

**Committee For The Environment**  
**Wildlife and Natural Environment Bill (NIA 5/09)**  
**TOGETHER WITH THE MINUTES OF PROCEEDINGS OF**  
**THE COMMITTEE RELATING TO THE REPORT AND THE**  
**MINUTES OF EVIDENCE**

Ordered by the Committee for the Environment to be printed 15 April 2010

Report: NIA 50/09/10R (Committee for the Environment)

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## **Membership and Powers**

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 46.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 9 May 2007 has been as follows:

Mr Cathal Boylan (Chairperson)  
Mr Dominic Bradley (Deputy Chairperson) 6 9

Mr Roy Beggs 2 Mr Jonathan Bell 7 8  
Mr John Dallat 5 Mr Danny Kinahan 3 4

Mr Ian McCrea Mr Daithi McKay  
Mr Alastair Ross 1 Mr Peter Weir  
Mr Brian Wilson 10

1 Mr Alex Maskey ceased to be a Member on 21 January 2008, Mr Alastair Ross was appointed on 21 January 2008.

2 With effect from 15 September 2008 Mr Roy Beggs replaced Mr Sam Gardiner.

3 With effect from 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong.

4 With effect from 22 June 2009 Mr Danny Kinahan replaced Mr David McClarty.

5 With effect from 29 June 2009 Mr John Dallat replaced Mr Tommy Gallagher.

6 With effect from 3 July 2009 Mrs Dolores Kelly replaced Mr Patsy McGlone as Chairperson.

7 With effect from 14 September 2009 Mr Adrian McQuillan replaced Mr Trevor Clarke.

8 With effect from 1 February 2010 Jonathan Bell replaced Mr Adrian McQuillan.

9 With effect from 12 April 2010 Dominic Bradley replaced Mrs Dolores Kelly.

10 Mr David Ford ceased to be a Member on 12 April, Mr Brian Wilson was appointed on 12 April 2010.

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## **Executive Summary**

### **Purpose**

1. This report sets out the Committee for the Environment's consideration of the Wildlife and Natural Environment Bill.
2. Members sought a balanced range of views as part of their deliberations on the Wildlife and Natural Environment Bill and requested evidence from interested organisations and individuals as well as from the Department of the Environment (the Department).

### **Delegated powers of the Bill**

3. The Committee sought advice from the Examiner of Statutory Rules in relation to powers within the Bill to make subordinate legislation. The Examiner advised that the powers were subject to negative resolution which in his opinion appeared to be an appropriate level of Assembly scrutiny. There were no matters to which he drew the attention of the Committee.

### **Duty to conserve biodiversity**

4. The Committee agreed with the Department that the wording of the primary legislation underpinning the new duty on public bodies to conserve biodiversity should be simple and straightforward.
5. The Committee received confirmation from the Department that the duty would apply to all public bodies including, crown, cross-border and Northern Ireland Water and that it would be providing training for all those affected by the new duty.
6. In light of the Committee's concerns the Department agreed to specify the duty to 'maintain and protect' on the face of the Bill and reassured the Committee that due consideration would be taken of the practicalities of the duty. The Committee subsequently agreed the Department's proposed amendments to bring this into effect.

7. The Committee was also presented with a Departmental amendment proposing that, "The Department 'must' issue guidance...", and the Committee agreed the clause subject to this amendment being made.

## **The biodiversity strategy**

8. The Committee was concerned about the vague wording regarding the period required for reporting on the implementation of the biodiversity strategy. The Department advised the Committee that the reporting obligation for the current Biodiversity Strategy is 3 years but that it wanted to retain sufficient flexibility in the legislation to allow for different approaches in the future. The Committee recognised the need for flexibility but felt that an upper limit on the reporting period should be included on the face of the Bill.

9. The Committee was subsequently presented with Departmental amendments that would require the Department to publish a report on the implementation of the biodiversity strategy not later than five years after designating it and at least once every five years thereafter. The Committee agreed the clause subject to this amendment.

## **Protection of nests of certain birds**

10. The Committee sought an explanation for the inclusion of the golden eagle to the list of birds which reuse their nests and the exclusion of other species. The Department argued that even though some species might have vulnerable populations, they do not require the protection of the law for their nest. In addition, the legislation will require specific species to be identified.

11. The Committee was presented with a proposed Departmental amendment to include the red kite, the osprey, the white-tailed eagle and the peregrine but not the barn owl. The Committee subsequently agreed the clause subject to the Department's amendment to include these 4 bird species and subject to a Committee amendment to include the barn owl.

## **Offences: recklessness**

12. The Committee sought clarification on the definition of 'recklessness' and was advised by the Department that the prosecution must prove the defendant to have had a state of mind amounting to less than 'intention' but more than 'negligence' at the time of committing the offence. The Department stressed that in its opinion the inclusion of 'reckless' would not impact on anyone acting in a responsible manner in the countryside. The Department advised that it would not be possible to incorporate a definition of 'reckless' onto the face of the Bill but that it would be explained fully in the guidance.

## **Offences: causing or permitting unlawful acts**

13. The Committee was concerned about the implications of the clause on landowners that give permission to gun owners to shoot on their land but do not have regular or ongoing contact with them. The Department suggested that there would be an opportunity for land owners to advise those shooting on their land of their responsibilities in relation to the Bill at the five-year gun licence renewal stage.

## **Protection of basking sharks from disturbance**



14. The Committee enquired if other vulnerable marine species such as cetaceans, seals or marine turtles could be protected from disturbance under this clause. The Department advised that cetaceans and marine turtles are protected under European law but that seals could be considered.

15. The Department accepted the Committee's recommendation on seals and presented the Committee with a proposed amendment to include the common and grey seals. The Committee agreed the clause subject to this amendment, noting that an amendment would also need to be made to the title of the clause which, as drafted, refers only to basking sharks.

## **Snares**

16. 16. The Committee considered two options:

- a) The introduction of a regime that would require all snare use to be licensed along with a requirement for set snares to be checked at least once every 12 hours.
- b) A total ban on the use of snares.

17. By majority, the Committee agreed a total ban on snares should be introduced through the Bill and agreed the clause subject to a Committee amendment to implement this.

## **Introduction of new species**

18. The Committee recognised the importance of raising awareness and education in relation to invasive non-native species, not just for the general public but also for the public sector. The Department confirmed that in addition to guidance and codes of practice, it would be running awareness programmes.

## **Prohibition on sale, etc. of invasive, non-native species**

19. The Department maintained that banning specific species will be much more effective than a blanket ban as most non-native species are unlikely to be invasive even if they escape into the wild. The Committee supported the proposed legislation to ban the sale of the species posing the highest risk of becoming invasive in NI.

## **Licences under Article 18**

20. In general the Committee was supportive of the proposals for licences under Article 18 of the Wildlife Order, welcoming the firmer footing on which licences would be placed.

## **Discharging firearms, etc. from vehicle**

21. The Committee questioned the need for this clause, having heard evidence suggesting that whilst the proposals are unlikely to make a significant improvement for deer management they could aid and abet wildlife crime and deer poaching.

22. The Committee was also presented with additional advice from the PSNI but being unable to ascertain sufficient justification for its inclusion and concerned that it might facilitate easier poaching and wildlife crime, the Committee recommended that the clause be deleted from the Bill.

## **Offences: possession of articles for purposes of committing offences**

23. In response to concerns raised on behalf of stakeholders regarding 'criminal intent', the Department informed the Committee that a definition of criminal intent is already included in the definition of Northern Ireland law (Criminal Attempts and Conspiracy (NI) Order).

## **Enforcement and Powers of constable in connection with samples**

24. The Department clarified that these proposals are designed to enhance the PSNI's existing role.

## **Enforcement: wildlife inspectors**

25. The Department reassured the Committee that the main responsibility for enforcement will remain with the police. Wildlife inspectors will be appointed from within the Department and will be fully trained.

## **Penalties**

26. The Committee welcomed the introduction of custodial sentences for serious wildlife crime but also recognised the potential contribution of proactive approaches such as restorative justice.

## **Review of Schedules**

27. The Department indicated that it could address the concerns around the length of review periods through the provision, via subordinate legislation, for emergency changes to be made to schedules at any time.

## **Reduction in close seasons for female deer**

28. The Committee accepted the Department's rationale for reducing the deer close season. However, on the evidence provided by stakeholders, questioned the proposal to shorten the season by reducing it by a month at the end rather than at the beginning as this is likely to produce a welfare problem of dependent young losing their mothers.

29. The Committee was subsequently presented with a proposed Departmental amendment to bring about this change and agreed the clause subject to the Department's amendment.

## **Offences in connection with ASSIs**

30. The Department noted that the changes proposed are not radical but will bring Northern Ireland's ASSI protection legislation in line with that in England and Wales.

## **Notification of change of owner or occupier**

31. The Committee felt that the Land Registry was unlikely to be sufficiently up-to-date to provide the necessary information of any change of ownership or occupation of the land in a timely manner and stressed to the Department the importance of it keeping ASSI land owners informed about their obligation on a regular basis.

32. The Committee also sought clarification on whether notification would be required for land that is let for short periods. The Department advised that notification would not be required for land taken in conacre and the Committee agreed the clause as drafted.

## **Notices and signs relating to ASSIs**

33. The Committee was concerned about the impact of the Bill's proposals on shooting rights. The Department clarified that shooting rights will only be affected where it is a requirement of the designation.

## **Abolition of game licences and game dealers' licences**

34. The Committee sought the opinion of the Department for Social Development on these proposals as it has responsibility for administering game and game dealers' licensing. It informed the Committee that there was wide support for the proposals to abolish the current requirements and that this Bill offered the legislative vehicle for doing it.

## **Inclusion/Exclusion of species on Schedules 1, 2, 4, 5 and 9 of the Wildlife (Northern Ireland) Order 1985**

### **Birds to be included on Schedule 1 of the Wildlife Order**

35. Stakeholders provided a range of species they believed should be added to Schedule 1 of the Wildlife Order which lists birds which are protected by special penalties.

#### **Golden plover**

36. The Department indicated that it is not minded to include it on the list at this stage but will review the situation in five years.

#### **Curlew**

37. The Department indicated it would consider an amendment including the curlew on Schedule 1.

#### **Bullfinch and Reed bunting**

38. The Department advised that it remains of the view that these species should not be added to Schedule 1.

#### **Whinchat, Raven, Lapwing and Redshank**

39. The Department indicated it is willing to consider the inclusion of the winchat, the lapwing and the redshank on Schedule 1 but is not minded to add the raven.

40. The Department subsequently provided the Committee with a proposed amendment to include curlew, lapwing, redshank and whinchat. The Committee welcomed these additions but in addition called for a further amendment to include the golden plover.

### **Birds to be excluded from Schedule 2 of the Wildlife Order**

41. Schedule 2 of the Wildlife Order lists birds which may be killed or taken. It currently includes both the golden plover and curlew. If these species are added to Schedule 1, they must be removed from Schedule 2.

42. The Department's proposed amendments made provision for the removal of the curlew but not the golden plover. The Committee subsequently agreed to accept the Department's amendment for the curlew and make its own amendment to exclude the golden plover from Schedule 2 of the Wildlife Order.

### **Birds to be included/excluded from Schedule 4 of the Wildlife Order**

43. Schedule 4 lists wild birds which may be shown for competitive purposes. The Bill proposes to add a further 16 to the current list of 15 species.

44. The Department indicated that the risk of illegal activity to boost captive stocks was much lower in Northern Ireland than the rest of the UK, because unlike GB all captive collections have to be licensed in Northern Ireland and a third of these licence holders are inspected annually.

45. In the absence of a Departmental amendment, the Committee will bring forward its own amendment to remove the reed bunting, the twite and the yellowhammer from existing Schedule 4 and to delete Schedule 1, paragraph 4, sub-paragraph 2.

### **Animals to be included on Schedule 5 of the Wildlife Order**

46. Schedule 5 lists animals that are protected at all times and stakeholders proposed a range of additional animals that they believe should be included.

### **White, Black and Long-nosed skates**

47. When discussing skates, the Department mentioned that it would be bringing forward an amendment to specify that the common skate, which is being added to the list, will only be protected within coastal waters. This also applies to the Angel shark.

48. The Committee accepted the Department's proposed amendment to specify that the common skate will only be protected within coastal waters.

### **Pollan**

49. The Department advised it would be reluctant to place pollan on Schedule 5 until more information about population numbers and impact on communities in areas where it is fished has been obtained.

### **Lamprey**

50. The Department is not minded to place the species on the protected list.

## **Irish hare**

51. The Department indicated to the Committee that there are signs that the population is now stable and that the Irish Hare Species Action Plan is on target to deliver its objectives. The Department is not minded to add the Irish hare to Schedule 5. In addition, the Department hinted strongly that if hare numbers continue to remain stable, it is unlikely to reissue a Special Protection Order in 2011.

## **Plants to be included on Schedule 8 of the Wildlife Order**

52. The Department confirmed that the Spanish bluebell, which is readily available in garden centres, is recognised as an invasive non-native species and as such is included on Schedule 9.

## **Animals and plants to be included on Schedule 9 of the Wildlife Order**

53. The Department was adamant that this list should be confined to the invasive aliens that present the highest risk to biodiversity. It also noted that it would be bringing forward an amendment to include Roe and Chinese water deer.

54. The Committee accepted the Department's proposed amendments to include Roe and Chinese Water Deer to the list and to list by species the three Knotweeds listed.

## **Special protection orders**

55. The Committee sought clarification from the Department that Special Protection Orders could be augmented to include 'possession' as well as taking and killing.

56. The Committee therefore welcomed the Department's proposed amendment to include a new clause in the Bill that would amend the Game Preservation Act (Northern Ireland) 1928 accordingly. The Committee also accepted the consequential amendments following on from this to the long title of the Bill.

# **Recommendations**

## **Definition of 'conserving' (Clause 1(3a))**

1. The Committee asked for clarification of the definition of 'conserving'. Many stakeholders suggested that if the words 'maintain' and 'protect' were not explicit in the definition, there was risk that biodiversity could be allowed to deteriorate. The Department indicated that the definition of 'conserve' does actually incorporate the need to maintain and protect and this will be specified in the accompanying guidance.

2. While some members of the Committee were keen to see the terminology referred to explicitly on the face of the Bill, others were concerned that this might place an obligation on public bodies that over time might become disproportionately expensive if habitat conditions changed beyond anthropological control.

3. In light of the Committee's concerns the Department agreed to specify the duty to 'maintain and protect' on the face of the Bill and reassured the Committee that due consideration would be taken of the practicalities of the duty. On 25 March 2010, the Committee agreed the Department's proposed amendments to bring this into effect.

## **Guidance for public bodies on the new biodiversity duty (Clause 1(4))**

4. The Committee welcomed the Department's indication that it may issue guidance for public bodies containing recommendations, advice and information for the assistance of public bodies in complying with the new biodiversity duties being introduced. To ensure there is no slippage in this proposal, the Committee recommended that the proposal is strengthened to 'The Department will or shall issue guidance...' and that the Department should aim to issue the guidance at the same time the legislation comes into force.

5. On 25 March 2010 the Committee was presented with a Departmental amendment proposing that, "The Department 'must' issue guidance...", and the Committee agreed the clause subject to this amendment being made.

## **Period of reporting requirement of Biodiversity Strategy (Clause 2(4))**

6. The Committee recognised the need for a degree of flexibility on the reporting period of the implementation of a biodiversity strategy. However, it felt the Department's proposal for a report to be published 'from time to time' to be too vague and recommended that this phrase is augmented by specifying, 'but no less frequently than every 5 years'.

7. On 25 March 2010 the Committee was presented with Departmental amendments that would require the Department to publish a report on the implementation of the biodiversity strategy not later than five years after designating it and at least once every five years thereafter. The Committee agreed the clause subject to this amendment.

## **Protection of nests of certain birds (Clause 4)**

8. The Committee welcomed the inclusion of new protection for the nests of birds which re-use their nests. Having clarified the intention of the legislation, the Committee recommended that in addition to the golden eagle, Schedule A1 should include the red kite, the osprey, the white-tailed eagle, the peregrine and the barn owl.

9. The Committee was presented with a proposed Departmental amendment to include all but the barn owl. On 25 March 2010, the Committee agreed the clause subject to the Department's amendment to include the red kite, the osprey, the white-tailed eagle and the peregrine and subject to a Committee amendment to include the barn owl.

## **Protection of seals from disturbance (Clause 9)**

10. The Committee welcomed the inclusion of a clause to protect basking sharks from disturbance and recommended that the clause should be expanded to include both species of seal found in Northern Ireland waters. The Department accepted this recommendation and presented the Committee with a proposed amendment to include the common and grey seals. The Committee agreed the clause subject to this amendment on 25 March 2010, noting that an amendment would also need to be made to the title of the clause which, as drafted, refers only to basking sharks.

## **Snares (Clause 10)**

11. Having taken evidence from a wide range of stakeholders the Committee unanimously concluded that the regulation on snare use should be much tighter than that proposed by the Department in the Bill. The Committee considered two options:

a) The introduction of a regime that would require all snare use to be licensed along with a requirement for set snares to be checked at least once every 12 hours.

b) A total ban on the use of snares.

12. By majority, the Committee agreed a total ban on snares should be introduced through the Bill and agreed the clause subject to a Committee amendment to implement this.

## **Discharging firearms, etc. from vehicle (Clause 15)**

13. The Committee was presented with advice from the PSNI on 25 March 2010. Being unable to ascertain sufficient justification for its inclusion and concerned that it might facilitate easier poaching and wildlife crime, the Committee recommended that the clause be deleted from the Bill.

## **Reduction in close seasons for female deer (Clause 26)**

14. The Committee agreed with the Department's proposals to reduce the deer close season from eight months to seven in order to allow for better welfare management. However, instead of shortening the close season by ending it on 30th September as proposed, the Committee recommended that the Department delays the start of the close season by a month, 1st April, lasting to the current end date of 31st October. The Committee was aware that this may result in the unfortunate circumstance of in-calf females being destroyed but assessed this to be preferable to dependent calves losing their mothers in October.

15. On 25 March 2010, the Committee was presented with a proposed Departmental amendment to bring about this change and agreed the clause subject to the Department's amendment.

## **Notification of change of owner or occupier (Clause 28)**

16. The Committee was concerned that the Land Registry was not likely to be sufficiently up-to-date to provide the necessary information in a timely manner. It recommended that the Department keeps ASSI land owners informed of their obligations on a much more regular basis. The Committee also sought clarification of the definition of ownership under this clause. Having received a letter from the Department on 22 March 2010, clarifying that ownership did not include land taken in conacre, the Committee agreed the clause as drafted on 25 March 2010.

## **Inclusion/Exclusion of species on Schedules 1, 2, 4, 5 and 9 of the Wildlife (Northern Ireland) Order 1985 (Schedule 1)**

### **Birds to be included on Schedule 1 of the Wildlife Order**

17. The Committee considered the information provided by a range of stakeholders and concluded that the golden plover, curlew, whinchat, lapwing and redshank should be added to Schedule 1; i.e. birds which are protected by special penalties. On 25 March 2010 the

Department provided the Committee with a proposed amendment to include curlew, lapwing, redshank and whinchat. The Committee welcomed these additions but in addition called for a further amendment to include the golden plover.

### **Birds to be excluded from Schedule 2 of the Wildlife Order**

18. 18. To enable the previous recommendation, the Committee recommended that the golden plover and curlew, should be removed from Schedule 2; i.e. birds which may be killed or taken. The Department's proposed amendments, presented to the Committee on 25 March 2010, made provision for the removal of the curlew but not the golden plover. The Committee subsequently agreed to accept the Department's amendment for the curlew and make its own amendment to exclude the golden plover from Schedule 2 of the Wildlife Order.

### **Birds to be excluded from Schedule 4 of the Wildlife Order**

19. 19. The Committee remained unconvinced that the licensing system in Northern Ireland, albeit more robust than the rest of the UK, would prevent birds being taken from the wild to support captive collections. Consequently the Committee recommended that the more vulnerable species should be removed from the existing Schedule 4; i.e. birds which may be shown for competitive purposes, and no new ones added.

20. In the absence of a Departmental amendment, the Committee will bring forward its own amendment to remove the reed bunting, the twite and the yellowhammer from existing Schedule 4 and to delete Schedule 1, paragraph 4, sub-paragraph 2.

### **Animals to be included on Schedule 5 of the Wildlife Order**

21. After much consideration the Committee, by majority, recommended that the status quo for the Irish hare should be retained and agreed Schedule 1 in relation to the Irish hare as drafted.

22. The Committee also accepted the Department's proposed amendment, presented to them on 25 March 2010, to specify that the common skate will only be protected within coastal waters.

### **Animals and plants to be included on Schedule 9 of the Wildlife Order**

23. The Committee supported the Department's rationale for the species it intends to add to Schedule 9; invasive non-native species and which should not be released or allowed to escape into the wild. It also accepted the Department's proposed amendments to include Roe and Chinese Water Deer to the list and to list by species the three Knotweeds listed.

### **Non-native invasive species**

24. The Committee was informed by stakeholders that Scotland is undertaking a comprehensive review of alien invasive species and looking at ways to improve prevention and control. The Department advised the Committee that Scotland had only recently undertaken this work and that it would be too soon for results to be assessed. The Committee subsequently recommended that the Department takes cognisance of this Scottish approach in due course and where appropriate applies it to the Northern Ireland context.

### **Special protection orders**



25. The Committee recommended that Special Protection Orders should be augmented to include 'possession' as an offence in addition to the 'taking' and 'killing' currently included.

26. The Committee therefore welcomed the Department's proposed amendment, presented to them on 25 March 2010, to include a new clause in the Bill that would amend the Game Preservation Act (Northern Ireland) 1928 accordingly. The Committee also accepted the consequential amendments following on from this to the long title of the Bill.

## **Introduction**

27. The Wildlife and Natural Environment Bill was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 12 January 2010.

28. The Minister of the Environment (the Minister) made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the Wildlife and Natural Environment Bill would be within the legislative competence of the Northern Ireland Assembly'.

29. The Bill proposes to introduce new provisions and amends the Wildlife (Northern Ireland) Order 1985 No. 171 (N.I.2) ('the Wildlife Order') in order to reflect the increasing significance of protecting Northern Ireland's biodiversity and the need to continue to deter wildlife crime.

30. During the period covered by this Report, the Committee considered the Bill and related issues at meetings on 7 and 28 January, 4, 18 and 25 February, 4, 11, 15, 18 and 25 March and 15 April 2010. The relevant extract from the Minutes of Proceedings for these meetings are included at Appendix 1.

31. The Committee had before it the Wildlife and Natural Environment Bill (NIA 5/09) and the Explanatory and Financial Memorandum that accompanied the Bill.

32. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 15 January 2010 in the Belfast Telegraph, Belfast Telegraph North West edition, Irish News and News Letter seeking written evidence on the Bill.

33. A total of 35 organisations/individuals responded to the request for written evidence and a copy of the submissions received by the Committee is included at Appendix 3.

34. The Committee was first briefed by officials about the consultation stages and policy development of the policy areas covered by the Wildlife and Natural Environment Bill on 7 January 2010. The Committee was also briefed by RSPB and Countryside Alliance on 18 February 2010, Northern Ireland Environment Link, Ulster Farmers' Union and Ulster Wildlife Trust on 25 February 2010, NILGA, Northern Ireland Biodiversity Group and Talnotry Avian Care Trust on 4 March 2010 and Premier Woodlands Trust on 11 March 2010. Departmental officials further briefed the Committee at meetings on 11, 15, and 18 March 2010.

35. The Committee began its formal clause by clause scrutiny of the Bill on 15 March 2010 and concluded this on 25 March 2010.

## **Extension of Committee Stage of the Bill**

36. On 15 February 2010, the Assembly agreed to extend the Committee Stage of the Bill to 20 April 2010.

## **Report on the Wildlife and Natural Environment Bill**

37. At its meeting on 15 April 2010 the Committee agreed its report on the Bill and agreed that it should be printed.

## **Consideration of the Bill by the Committee**

38. The Bill consists of 36 Clauses and 3 Schedules. Clauses 1 to 3 are new statutory provisions. Clauses 4 to 26 relate to amendments to the Wildlife (Northern Ireland) Order 1985. Clauses 27 to 30 relate to amendments to the Environment (Northern Ireland) Order 2002, while clauses 31 and 32 relate to changes to provisions contained in the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972, the Game Act 1931, the Game Preservation Act (Northern Ireland) 1928 and the Wildlife (Northern Ireland) Order 1985 relating to game species.

## **Departmental briefing on areas covered by the Wildlife and Natural Environment Bill, 7 January 2010.**

39. The Department briefed members on 7 January 2010. Officials provided the Committee with an overview of the Wildlife and Natural Environment Bill's main provisions and aims.

40. The officials stated that the Department believes that the Bill will have a positive and practical impact on conservation of biodiversity and protection of valuable wildlife, that the Wildlife Order is 25 years old and needed to be reviewed and updated, that the Bill will provide stronger enforcement powers for the police and the Department's wildlife inspectors to enforce the legislation and that a new biodiversity duty will be placed on all Departments, district councils and public bodies to further the conservation of biodiversity consistent with the exercise of their functions.

41. The officials also stated that the Bill will contain provisions that will abolish the existing systems in Northern Ireland that require anybody that hunts or trades in game species to have a licence and that the Department is taking the legislative opportunity to make some amendments to the Environment (Northern Ireland) Order 2002, mainly to enhance the protection and management of ASSIs.

## **Briefing by Royal Society for the Protection of Birds (RSPB), 18 February 2010**

42. Representatives from the RSPB briefed the Committee on 18 February 2010. The representatives stated they strongly welcomed the Bill, welcomed the inclusion of a biodiversity duty for public bodies and the introduction of custodial sentences and increased fines for wildlife crime but that the organisation would like some amendments and some additional clauses.

43. One of the RSPB's main recommendations was that the curlew should be moved from schedule 2 to schedule 1 of the 1985 Order due to the decline in numbers. The RSPB stated that maintenance of the curlew on schedule 2 was at odds with a lot of positive work that is being done for the species.

44. On other aspects of the Bill the RSPB stated they would like to see the inclusion of a statutory duty to report on licences in line with article 9 of the birds directive, a review of licensing procedures, particularly with regard to general licences, a review of the legislation on non-native species, an introduction of temporary stop notices in relation to ASSIs and to allow the provisions of protection that are given to ASSIs under the Environment (Northern Ireland) Order 2002 to apply to Special Protection Areas and Special Areas of Conservation.

## **Briefing by Countryside Alliance Ireland, 18 February 2010**

45. Representatives from the Countryside Alliance Ireland briefed the Committee on 18 February 2010. The representatives stated that although there are concerns that Irish hare numbers are under threat from coursing, scientific evidence categorically states otherwise.

46. In relation to the curlew, the Countryside Alliance stated that it is aware of the decline in curlew numbers in Northern Ireland but believe that the largest factor in the resident curlew's decline is the loss and damage of its habitat due to predation. The organisation believes it is important to leave the curlew as it is and to encourage inclusive participation by all country sports and conservation organisations, so that they work together to employ proper predator control, habitat management and wardenship, rather than simply opting for a crude and unwieldy banning measure.

47. On the issue of snares, the organisation stated its members fully support the Department's proposal to move forward on the basis of the favoured option but that the organisation is aware that it is a sensitive issue and it is in favour of the introduction of a licensing scheme to make the use of snares more professional, more visible and more ethical.

## **Briefing by the Northern Ireland Environment Link (NIEL), 25 February 2010**

48. NIEL considered that the current failing to have accurate biodiversity data was detrimental to biodiversity protection and custodial and punitive sentences were required to ensure preservation of wildlife and the biosphere. NIEL supported the banning of snares, asked for clarity on licensing procedures and reported that protection of more individual species was required.

49. NIEL stressed that the prevention of entry and the prevention of the spread of alien species within Northern Ireland was of high priority

50. On the issue of the Irish hare NIEL confirmed that they wanted additional protective measures.

51. On ASSIs, NIEL stated that it was important to protect not just designated land but undesignated land also needed to be given a degree of protection and in that respect the implementation of PPS2 was important.

## **Briefing by the Ulster Wildlife Trust (UWT), 25 February 2010**

52. The UWT stressed that the costs of repairing damage to ASSIs were considerable. The high costs involved in making good any damage was a key factor in ensuring that damage were prevented and that the ultimate deterrent of a custodial sentence was available to society. The UWT supported the potential use of custodial sentences in helping to eliminate wildlife crime.

53. Discussing the issue of species reclassification, the UWT suggested that Schedules should have a mechanism for incorporating any Scheduled species that may become reclassified as a result of ongoing international research.

## **Briefing by the Ulster Framers Union, 25 February 2010**

54. The Ulster Framers Union were concerned about the concept of "reckless intention" being applied to the Bill given that environmental legislation was so extensive farmers could not be expected to be aware of all the various areas of the law.

55. The Ulster Farmers Union stressed that the powers of any Wildlife Inspectors should be substantially less than the powers of the PSNI and that access on to private land to investigate alleged wildlife crimes should be by a legal warrant.

56. In relation to the cutting of hedge rows the Ulster Farmers Union suggested that the time be brought forward for the cutting of hedgerows to mirror that of England and Scotland.

## **Briefing by NILGA, 4 March 2010**

57. NILGA confirmed that they welcomed the Bill however there were substantial gaps within the Bill that needed to be addressed in terms of funding, training, monitoring, knowledge, and baseline information. NILGA stated that, currently within the 26 district councils, there were only 7 biodiversity officers of which 3 were on permanent contracts.

58. The issue of funding the additional duties to be imposed under the Wildlife Bill was of great concern to NILGA and the officials asked for guidance should local government fail to meet any commitments required under the legislation.

59. The use of the landfill tax to help local government to fund biodiversity issues was suggested by NILGA, perhaps to pay for the recruitment of new biodiversity officers.

60. NILGA confirmed that in Europe there was a stricter regime for those engaged in gun sports with a requirement for individuals to report the levels of kills and for recognition tests to be taken as part of licensing requirements. It was suggested that tests could be used to obtain a gun licence within Northern Ireland and that wildfowlers should be required to provide feedback on their kills to help with data collection.

61. In relation to the new offence of recklessness NILGA stated that there was an ongoing need to take early intervention against invasive species and that recklessness as an offence was necessary within the new Bill to prevent unintentional biosphere destruction or the release or introduction of species not indigenous to Northern Ireland.

## **Briefing by the NI Biodiversity Group, 4 March 2010**

62. The NI Biodiversity Group asked for some of the terminology of the Bill to be tightened up to expand on several of the duties included within the Bill. The Group made specific suggestions

that the new Bill be widened to include a duty to influence outcome and to protect and maintain the existing biosphere.

63. In relation to available scientific data, the NI Biodiversity Group stated that current, accurate scientific data were not available to enable reliable judgements to be formed and that data collection was an urgent priority. The Group expressed concern at the lack of resourcing of the biodiversity measures.

64. It was the view of the NI Biodiversity Group that the large suite of current legislation covering environmental, biodiversity and wildlife protection makes interpretation of existing regulations difficult and confusing for all concerned.

65. In relation to the use of snares, the NI Biodiversity group reported that they would like to see the management of snares included within the Bill. The group advocated the checking of snares every twelve hours and not every twenty four hours as recommended within the Bill. In relation to self locking snares the NI Biodiversity Group argued that these were unacceptable and should be prohibited.

## **Briefing by the Talnotry Avian Care Trust (TACT), 4 March 2010**

66. TACT confirmed that in relation to their sanctuary the forthcoming Bill, which proposed a multiple series of licenses, could be extremely damaging. Numerous licences would be required for each of the different animals and birds, the cost of which would place an enormous financial burden on operations possibly even threatening the existence of the Trust.

67. TACT suggested that operations such as their own should be covered by a "one-off group" licence otherwise the management, administration and the costs of the licensing becomes cost prohibitive.

## **Briefing by Premier Woodlands Trust, 11 March 2010**

68. The Premier Woodlands Trust in general welcomed the forthcoming Bill but suggested that certain clarifications were required to help manage the deer stock within Northern Ireland. The identification of the seven main species of deer, their sub-species and hybrid deer needed to be identified and quantified to be of assistance to those drafting the new Bill.

69. In relation to the use of snares, Premier Woodland Trust considered snares to be a useful tool among others to help protect young saplings. The Trust agreed that snares should be checked every 24 hours (or less) and needed to be sited well away from public access.

70. Premier Woodlands Trust suggested that the new Bill needed to address issues such as deer farming exemption certificates which applied under the old Wildlife Order but were no longer available and the issue of other different types of licenses in terms of deer protection. It was the view of Premier Woodlands Trust that the management of deer by shooting from a stationary vehicle, with the engine off, as included within the Bill would make it more difficult to prosecute potential poachers.

71. The Premier Woodlands Trust stated that the Department needed to clarify exactly who would be the wildlife inspectors proposed within the new Bill. In relation to extending the season for the shooting of deer by a month at the start of the season, Premier Woodlands thought that this was a huge mistake as it was possible that dependent young calves could be left to suffer

and die if their mothers were shot. It was suggested that following the Scottish model in relation to shooting seasons would be better for the management of deer. Premier Woodlands Trust suggested that extending the end of the season was preferable to extending the start of the shooting season.

## **Departmental briefing on 11 March 2010**

72. Departmental officials attended the meeting on 11 March to answer members' queries as the Committee began initial clause by clause consideration of the Bill - Clauses 1 - 20. The main areas of discussion were guidance on the biodiversity duty, the review of the biodiversity strategy, protection for nest sites, definition of reckless, the need for snares, the need for Clause 15 of the Bill and wildlife inspectors.

## **Departmental briefing on 15 March 2010**

73. Departmental officials attended the meeting on 15 March to answer members' queries as the Committee continued initial clause by clause consideration of the Bill – Clauses 21 – 26, 31 – 36 and Schedule 1. The main areas of discussion were the population of the Irish hare, the possibility of removing the curlew from Schedule 2 and adding to Schedule 1, the status of the golden plover and the definition of protection in special protection orders.

## **Departmental briefing on 18 March 2010**

74. Departmental officials attended the meeting on 18 March to answer members' queries as the Committee continued initial clause by clause consideration of the Bill – Clauses 27 - 30. The main areas of discussion were the definition of 'occupier' in relation to land ownership and ASSIs and biosecurity in relation to ASSIs.

## **Key Issues**

75. During its consideration of oral and written evidence from interested individuals and organisations, the Committee identified a number of key issues on which further advice was sought.

## **Delegated powers of the Bill**

76. The Committee sought advice from the Examiner of Statutory Rules in relation to powers within the Bill to make subordinate legislation. The Examiner informed the Committee that the Bill contains powers to make subordinate legislation in Clause 13 giving the Department the power to specify by order certain animal and plant species which will be prohibited from sale. The Examiner advised that the powers were subject to negative resolution which in his opinion appeared to be an appropriate level of Assembly scrutiny. There were no matters to which he drew the attention of the Committee.

## **Duty to conserve biodiversity**

77. The Committee agreed with the Department that the wording of the primary legislation underpinning the new duty on public bodies to conserve biodiversity should be simple and straightforward. Recommendations, advice and information relating to the duty should be issued via guidance.

78. The Committee received confirmation from the Department that the duty would apply to all public bodies including, crown, cross-border and Northern Ireland Water and that it would be providing training for all those affected by the new duty.

## **The biodiversity strategy**

79. The Committee was advised that the Department intends the 2002-2016 Biodiversity Strategy to be the designated strategy when the Bill becomes law. However, the wording of the legislation allows for flexibility beyond 2016.

80. The Committee was concerned about the vague wording regarding the period required for reporting on the implementation of the biodiversity strategy. The Department advised the Committee that the reporting obligation for the current Biodiversity Strategy is 3 years but that it wanted to retain sufficient flexibility in the legislation to allow for different approaches in the future. The Committee recognised the need for flexibility but felt that an upper limit on the reporting period should be included on the face of the Bill.

## **Protection of nests of certain birds**

81. The Committee sought an explanation for the inclusion of the golden eagle to the list of birds that reuse their nests and the exclusion of other species. The Department advised that some species, like golden eagle, red kite, osprey, white-tailed eagle and peregrine are 'nest faithful', coming back to the same nest year on year and failing to nest in the area if the nest has been destroyed. Others, such as the barn owl, hen harrier, merlin, chough and swift, adapt more readily, nesting in alternative sites within a location if necessary. The Department argued that even though some of the latter species might have vulnerable populations, they do not require the protection of the law for their nest.

82. The Department noted that the general term 'raptor' could not be used in the legislation because whilst many of the 'nest faithful' species are raptors, not all raptors fall into the category. In addition, the legislation will require specific species to be identified.

## **Offences: recklessness**

83. The Committee sought clarification on the definition of 'recklessness' and was advised by the Department that the prosecution must prove the defendant to have had a state of mind amounting to less than 'intention' but more than 'negligence' at the time of committing the offence. Recklessness has normally been held to have a subjective meaning of being aware of the risk of a particular consequence arising from one's action but deciding nonetheless to continue with one's actions and take the risk. The Department stressed that in its opinion the inclusion of 'reckless' would not impact on anyone acting in a responsible manner in the countryside.

84. The Department advised that it would not be possible to incorporate a definition of 'reckless' onto the face of the Bill but that it would be explained fully in the guidance.

## **Offences: causing or permitting unlawful acts**

85. The Department advised the Committee that under current legislation employers are not considered to have committed an offence if it has been done at their request by an employee. Proposals in Clause 6 are designed to close this loophole.

86. The Committee was concerned about the implications of the clause on landowners that give permission to gun owners to shoot on their land but do not have regular or ongoing contact with them. The Department suggested that there would be an opportunity for land owners to advise those shooting on their land of their responsibilities in relation to Bill at the five-year gun licence renewal stage.

## **Protection of basking sharks from disturbance**

87. The Committee enquired if other vulnerable marine species such as cetaceans, seals or marine turtles could be protected from disturbance under this clause. The Department advised that cetaceans and marine turtles are protected under European law but that seals could be considered.

88. The Department noted that an accredited Wildlife Safe Operator Scheme for commercial and private boat operators will underpin the legislation.

## **Snares**

89. The Committee sought further information on a range of aspects of snare use. The Department informed the Committee that it recognised the value of snares as a land management tool but was proposing to strengthen controls over their use by outlawing the use of self-locking snares and the setting of snares that could cause unnecessary suffering. Anyone setting a snare will also be required to inspect it at least once every 24 hours.

90. The Committee was advised by stakeholders that the UK and the Republic of Ireland are 2 of only 5 countries within the EU which permit the use of snares and that it is possible that permitting the use of snares contravenes the Bern Convention on the Conservation of European and Wildlife and Natural Habitat which prohibits the use of all indiscriminate means of capture. The Department stressed, however, that Northern Ireland, Scotland and the Republic of Ireland have not been challenged under this convention.

91. When asked about the possibility of introducing licenses the Department indicated that while feasible, the resource implications of doing so were unknown. The Department told the Committee that new legislation in Scotland required snares to have fixed stops and ID tags but it was too soon after its introduction to assess the effectiveness of this approach.

## **Introduction of new species**

92. The Committee recognised the importance of raising awareness and education in relation to invasive non-native species, not just for the general public but also for the public sector. The Department confirmed that in addition to guidance and codes of practice, it would be running awareness programmes.

93. Some stakeholders were concerned that new guidance would be inconsistent with existing guidance but the Department reassured the Committee that it would ensure new guidance and codes of practice would complement existing material.

94. The Department noted that this legislation had been developed in accordance with forthcoming European legislation.

## **Prohibition on sale, etc. of invasive, non-native species**



95. Many stakeholders expressed concerns about the adequacy of the provisions being proposed for controlling the introduction of non-native invasive new species and some suggested that there should be a ban on the sale of all alien species. The Department maintained that banning specific species will be much more effective than a blanket ban as most non-native species are unlikely to be invasive even if they escape into the wild. The Committee supported the proposed legislation to ban the sale of the highest risk species.

96. As previously, the Department noted that this legislation had been developed in accordance with forthcoming European legislation.

## **Licences under Article 18**

97. In general the Committee was supportive of the proposals for licences under Article 18 of the Wildlife Order, welcoming the firmer footing on which licences would be placed. The Committee received confirmation from the Department that suggestions from stakeholders for a range of further amendments were not appropriate for the face of the Bill.

98. The Committee also sought and received confirmation from the Department that it would continue to liaise closely with stakeholders with particular needs such as those requiring multiple or group licenses or switching from licences under this legislation to others, such as zoo licenses.

99. It was noted that if the Committee agreed to introduce an amendment to ban the use of snares, consequential amendments would be required to Article 18 of the Wildlife Order accordingly which would be dealt with in Clause 14 of the Wildlife and Natural Environment Bill.

## **Discharging firearms, etc. from vehicle**

100. The Committee questioned the need for this clause, having heard evidence suggesting that whilst the proposals are unlikely to make a significant improvement for deer management they could aid and abet wildlife crime and deer poaching. The Committee sought guidance from the PSNI.

101. The PSNI advised that while it was not aware as to why the clause was being suggested by the Department, the relevant clause of the Firearms (NI) Order 2004, Article 61(2) stated that:

A person who discharges any firearm on any public road, or within 18 metres of the centre of any public road, or in any church, churchyard or burial ground shall be guilty of an offence unless he shows that he had lawful authority or reasonable excuse for doing so.

## **Offences: possession of articles for purposes of committing offences**

102. In response to concerns raised on behalf of stakeholders regarding 'criminal intent', the Department informed the Committee that a definition of criminal intent is already included in the definition of Northern Ireland law (Criminal Attempts and Conspiracy (NI) Order).

103. Other stakeholders were concerned about the lack of definition of 'articles capable of being used for committing the relevant offence', particularly where these might include land management equipment and dogs. However, the Department advised the Committee that this clause should not cause any land owner going about legitimate management any concern and that it was not necessary to include breed of dog on the face of the Bill.

## **Enforcement and Powers of constable in connection with samples**

104. The Department clarified that these proposals are designed to enhance the PSNI's existing role. The powers to enter land are not affected but new controls on the general use of powers of entry accord with modern legislation.

105. Some stakeholders were concerned that the additional powers to enter premises could compromise biosecurity on farms but the Department assured the Committee that this concern would be addressed outside the legislation through guidance, for which there is already a precedent.

## **Enforcement: wildlife inspectors**

106. Concerns were raised with the Committee about the proposals for increased powers for individuals who have been appointed wildlife officers. The Department reassured the Committee that the main responsibility for enforcement will remain with the police. Powers of wildlife inspectors will be more limited but powers of entry and to take samples are necessary to ensure inspectors can be effective. Wildlife inspectors will be appointed from within the Department and will be fully trained.

## **Penalties**

107. Many stakeholders mentioned the importance of ensuring penalties reflect the crime committed and the Department indicated that the proposals were aimed at achieving this. The Committee welcomed the introduction of custodial sentences for serious wildlife crime but also recognised the potential contribution of proactive approaches such as restorative justice.

## **Review of Schedules**

108. Stakeholders were mixed in their responses to the proposals for a 5-yearly review of the Schedules. Some felt the time period too short; concerned that frequent changes would make it difficult for those affected to keep track of changes. Others felt that there should be more frequent reviews to allow for species to be protected as soon as it is known they are vulnerable. The Department indicated that it could address the concerns of the latter group through the provision, via subordinate legislation, for emergency changes to be made to Schedules at any time. The Department also noted that the review serves as a mechanism to ensure the Schedules reflect the current situation and will not necessarily be changed every time. This should alleviate the concerns of the group worried about keeping abreast of changes.

## **Reduction in close seasons for female deer**

109. The Committee accepted the Department's rationale for reducing the deer close season. However, on the evidence provided by stakeholders, questioned the proposal to shorten the season by reducing it by a month at the end rather than at the beginning as this is likely to produce a welfare problem of dependent young losing their mothers.

## **Offences in connection with ASSIs**

110. The Committee was informed that ‘ignorance’ had been successfully used as a defence in the past in Northern Ireland and that this clause would close this loophole. The Department noted that the changes proposed are not radical but will bring Northern Ireland’s ASSI protection legislation in line with that in England and Wales.

## **Notification of change of owner or occupier**

111. These proposals place a requirement on the owners of the land within an ASSI to notify the Department of any change of ownership or occupation of the land. Stakeholders representing landowners were strongly opposed to this, suggesting that the Department could have access to the information through the Land Registry or the Department of Agriculture and Rural Development and that the onus should not be placed on the land owner. However the Committee felt that the Land Registry was unlikely to be sufficiently up-to-date to provide the necessary information in a timely manner and stressed to the Department the importance of it keeping ASSI land owners informed about their obligation on a regular basis.

112. The Committee also sought clarification on whether notification would be required for land that is let for short periods through the conacre system. The Department advised that notification would not be required for land taken in conacre.

## **Notices and signs relating to ASSIs**

113. The Committee was concerned about the impact of these proposals on shooting rights. The Department clarified that shooting rights will only be affected where it is a requirement of the designation.

## **Abolition of game licences and game dealers’ licences**

114. The Committee sought the opinion of the Department for Social Development on these proposals as it has responsibility for administering game and game dealers’ licensing. DSD informed the Committee that there was wide support for the proposals to abolish the current requirements and that this Bill offered the legislative vehicle for doing it.

115. Some stakeholders suggested that game licencing should be retained and adjusted to collect and provide numbers of species through ‘bag’ information. The Department advised the Committee that it is an EU requirement for member states to ensure that hunting is sustainable. Northern Ireland is involved in the development of a UK-wide scheme for collecting hunting bag statistics which falls outside the legislation.

## **Inclusion/Exclusion of species on Schedules 1, 2, 4, 5 and 9 of the Wildlife (Northern Ireland) Order 1985**

### **Birds to be included on Schedule 1 of the Wildlife Order**

116. Stakeholders provided a range of species they believed should be added to Schedule 1 of the Wildlife Order which lists birds which are protected by special penalties:

- Golden plover
- Curlew
- Bullfinch

- Reed bunting
- Whinchat
- Raven
- Lapwing
- Redshank

### **Golden plover**

117. The Department provided information that indicated that the golden plover population is low but stable in Northern Ireland, even though its numbers are increasing in other parts of the UK. The Department indicated that it is not minded to include it on the list at this stage but will review the situation in five years.

### **Curlew**

118. The Department agreed that curlew numbers are in decline and admitted that the action plan for its recovery did not appear to be delivering. The Department indicated it would consider an amendment including the curlew on Schedule 1.

### **Bullfinch and Reed bunting**

119. The Department indicated that the bullfinch and reed bunting are both widespread and the former may cause damage in orchards. Consequently it remains of the view that the species should not be added to Schedule 1.

### **Whinchat, Raven, Lapwing and Redshank**

120. Whinchat, lapwing and redshank numbers indicate that these species are now rare and the Department is willing to consider their inclusion on Schedule 1. However the raven population would appear to be on the increase and the Department is not minded to add the species to Schedule 1.

### **Birds to be excluded from Schedule 2 of the Wildlife Order**

121. Schedule 2 of the Wildlife Order lists birds which may be killed or taken. It currently includes both the golden plover and curlew. If these species are added to Schedule 1, they must be removed from Schedule 2.

### **Birds to be included/excluded from Schedule 4 of the Wildlife Order**

122. Schedule 4 lists wild birds which may be shown for competitive purposes. The Bill proposes to add a further 16 to the current list of 15 species. Stakeholders drew the Committee's attention to their concerns that this practice of keeping captive collections for showing purposes was encouraging illegal trapping, sometimes from beyond the UK, and that species with vulnerable populations should be excluded. Stakeholders were particularly concerned about the reed bunting, the twite and the yellowhammer which are currently included in Schedule 4 of the Wildlife Order.

123. The Department indicated that this risk of illegal activity to boost captive stocks was much lower in Northern Ireland than the rest of the UK, because unlike GB all captive collections have to be licensed in Northern Ireland and a third of these licence holders are inspected annually.

### **Animals to be included on Schedule 5 of the Wildlife Order**

124. Schedule 5 lists animals that are protected at all times and stakeholders proposed a range of additional animals that they believe should be included:

- White skate
- Black skate
- Long-nosed skate
- Pollan
- Lamprey
- Irish hare

### **White, Black and Long-nosed skates**

125. The Department advised the Committee that there was no evidence that the white, black and long-nosed skates are found in Northern Ireland waters. When discussing skates, the Department mentioned that it would be bringing forward an amendment to specify that the common skate, which is being added to the list, will only be protected within coastal waters. This also applies to the Angel shark which, like the Common skate, comes under the EU Common Fisheries Policy beyond 6 nautical miles.

### **Pollan**

126. The Department advised the Committee that Pollan is commercially fished in parts of Northern Ireland and it would be reluctant to place it on Schedule 5 until more information about population numbers and impact on communities in areas where it is fished has been obtained.

### **Lamprey**

127. According to a recent survey carried out for the Department under the Water Framework Directive, all three species of Lamprey are more prevalent in Northern Ireland inshore waters than anticipated. As such, the Department is not minded to place the species on the protected list.

### **Irish hare**

128. Stakeholders were divided in opinion on the inclusion of the Irish hare on Schedule 5. Some felt strongly that the animal should be afforded full and ongoing protection while others favoured the current approach with annual Special Protection Orders being issued while the species' population remained threatened.

129. The Department indicated to the Committee that there are signs that the population is now stable and that the Irish Hare Species Action Plan is on target to deliver its objectives. Consequently the Department is not minded to add the Irish hare to Schedule 5. In addition, the Department hinted strongly that if hare numbers continue to remain stable, it is unlikely to reissue a Special Protection Order next year.

## **Plants to be included on Schedule 8 of the Wildlife Order**

130. The Committee sought clarification that only the native bluebell would be added to Schedule 8. The Department confirmed that the Spanish bluebell, which is readily available in garden centres, is recognised as an invasive non-native species and as such is included on Schedule 9.

## **Animals and plants to be included on Schedule 9 of the Wildlife Order**

131. Schedule 9 lists animals and plants which are considered to be invasive non-native species and which should not be released or allowed to escape into the wild. Many stakeholders wanted the list to be considerably extended to include more species. The Department was adamant that this list should be confined to the invasive aliens that present the highest risk to biodiversity. It also noted that it would be bringing forward an amendment to include Roe and Chinese water deer.

## **Special protection orders**

132. The Committee sought clarification from the Department that Special Protection Orders could be augmented to include 'possession' as well as taking and killing.

## **Clause by Clause Consideration of the Bill**

133. The Committee conducted its clause by clause scrutiny of the Bill on 18 March and 25 March– see Appendix 2. The Committee recommended several amendments which are outlined below.

### **Clause 1 – Duty to conserve biodiversity**

134. At the meeting on 18 March the Committee decided to refer the clause for further consideration and on being provided with proposed departmental amendments on 25 March agreed Clause 1 as amended by the Department.

### **Clause 2 – The biodiversity strategy**

135. At the meeting on 18 March the Committee decided to refer the clause for further consideration and on being provided with proposed departmental amendments on 25 March agreed Clause 2 as amended by the Department.

### **Clause 3 – Biodiversity lists**

136. At the meeting on 18 March the Committee agreed Clause 3 as drafted but on 25 March subsequently supported the Department's proposed amendment to extend the duties under the clause beyond the Department to all public bodies.

### **Clause 4 – Protection of nests of certain birds**

137. At the meeting on 18 March the Committee decided to refer the clause for further consideration and on being provided with proposed departmental amendments on 25 March

agreed Clause 4 as amended by the Department to add the white-tailed eagle, osprey, peregrine and red kite and, as amended by the Committee, to include the barn owl.

## **Clause 5 – Offences – recklessness**

138. At the meeting on 18 March the Committee agreed Clause 5 as drafted.

## **Clause 6 – Offences – causing or permitting unlawful acts**

139. At the meeting on 18 March the Committee agreed Clause 6 as drafted.

## **Clause 7 – Defences in relation to offences under Article 4**

140. At the meeting on 18 March the Committee agreed Clause 7 as drafted.

## **Clause 8 – Disqualification for registration**

141. At the meeting on 18 March the Committee agreed Clause 8 as drafted.

## **Clause 9 – Protection of basking sharks from disturbance**

142. At the meeting on 18 March the Committee decided to refer the clause for further consideration and on being provided with a proposed departmental amendment on 25 March agreed Clause 9 as amended by the Department.

143. The Committee noted that a technical amendment will need to be made to the title of the clause.

## **Clause 10 – Snares**

144. At the meeting on 18 March the Committee decided to refer the clause for further consideration and on 25 March having considered draft Committee amendments for either a licencing system or a ban, agreed Clause 10 as amended by the Committee to ban the use of all snares. This will be done by widening Article 12 of the 1985 Wildlife Order to cover all snares by deleting references to "self-locking" and by deleting references to licensing arrangements in Article 18 as they apply to Article 12 in relation to snares, as follows:

Clause 10, page 4, line 34

After (a) insert: "delete "self-locking" and"

Clause 10, page 4, line 35

Omit paragraph (3)

Clause 10, page 4, line 39

( ) In paragraph (2)(a) delete "snare"

Clause 10, page 4, line 40

Leave out from line 40 on page 4 to line 9 on page 5

Clause 10, page 5, line 13

Leave out lines 13 to 18.

Clause 10, page 5, line 18

At end insert:

() In paragraph (7), delete from "self-locking" to "(b)," and insert "snare".

Note: Article 18 of the 85 Order deals with licensing and refers to Article 12(1) in this context. Consequential amendments would therefore be required to exclude the amended Article 12(1)(a) from this. It seems however that these would naturally sit in Clause 14 of present bill.

Clause 14, page 6, line 42

At end insert

( ) In paragraph (1), for "12(1) and (2)" substitute "12(1)(b) and (c) and 12(2)"

Clause 14, page 7, line 16

At end insert

( ) In paragraph (3), for "12(1) and (2)" substitute "12(1)(b) and (c) and 12(2)"

## **Clause 11 – Protection of wild plants**

145. At the meeting on 18 March the Committee agreed Clause 11 as drafted.

## **Clause 12 – Introduction of new species**

146. At the meeting on 18 March the Committee agreed Clause 12 as drafted.

## **Clause 13 – Prohibition on sale, etc. of invasive, non-native species**

147. At the meeting on 18 March the Committee agreed Clause 13 as drafted.

## **Clause 14 – Licenses under Article 18**

148. At the meeting on 18 March the Committee agreed Clause 14 as drafted but was advised that it may be subject to consequential amendments arising from its decision on 25 March to propose a Committee amendment banning the use of all snares as reported under Clause 10 above.

## **Clause 15 – Discharging firearms, etc. from vehicle**



149. At the meeting on 18 March the Committee decided to refer the clause for further consideration and on 25 March agreed that Clause 15 should be deleted.

## **Clause 16 – Licenses relating to deer**

150. At the meeting on 18 March the Committee agreed Clause 16 as drafted.

## **Clause 17 – Offences: possession of articles for purposes of committing offences**

151. At the meeting on 18 March the Committee agreed Clause 17 as drafted.

## **Clause 18 – Enforcement**

152. At the meeting on 18 March the Committee agreed Clause 18 as drafted.

## **Clause 19 – Powers of constable in connection with samples**

153. At the meeting on 18 March the Committee agreed Clause 19 as drafted.

## **Clause 20 – Enforcement: wildlife inspectors**

154. At the meeting on 18 March the Committee agreed Clause 20 as drafted.

## **Clause 21 – Time limit for prosecution of summary offences**

155. At the meeting on 18 March the Committee agreed Clause 21 as drafted.

## **Clause 22 – Penalties**

156. At the meeting on 18 March the Committee agreed Clause 22 as drafted.

## **Clause 23 – Application to the Crown**

157. At the meeting on 18 March the Committee agreed Clause 23 as drafted.

## **Clause 24 – Review of Schedules to the Wildlife Order**

158. At the meeting on 18 March the Committee agreed Clause 24 as drafted.

## **Clause 25 – Amendments to Schedules 1 to 9 to the Wildlife Order**

159. At the meeting on 18 March the Committee decided to refer the clause until it had completed its deliberations on Schedule 1 to which the clause applies. On 25 March the Committee agreed Clause 25 as drafted.

## **Clause 26 – Reduction in close seasons for female deer**

160. At the meeting on 18 March the Committee decided to refer the clause for further consideration and on being provided with a proposed Departmental amendment on 25 March agreed Clause 26 as amended by the Department.

## **Clause 27 – Offences in connection with ASSI**

161. At the meeting on 18 March the Committee agreed Clause 27 as drafted.

## **Clause 28 – Notification of change of owner or occupier**

162. The Committee decided to refer the clause for further consideration and being provided on 25 March with conformation from the Department that the clause did not apply to temporary land letting arrangements, agreed Clause 28 as drafted.

## **Clause 29 – Notices and signs relating to ASSIs**

163. At the meeting on 18 March the Committee agreed Clause 29 as drafted.

## **Clause 30- Effects of failure to serve certain notices in connection with ASSI**

164. At the meeting on 18 March the Committee agreed Clause 30 as drafted.

## **Clause 31 – Abolition of game licenses and game dealers' licenses**

165. At the meeting on 18 March the Committee agreed Clause 31 as drafted.

## **Clause 32 – Sale of Game**

166. At the meeting on 18 March the Committee agreed Clause 32 as drafted.

## **Clause 33 – Minor and consequential amendments and repeals**

167. At the meeting on 18 March the Committee agreed Clause 33 as drafted.

## **Clause 34 – Commencement**

168. At the meeting on 18 March the Committee agreed Clause 34 as drafted.

## Clause 35 – Interpretation

169. At the meeting on 18 March the Committee agreed Clause 35 as drafted.

## Clause 36 – Short title

170. At the meeting on 18 March the Committee agreed Clause 36 as drafted.

## Schedule 1

171. At the meeting on 18 March the Committee decided to refer the Schedule for further consideration. On being provided on 25 March with proposed Departmental and Committee amendments the Committee agreed with Schedule 1 as amended by the Department, as outlined in its list of amendments and as amended by the Committee to include the golden plover on Schedule 1 of the Wildlife Order, amend paragraph 4 to remove the yellowhammer, twite and reed bunting from Schedule 4 of the Wildlife Order and delete paragraph 4, sub paragraph 2 of Schedule 1 of the Bill, as follows:

Amendments re: Golden Plover

Schedule 1, page 20, line 18

At end insert

Common name	Scientific name
Plover, Golden	<i>Pluvialis apricaria</i>

Schedule 1, page 20, line 30

At end insert

( ) In Part 2 omit the following entry

Common name	Scientific name
Plover, Golden	<i>Pluvialis apricaria</i>

Schedule 1, page 21, line 2

At end insert

( ) In Part 1 omit the following entry-

Common name	Scientific name
Plover, Golden	<i>Pluvialis apricaria</i>

Amendments re: birds which may be shown for competition purposes:

Schedule 1, page 21, line 5

Leave out paragraph (2) and insert:

( ) In schedule 4 omit the following entries-

Common name	Scientific name
Bunting, Reed	<i>Emberiza schoeniclus</i>
Twite	<i>Carduelis flavirostris</i>
Yellowhammer	<i>Emberiza citrinella</i>

## Schedule 2

172. At the meeting on 18 March the Committee decided to refer the clause for further consideration and on being provided on 25 March with a proposed Departmental amendment to insert a new Clause 32A incorporating 'possession' into Special Protection Orders for game, agreed Schedule 2 as amended by the Department.

## Schedule 3

173. At the meeting on 18 March the Committee agreed Schedule 3 as drafted but on 25 March subsequently supported the Department's proposed amendment to address technical issues relating to the protection of game birds during prolonged period of bad weather.

## Long Title

174. At the meeting on 18 March the Committee agreed the Long Title as drafted but on 25 March subsequently supported the Department's proposed amendment to extend the long title to accommodate the consequences of the new clause referred to under Schedule 2 which amends the Game Preservation Act.

## Appendix 1

### Minutes of Proceedings of the Committee Relating to the Report

#### Minutes of Proceedings of the Committee Relating to the Report

3 December 2009

7 January 2010

28 January 2010

4 February 2010

18 February 2010

25 February 2010

4 March 2010

11 March 2010

15 March 2010

18 March 2010

25 March 2010

15 April 2010

**Thursday 03 December 2009,  
Senate Chamber, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Adrian McQuillan  
Mr Alastair Ross

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Ian McCrea  
Mr Daithi McKay  
Mr Peter Weir

**4. Matters arising**

The Chairperson informed members that they had been provided with a copy of the Wildlife and Natural Environment Bill, a draft public notice and a list of key stakeholders

Agreed: That the public notice is issued following the second stage reading of the Bill on Tuesday 8 December 2009, that Committee staff write to the list of key stakeholders inviting comments on the Bill and that concerns around the cost of public notices is conveyed to Assembly management.

Dolores Kelly

Chairperson, Committee for the Environment  
7 January 2010

[EXTRACT]

## **Thursday 07 January 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Cathal Boylan  
Mr Adrian McQuillan

### **5. Departmental Briefing on Wildlife and Natural Environment Bill**

Departmental officials briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

10.44am Mr Ford joined the meeting

10.51am Mr McKay joined the meeting

The main areas of discussion were amendments to the order, stronger enforcement powers for PSNI, increased level of penalties, the Biodiversity Duty, licensing of game species, amendments to Environment Order 2002 and ASSIs.

Agreed: That a letter is sent to the Department asking that the Committee receives guidance on Biodiversity Duty at the earliest opportunity.

Agreed: That a letter asking for written submissions on the Bill is sent to NILGA to forward to the local councils.

Agreed: That a letter is sent to PSNI asking for their views on the new enforcement powers that they will be given in relation to wildlife crime.

Agreed: That a letter is sent to other Departments asking for their views on the Biodiversity Duty and to ask the Department for Social Development Committee for their views on the game licensing aspect of the Bill as this falls within their remit.

Dolores Kelly

Chairperson, Committee for the Environment  
14 January 2010

[EXTRACT]

**Thursday 28 January 2010,  
Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mrs Dolores Kelly (Chairperson)  
Mr David Ford

**7. Wildlife and Natural Environment Bill**

Members noted a copy of the Bill timeline and a copy of the delegated powers memorandum.

Agreed: That a memo requesting the extension of the Committee stage of the Bill is drafted for agreement at the meeting on 4 February.

Agreed: That a copy of the delegated powers memorandum is forwarded to the Examiner of Statutory Rules for comments.

The Deputy Chairperson informed members that they had also been provided with a copy of a request to brief the Committee and a briefing paper from the Countryside Alliance.

Agreed: That a decision on inviting organizations to give oral evidence is deferred until receipt of further submissions to the Committee's public notice.

Dolores Kelly

Chairperson, Committee for the Environment  
4 February 2010

[EXTRACT]

**Thursday 04 February 2010,  
Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Jonathan Bell  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat

Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Alastair Ross

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Peter Weir

#### 9. Wildlife and Natural Environment Bill

The Chairperson informed members that they had been provided with a draft Committee motion to extend Committee stage of the Wildlife and Natural Environment Bill.

Agreed: That the motion is lodged with the Business Office.

The Chairperson informed members they had been provided at with a copy of a request to brief the Committee and a briefing paper on the Bill from the Countryside Alliance, a submission from Ulster Wildlife Trust and a submission from the RSPB.

Agreed: That an invitation to brief the committee is sent to Countryside Alliance, Ulster Wildlife Trust and the RSPB.

Agreed: That all submissions received are uploaded to the Assembly website.

Dolores Kelly

Chairperson, Committee for the Environment  
11 February 2010

[EXTRACT]

### **Thursday 18 February 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Jonathan Bell  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross  
Mr Peter Weir



In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

#### 5. RSPB briefing on Wildlife and Natural Environment Bill

Representatives from the RSPB briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

The main areas of discussion were temporary stop notices, reinstatement notices, curlew numbers, EU Directives, RSPB discussions with the Department, review of licensing and proposed, non-native species, custodial sentences and fines, snares and proposed amendments to the bill.

Agreed: That a letter is sent to the RSPB asking for further information on the EU directives with which they feel Northern Ireland is non-compliant.

#### 6. Countryside Alliance Ireland briefing on Wildlife and Natural Environment Bill

Representatives from the Countryside Alliance Ireland briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

The main areas of discussion were snares, the curlew, hare coursing, scientific research on the Irish Hare and proposed amendments to the bill.

Agreed: That a letter is sent to the Countryside Alliance asking for more information on their townland membership and more information on their study of Glenwherry.

#### 7. Wildlife and Natural Environment Bill

The following members declared an interest:

Mr Bell declared an interest as a member of NILGA

Mr Weir declared an interest as Vice-Chair of NILGA

The Chairperson informed members that they had been provided with copies of submissions from Northern Ireland Environment Link, UFU, NILGA, Northern Ireland Biodiversity Group and T.A.C.T (Talnotry Avian Care Trust).

Agreed: That all the groups are invited to give oral evidence on the Bill within a 15 minute time slot at future Committee meetings.

Members noted Departmental replies to the Wildlife Bill from DARD, DSD, DFP, DCAL and DETI.

Agreed: That Assembly Research prepares a paper on how proposals in the Northern Ireland Wildlife and Natural Environment Bill compare with Wildlife Orders in England, Wales and Scotland.

Dolores Kelly

Chairperson, Committee for the Environment  
25 February 2010

[EXTRACT]

**Thursday 25 February 2010,  
Room 144, Parliament Buildings**

Present: Mr Jonathan Bell  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)  
Mr Edward Cooke

Apologies: Mr Cathal Boylan (Deputy Chairperson)  
Mr Roy Beggs  
Mr Daithi McKay

**4. Northern Ireland Environment Link briefing on Wildlife and Natural Environment Bill**

Representatives from NIEL briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

The main areas of discussion were engaging people with local biodiversity, clarification on mechanisms of the bill and funding and the banning of snares.

**5. Ulster Wildlife Trust briefing on Wildlife and Natural Environment Bill**

Representatives from the Ulster Wildlife Trust briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

The main areas of discussion were the biodiversity duty, protection of ASSIs and enforcement.

**6. Ulster Farmers' Union briefing on Wildlife and Natural Environment Bill**

Mr Kinahan declared an interest as a member of the UFU

11.27a.m Mr Ford rejoined the meeting.

11.38a.m Mr McCrea left the meeting.

Representatives from the Ulster Farmers' Union briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

The main areas of discussion were hedge cutting seasons, powers of wildlife inspectors, education, and notification of newly assigned ASSIs to the relevant landowners.

## 7. Wildlife and Natural Environment Bill

Members agreed to note the comments provided by e-mail from Trisha Lynn, Barbara Haig, Elizabeth Close, Hare Preservation Trust, Katie Rutledge and Lecale Conservation and incorporate them into the Committee report on the Bill.

The Chairperson informed members that they have been provided with copies of submissions from:

- Animal Welfare Federation NI
- Irish Hawking Club
- NI Badger Group
- League Against Cruel Sports
- Badger Trust
- Irish Hare Initiative
- Badger Watch
- Premier Woodlands Limited
- Paul Lamb – a Northern Ireland falconer

Agreed: That Premier Woodlands is invited to brief the Committee at a future meeting and the other submissions are noted and incorporated into the Committee's report.

Members noted a copy of a response from DRD.

Dolores Kelly

Chairperson, Committee for the Environment  
4 March 2010

[EXTRACT]

## **Thursday 4 March 2010, Room 144, Parliament Buildings**

Present: Mr Jonathan Bell  
Mr Roy Beggs  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Alastair Ross

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Cathal Boylan (Deputy Chairperson)  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Peter Weir

#### 1. NILGA briefing on Wildlife and Natural Environment Bill

Representatives from NILGA briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

10.31a.m Mr Ford joined the meeting.

10.31a.m Mr Beggs joined the meeting at.

10.32a.m Mr Ross joined the meeting at.

10.33a.m Mr Bell joined the meeting.

The main areas of discussion were the Biodiversity Duty, funding, invasive species, the current level of engagement with NIEA, the Biodiversity Strategy, landfill tax, Biodiversity Officers and enforcement.

The following members declared an interest:

Mr Beggs - member of Carrickfergus Borough Council.

Dolores Kelly – member of Craigavon Borough Council and member of Craigavon Voluntary Transition Committee

David Ford – Member of Antrim Borough Council

John Dallat – Member of Coleraine Borough Council

Jonathan Bell – Member of Ards Borough Council and NILGA

Danny Kinahan – Member of Antrim Borough Council.

Agreed: That a letter is sent to the Department asking for more information on how landfill tax is administered.

#### 2. Northern Ireland Biodiversity Group (NIBG) briefing on Wildlife and Natural Environment Bill

10.55a.m Mr Ford left the meeting.

Representatives from NIBG briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

The main areas of discussion were the management of snares, resources, enforcement and restorative justice.

#### 3. Talnotry Avian Care Trust (T.A.C.T.) briefing on Wildlife and Natural Environment Bill

Representatives from T.A.C.T briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

The main area of discussion was T.A.C.T.'s call for a provision within the Bill to licence wild birds and animals to be cared for if they cannot be returned to the wild and group licences.

11.37a.m Mr Ford rejoined the meeting.

#### 4. Departmental briefing on Wildlife and Natural Environment Bill

Departmental officials briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

Agreed: That a letter is sent to the Convention of Scottish Local Authorities asking for information on the cost and effectiveness of the biodiversity duty in Scotland.

#### 5. Wildlife and Natural Environment Bill

The Chairperson informed members that they had been provided with a response from the Examiner of Statutory Rules on the delegated powers of the Bill.

Agreed: That the response is included in the Committee report on the Bill.

The Chairperson informed members that they had been provided with submissions from the British Deer Society and the British Association for Shooting and Conservation (BASC). Also that the PSNI had indicated they would be a written response.

Agreed: That the British Association for Shooting and Conservation and PSNI are invited to brief the Committee at the meeting on 11 March.

The Chairperson informed members that they had been provided with supplementary information from the Countryside Alliance Ireland.

Agreed: That the information is included in the Committee report on the Bill.

Dolores Kelly  
Chairperson, Committee for the Environment  
11 March 2010

[EXTRACT]

### **Thursday 11 March 2010, Room 144, Parliament Buildings**

Present: Mr Jonathan Bell  
Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Ian McCrea

Mr Daithi McKay  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross

#### 5. Briefing by Premier Woodlands Trust on the Wildlife and Natural Environment Bill

Mr Kinahan declared an interest as he knew the Premier Woodland Trust representative who had carried out work for him.

Premier Woodlands Trust briefed the Committee and answered members' questions on the Wildlife and Natural Environment Bill.

The main areas of discussion were snares, the management of deer, deer farming exemptions and wildlife inspectors.

Agreed: That clarity is sought from DARD on the issue of deer farming exemptions.

#### 6. Wildlife and Natural Environment Bill

The Chairperson informed members they had been provided with additional papers from the RSPB on hedge cutting and habitats and birds directives.

Agreed: That the papers are included in the final Committee report.

The Chairperson informed members that they had been provided with a copy of an e-mail from the British Association for Shooting and Conservation NI advising that they are unable to brief at the meeting on 11 March and requesting the opportunity to brief on an alternative date.

Agreed: That, due to time constraints, it is not possible to agree to the request to brief on an alternative date and that the submission from the British Association for Shooting and Conservation NI is included in the final Committee report.

Members noted a clarification e-mail from the Talnotry Avian Care Trust following their briefing session on 4 March 2010.

#### 7. Wildlife and Natural Environment Bill – initial clause by clause consideration

Departmental officials explained the purpose of Clauses 1 – 20 and answered members' queries on the clauses.

Agreed: That an additional meeting is arranged for the afternoon of Monday 15 March to continue clause by clause consideration.

Agreed: That a research paper is requested on the use of snares in other UK jurisdictions and the use of snares, and alternative forms of predator control, throughout Europe.

Dolores Kelly  
Chairperson, Committee for the Environment  
4 March 2010

[EXTRACT]

**Thursday 15 March 2010,  
Room 135, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

1. Wildlife and Natural Environment Bill – initial clause by clause consideration

The Chairperson informed members that additional meetings to discuss the Bill had been arranged for 23 March and 13 April.

Members noted a submission on the Bill from the PSNI.

The Chairperson informed members that they had been provided with a copy of an e mail received by Mr Kinahan from the British Association for Shooting and Conservation requesting an opportunity to brief the Committee on the Bill.

Agreed: That, due to time constraints, the Committee is unable to agree to the request to brief.

The Chairperson informed members that they had been provided with a copy of an e mail from the League Against Cruel Sports requesting the opportunity to brief the Committee on the Bill.

Agreed: That, due to time constraints, the Committee is unable to agree to the request to brief but is willing to accept additional information in relation to snares if this is provided in time for the meeting on 18 March 2010.

Departmental officials explained the purpose of Schedules 1 – 3 and Clauses 21 – 26 and Clauses 31 – 32 and answered members queries in relation to these.

Dolores Kelly  
Chairperson, Committee for the Environment  
18 March 2010

[EXTRACT]

## **Thursday 18 March 2010, Room 144, Parliament Buildings**

Present: Mr Jonathan Bell  
Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Alastair Ross  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies:

10.04a.m The meeting began in public session.

### **1. Apologies**

There were no apologies.

### **2. Minutes**

The minutes of the meeting on 11 March 2010 were agreed.

The minutes of the meeting on 15 March 2010 were agreed.

### **3. Chairperson's business**

The Chairperson informed members that they had been provided with a note of a meeting with Critical Friends Group regarding a Ten Point Plan for sustainable development, a Critical Friends note to the OFMDFM Committee and an OFMDFM reply to Committee queries on Sustainable Development Implementation Plan.

10.08a.m Mr Boylan joined the meeting.

Agreed: That a letter is sent to the Chairperson of the OFMdFM Committee from the Environment Committee Chair and ODFdFM Committee Chair asking that they include sustainable development in the Working Group looking at improving government processes.

The Chairperson informed members that they had been provided with a note of a meeting with the Minister on RPA progress on 9 March.

The following members declared an interest:



Mrs Kelly – member of Craigavon Borough Council and member of voluntary Craigavon Transition Committee

Mr Ford – member of Antrim Borough Council

Mr Kinahan – member of Antrim Borough Council

Mr Beggs – member of Carrickfergus Borough Council and member of Strategic Leadership Board

Mr Weir – member of North Down Borough Council, Vice President of NILGA and members Policy Panel A

Agreed: That a letter is sent to OFMdFM highlighting the concerns of the committee around the lack of progress of the RPA process and asking for an update on the current progress of RPA.

#### 4. Matters Arising

The Chairperson informed members that they had been provided with an Assembly Research paper – Speeding on rural roads – proposals for a 45mph speed limit.

Agreed: That the Royal Society for the Prevention of Accidents (ROSPA) is invited to attend a future Committee meeting to brief members on the Road Safety Strategy Consultation.

Agreed: That a copy of the Research paper is published on the website.

10.18a.m Mr Bell joined the meeting.

The Chairperson informed members that they had been provided with a Draft Committee response to the Roads (Miscellaneous Provisions) Bill and NILGA response to the Roads (Miscellaneous Provisions) Bill.

Agreed: That the response is issued.

The Chairperson informed members that they had been provided with a DRD response to Committee queries on road safety in rural areas.

Agreed: That a letter is sent to DRD asking for clarification regarding the use of boulders along sight lines and how often the enforcement powers referred to in the reply have been used. The letter is also to ask about the use of the Land Registry database and whether the information contained in it is up to date.

Agreed: That the response is forwarded to the Ulster Farmers' Union

The Chairperson informed members that they had been provided with a reply from the Northern Ireland Food and Drink Association (NIFDA) on Drivers' Hours legislation.

10.28a.m. Mr McCrea joined the meeting.

Agreed: That a letter is sent to the Chairperson of NIFDA asking for a response on this issue.

Agreed: That a letter is sent to the 3 Northern Ireland MEPs informing them of this issue and asking if they have any comments at this stage.

Agreed: That a letter is sent to Linwoods and Irwins informing them that NIFDA are still to respond to the committee and asking if they have any further comments to make.

The Chairperson informed members that they had been provided with a copy of an e mail from the PSNI in reply to the Committee's query on road safety initiatives introduced since the PSNI briefed the Committee on 14 January 2010.

Agreed: That a letter is sent to the PSNI inviting them to brief the Committee during the Road Safety Strategy Consultation to give their views on the Strategy and their latest project on modified cars.

Agreed: That the PSNI are asked to bring their modified car to the Committee's stand at the Balmoral Show on 12 May.

Agreed: That a letter is sent to DARD and the Health and Safety Executive informing them of the Committee's intention to participate in the Balmoral show and inviting them to make comments on vehicle safety on farms.

The Chairperson informed members that the focus of the Committee event at Balmoral Show will be road safety and that a draft itinerary will be presented to members after Easter recess.

#### 5. Wildlife and Natural Environment Bill – Initial clause by clause consideration

Departmental officials explained the purpose of Clauses 27 – 30 and answered members' queries in relation to these.

10.40a.m Mr McKay joined the meeting.

Agreed: That comments in relation to the Badger Vaccination Programme are forwarded to DARD for their views.

#### 6. Wildlife and Natural Environment Bill – Formal clause by clause consideration

The Chairperson informed members that they now needed to formally consider the clauses of the Bill.

##### Clause 1 – Duty to conserve biodiversity

The Committee decided to refer the clause for further consideration.

##### Clause 2 – The biodiversity strategy

The Committee decided to refer the clause for further consideration.

##### Clause 3 – Biodiversity lists

The Committee agreed the clause as drafted, put and agreed to.

##### Clause 4 – Protection of nests of certain birds

The Committee decided to refer the clause for further consideration.

Clause 5 – Offences - recklessness

The Committee agreed the clause as drafted, put and agreed to.

Clause 6 – Offences – causing or permitting unlawful acts

The Committee agreed the clause as drafted, put and agreed to.

Clause 7 – Defences in relation to offences under Article 4

The Committee agreed the clause as drafted, put and agreed to.

Clause 8 – Disqualification for registration

The Committee agreed the clause as drafted, put and agreed to.

Clause 9 – Protection of basking sharks from disturbance

The Committee decided to refer the clause for further consideration.

Clause 10 – Snares

The Committee decided to refer the clause for further consideration.

Clause 11 – Protection of wild plants

The Committee agreed the clause as drafted, put and agreed to.

Clause 12 – Introduction of new species

The Committee agreed the clause as drafted, put and agreed to.

Clause 13 – Prohibition on sale, etc. of invasive, non-native species

The Committee agreed the clause as drafted, put and agreed to.

Clause 14 – Licenses under Article 18

The Committee agreed the clause as drafted, put and agreed to.

Clause 15 – Discharging firearms, etc. from vehicle

The Committee decided to refer the clause for further consideration.

Agreed: That the views of the PSNI are sought in relation to this Clause.

Clause 16 – Licenses relating to deer

The Committee agreed the clause as drafted, put and agreed to.

Clause 17 – Offences: possession of articles for purposes of committing offences

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 18 – Enforcement

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 19 – Powers of constable in connection with samples

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 20 – Enforcement: wildlife inspectors

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 21 – Time limit for prosecution of summary offences

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 22 – Penalties

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 23 – Application to the Crown

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 24 – Review of Schedules to the Wildlife Order

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 25 – Amendments to Schedules 1 to 9 to the Wildlife Order

The Committee decided to refer the clause for further consideration.

#### Clause 26 – Reduction in close seasons for female deer

The Committee decided to refer the clause for further consideration.

#### Clause 27 – Offences in connection with ASSI

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 28 – Notification of change of owner or occupier

The Committee decided to refer the clause for further consideration.

#### Clause 29 – Notices and signs relating to ASSIs

The Committee agreed the clause as drafted, put and agreed to.

#### Clause 30- Effects of failure to serve certain notices in connection with ASSI

The Committee agreed the clause as drafted, put and agreed to.

Clause 31 – Abolition of game licenses and game dealers' licenses

The Committee agreed the clause as drafted, put and agreed to.

11.30a.m Mr Weir rejoined the meeting.

Clause 32 – Sale of Game

The Committee agreed the clause as drafted, put and agreed to.

Clause 33 – Minor and consequential amendments and repeals

The Committee agreed the clause as drafted, put and agreed to.

Clause 34 – Commencement

The Committee agreed the clause as drafted, put and agreed to.

Clause 35 – Interpretation

The Committee agreed the clause as drafted, put and agreed to.

Clause 36 – Short title

The Committee agreed the clause as drafted, put and agreed to.

11.32a.m The Chairperson adjourned the meeting.

12.38p.m. The meeting resumed with the following members present:

Mrs Kelly, Mr Kinahan, Mr Boylan, Mr McKay, Mr Ford, Mr Ross, Mr Weir, Mr McCrea, Mr Dallat

Schedule 1

11.45a.m Mr Beggs rejoined the meeting.

The Committee decided to refer the clause for further consideration.

Schedule 2

The Committee decided to refer the clause for further consideration.

Schedule 3

The Committee agreed the clause as drafted, put and agreed to.

Long Title

The Committee agreed the Long Title as drafted, put and agreed to.

Agreed: That the Department provides the Committee with a population graph of the Irish Hare and information to date on the 2010 Irish Hare survey.

11.53a.m Mr Ross left the meeting.

#### 7. Local Government (Disqualification) (Amendment) Bill

The Chairperson informed members that they had been provided with a copy of the Bill, a timeline for Committee Stage and a stakeholder.

The following members declared an interest:

Mrs Kelly – member of Craigavon Borough Council and voluntary member of Craigavon Transition Committee

Mr Ford – member of Antrim Borough Council

Mr Kinahan – member of Antrim Borough Council

Mr Beggs – member of Carrickfergus Borough Council and member of Strategic Leadership Board

Mr Weir – member of North Down Borough Council and NILGA Vice President

Mr McKay – member of Ballymoney Borough Council

Agreed: That the National Association of Councils and all political parties are added to the stakeholder list and that the letters of invitation to the stakeholders to provide a written submission are now issued.

Agreed: That Assembly Research is asked to compile a table of the number of MLAs that are also councillors.

11.55a.m Mr Ross rejoined the meeting.

#### 8. Statutory Rule

SR 2010/64 – The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010

Question put and agreed:

‘The Committee for the Environment has considered SR 2010/64 – The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 and has no objection to this rule subject to the Examiner of Statutory Rules report.’

#### 9. Proposals for secondary legislation

The Environment (Northern Ireland) Order 2002 (Amendment) Regulations (Northern Ireland) 2010

Agreed: That the Committee is content for the Department to proceed with the policy.

The Greenhouse Gas Emissions Trading Scheme Charging Scheme Regulations (Northern Ireland) 2010

Agreed: That the Committee is content for the Department to proceed with the policy.

Greenhouse Gas Emissions Charging Scheme (Northern Ireland) 2010

Agreed: That the Committee is content for the Department to proceed with the policy.

The Smoke Control Areas (Exempted Fireplaces) Regulations (Northern Ireland) 2010

Agreed: That the Committee is content for the Department to proceed with the policy.

## 10. Consultations

Defra consultation document on revised guidance about 'green claims' in marketing

Agreed: That a copy of the synopsis of responses is requested

Draft Local Government (General Grant) (Amendment) Regulations (Northern Ireland) 2010- synopsis of responses to the consultation

Agreed: That the Committee is content for the Department to proceed with the policy.

Departmental reply to Committee queries on proposed changes to the local government pension scheme – 85 year rule

Agreed: That a letter is sent to the Department asking for information on why the Scottish model was chosen and what the costs would have been if another model, such as the English or Welsh model, was selected.

## 11. Correspondence

Belfast City Airport Watch Letter re Report by Civil Aviation Authority on noise aspects of the planning application for a runway extension by George Best Belfast City Airport.

Agreed: That a copy of the letter is forwarded to the Department for comment and to the Committee for Regional Development for information.

Memo from Clerk to Committee for Culture, Arts and Leisure regarding a bike to work scheme.

Agreed: That a copy of the memo is forwarded to the Department for comment.

Memo from Clerk to the Agriculture & Rural Development Committee regarding ASSI Designation, and various issues raised in correspondence from the Green Glens Marketing Group.

Agreed: That a copy of the memo is forwarded to the Minister.

Clerk to the Agriculture & Rural Development Committee regarding an invitation to NIEA from the Committee to make a presentation on its specific responsibilities with regard to the agriculture industry.

Agreed: That a copy of the memo and invitation to brief are forwarded to the Minister and the NIEA.

Memo from Clerk to the Committee for Finance & Personnel regarding 'Support for Carers' – options available to provide increased rate relief for carers.

Agreed: That a reply is sent to the Committee for Finance and Personnel stating that the Committee noted the information and has no comments to make.

Letter of response from the Department to the Employment and Learning Committee's letter regarding 'Automated Communications Systems'.

Agreed: That a copy of the letter is forwarded to the Employment and Learning Committee.

Members noted the following items of correspondence:

British Heart Foundation Northern Ireland letter with their response to the Review of 2010 – 11 Spending Plans for Northern Ireland Departments.

Copy of 'NILGA News' February 2010 edition.

Letter from the Minister advising of his intention to approve planning application V/2009/0199/F, extension to existing salt mine, Carrickfergus.

Departmental letter regarding the Minister's response to Mr Bumper Graham's request to meet to discuss issues surrounding the refurbishment of Greenvale Leisure Centre.

Copy of NIEL's Source guide to the environmental sector, March 2010.

Copy of Advice NI 2009 Annual Report & winter 2009/10 Newssheet.

Members noted an invitation to to attend a PSNI event - an introductory demonstration – Speed Awareness and Young Driver Schemes.

12. Date, time and place of next meeting

10.00a.m The next meeting will be held on Thursday 25 March 2010 in Room 144, Parliament Buildings.

12.13p.m The Chairperson adjourned the meeting.

Cathal Boylan  
Deputy Chairperson, Committee for the Environment  
25 March 2010

**Thursday 25 March 2010,  
Room 144, Parliament Buildings**

Present: Mr Jonathan Bell  
Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat



Mr David Ford  
Mr Danny Kinahan  
Mr Daithi McKay  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mrs Dolores Kelly (Chairperson)  
Mr Ian McCrea  
Mr Alastair Ross

## 2. Wildlife and Natural Environment Bill – formal clause by clause consideration

The Committee agreed that agenda item 3 would be considered next; formal clause by clause consideration of the Wildlife and Natural Environment Bill.

The Chairperson informed members that they needed to formally consider Clauses 1, 2, 4, 9, 10, 15, 25, 26 and 28 and Schedules 1 and 2.

### Clause 1 – duty to conserve biodiversity

The Committee agreed with Clause 1 as amended by the Department.

### Clause 2 – biodiversity strategy

The Committee agreed with Clause 2 as amended by the Department.

### Clause 3 – biodiversity lists

Members agreed to record in the Committee report that although Clause 3 was agreed as drafted, the Committee supported the Department's subsequent amendment to extend the duties under the Clause beyond the Department to all public bodies.

### Clause 4 – protection of nests of certain birds

10.25a.m Mr McKay joined the meeting.

The Committee agreed with Clause 4 as amended by the Department to add the white-tailed eagle, osprey, peregrine and red kite and, as amended by the Committee, to include the barn owl.

### Clause 9 – protection of basking sharks from disturbance

The Committee agreed with Clause 9 as amended by the Department.

The Committee noted that a technical amendment needed to be made to the title of the clause to include seals.

### Clause 15 – discharging firearms etc. from a vehicle

The Committee agreed that Clause 15 should be deleted.

Clause 26 – reduction in closed season for female deer

Mr Kinahan declared an interest as John Hetherington, Premier Woodlands Ltd, had carried out work on his behalf.

The Committee agreed with Clause 26 as amended by the Department.

Clause 28 – notification of change of owner or occupier

The Committee agreed with the Clause as drafted.

Clause 10 – snares

10.35a.m Mr Bell joined the meeting.

10.37a.m Mr Weir left the meeting.

The Deputy Chairperson put the following motion:

That the Committee is agreed with Clause 10 subject to a Committee amendment to ban the use of all snares.

The Committee divided:

AYES NOES

Mr Boylan Mr Bell  
Mr Ford Mr Kinahan  
Mr McKay Mr Beggs  
Mr Dallat

The motion was therefore carried.

The Committee agreed with Clause 10 subject to a Committee agreement to ban the use of all snares.

Schedule 1 – amendments to schedules to the Wildlife Order

The Committee was content with the proposed Departmental amendments including the curlew, lapwing, redshank and winchat on Schedule 1 of the Wildlife Order and removing the curlew from Schedule 2 of the Wildlife Order.

The Committee agreed with the draft Committee amendment to include the golden plover on Schedule 1 of the Wildlife Order and remove it from Schedule 2.

The Committee agreed with the Departmental amendment confining the protection of the common skate to coastal waters.

The Committee agreed with the Departmental amendment adding the Chinese water deer and the Roe deer to the list of non-native species.

The Committee agreed with the Departmental amendment specifying the relevant species of knotweed included in Part 2 of Schedule 9 of the 1985 Wildlife Order.

The Committee considered a paper from the RSPB and decided to make a recommendation in the report that the Department takes cognisance of the Scottish approach in relation to alien invasive species.

The Deputy Chairperson informed members they had been provided with a draft Committee amendment in relation to the Irish hare.

The Deputy Chairperson put forward the following motion:

That the Committee is content with the draft Committee amendment to include the Irish hare on Schedule 5 of the 1985 Wildlife Order.

The Committee divided:

AYES NOES

Mr Ford Mr Boylan  
Mr McKay Mr Bell  
Mr Dallat Mr Beggs  
Mr Kinahan

The motion therefore fell.

The Committee agreed with Schedule 1 in relation to the Irish hare as drafted.

11.30a.m Mr McKay left the meeting.

The Committee agreed with Schedule 1 as amended by the Department, as outlined in its list of amendments and as amended by the Committee to include the golden plover on Schedule 1 of the Wildlife Order, amend paragraph 4 to remove the yellowhammer, twite and reed bunting from Schedule 4 of the Wildlife Order and delete paragraph 4, sub paragraph 2 of Schedule 1 of the Bill.

The Committee agreed with Clause 25 as drafted.

11.35a.m Mr McKay rejoined the meeting.

Clause 14 – licences under Article 18

The Committee considered further papers from T.A.C.T. regarding group licences and decided it was content that the Department would continue to liaise with stakeholders with particular needs such as those requiring group licences or licensing under other legislation such as zoo licences.

Schedule 2 – amendments

The Committee agreed with the Departmental amendment to insert Clause 32A incorporating 'possession' into Special Protection Orders for game.

The Committee agreed with Schedule 2 as amended by the Department.

The Committee agreed to note in the report its support for the subsequent Departmental amendment to Schedule 3.

The Committee agreed to note in the report its support for the subsequent Departmental amendment to the Long Title.

### 3. Wildlife and Natural Environment Bill – Consideration of draft report

The Committee agreed that agenda item 4 would be considered next; consideration of draft report - Wildlife and Natural Environment Bill.

The Chairperson informed members that they had been provided with a draft Committee report on the Bill and a list of the appendices.

Agreed: That the key issues and appendices are included in the final report.

Members noted an RSPB paper on additional clauses or recommendations.

Cathal Boylan  
Chairperson, Committee for the Environment  
15 April 2010

[EXTRACT]

## **Thursday 15 April 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Chairperson)  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Jonathan Bell  
Mr John Dallat  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Danny Kinahan  
Mr Dominic Bradley

### 5. Wildlife and Natural Environment Bill – agreement of Committee report

The Committee agreed that agenda item 3 would be considered next.

The Chairperson informed members that they had been provided with a copy of the draft Committee report on the Bill and that he would go through each section asking members to agree it.

Members noted the following letters in relation to the Bill:

- response from DARD in relation to Committee queries on deer farming exemptions
- letter from Ulster Wildlife Trust in response to issues raised during their briefing of the Committee
- letter from Dr Donald regarding the Committee's decision on the Irish hare
- submission from the Department of Health, Social Services and Public Safety in response to the Committee's request for information on the impact of the new biodiversity duty on the public sector.

Agreed: That the letters are included in the final report.

Agreed: That the Committee is content with the Executive summary.

Agreed: That the Committee is content with the Recommendations.

Agreed: That the Committee is content with the Introduction.

Agreed: That the Committee is content with the Consideration of the Bill by the Committee.

Agreed: That the Committee is content with the Key issues

Agreed: That the Committee is content with the clause by clause consideration of the Bill.

Agreed: That the Committee is content with Appendix 1 - Minutes of Proceedings relating to the report.

Agreed: That the Committee is content with Appendix 2 - Minutes of Evidence relating to the report.

Agreed: That the Committee is content with Appendix 3 - Written Submissions?

Agreed: That the Committee is content with Appendix 4 - List of Witnesses?

Agreed: That the Committee is content with Appendix 5 - Other papers submitted to the Committee.

Agreed: That the Committee is content with Appendix 6 – Assembly Research papers .

Agreed: That the report is printed.

Agreed: That the minutes, and minutes of evidence, from the meeting on 15 April are incorporated into the final report.

The Chairperson informed members the report will now be ordered to be printed and submitted to the Business Office as the Committee's official report on the Wildlife and Natural Environment Bill – the end of the Committee Stage.

Cathal Boylan  
Chairperson, Committee for the Environment  
22 April 2010

[EXTRACT]

## **Appendix 2**

### **Minutes of Evidence**

#### **Minutes of Evidence of the Committee Relating to the Report**

7 January 2010

18 February 2010

25 February 2010

4 March 2010

11 March 2010

15 March 2010

18 March 2010

25 March 2010

15 April 2010

7 January 2010

Members present for all or part of the proceedings:

Mrs Dolores Kelly (Chairperson)

Mr Roy Beggs

Mr John Dallat

Mr David Ford

Mr Danny Kinahan

Mr Ian McCrea

Mr Daithí McKay

Mr Alastair Ross

Mr Peter Weir

Witnesses:

Mr Ken Bradley	Department of the Environment
Mr Chris Savage	
Mr Mike Meharg	

1. The Chairperson (Mrs D Kelly): We now move to today's evidence session. The Second Stage of the Wildlife and Natural Environment Bill was due to be moved on 8 December 2009. It is the Minister's intention to move it on Tuesday 12 January 2010.

2. The Committee has been provided with a departmental briefing paper for today's meeting. I invite the departmental officials to join us. They are Ken Bradley, who is a grade 7 civil servant in the Department of the Environment's planning and environmental policy division; Chris Savage, who is deputy principal in that division; and Mike Meharg, who is head of the biodiversity unit in the Northern Ireland Environment Agency (NIEA). You are very welcome. Five to 10 minutes have been set aside to allow you to brief the Committee. Hopefully, afterwards, you will have time to respond to members' questions and comments.

3. Mr Chris Savage (Department of the Environment): We will quickly run through an overview of the Wildlife and Natural Environment Bill's main provisions. The Committee will be aware that it was introduced in the Assembly on 30 November 2009. Its Second Stage has been scheduled provisionally for Tuesday 12 January 2010.

4. The Bill's main aims are to amend and update the Wildlife (Northern Ireland) Order 1985; to introduce a new biodiversity duty upon public authorities in Northern Ireland; to reform elements of existing game laws; and to amend Part IV of the Environment (Northern Ireland) Order 2002, which relates to areas of special scientific interest (ASSIs).

5. The Department undertook a policy consultation on those proposals in 2008, after which the Committee was provided with a synopsis of responses to that consultation. On 19 March 2009, the Committee accepted the main recommendations for moving forward.

6. In general, the Department believes that the Bill will have a positive and practical impact on conservation of biodiversity and protection of valuable wildlife. It will give important focus to the role that Government can play to advance the conservation of biodiversity. It will also provide the authorities that have responsibility for enforcing the provisions of the Wildlife Order with suitable powers to do so, and it will offer an effective and appropriate level of deterrent against wildlife crime.

7. The Wildlife Order is 25 years old and needed to be reviewed and updated. The Bill will make a number of amendments to the Order, including bringing the schedules to the Order up to date and providing protection for a larger range of birds, animals and plants. It will also place a new duty on the Department to review the schedules every five years; that is something that has not been in place before.

8. The Bill will also provide stronger enforcement powers for the police and the Department's wildlife inspectors to enforce the legislation. Those powers will include stronger stop-and-search powers, stronger powers of entry and seizure, and powers to take samples for DNA and other evidential purposes. The Bill will also increase the level of penalties for wildlife crime generally, including, for the first time in Northern Ireland, giving the courts powers to impose custodial sentences for wildlife-related offences.

9. The Bill will also provide better enforcement by amending some of the existing offences in the Order. For example, reckless action that harms wildlife will be made an offence in the same way that intentional action is presently treated under the Order. The Bill will give the Department additional powers for the purpose of managing the wild deer population in Northern Ireland, which has been steadily increasing in recent years. It will also provide stronger controls in relation to the use of snares. The Bill will also make some amendments to the provisions relating to the regulation of invasive non-native species, which can have quite a detrimental effect on biodiversity as well as economic interests.

10. A new biodiversity duty will be placed on all Departments, district councils and public bodies to further the conservation of biodiversity consistent with the exercise of their functions. The broad aim of the duty is to raise the profile of biodiversity and promote biodiversity issues as a

natural part of policymaking throughout the public sector. It will also help to ensure that Northern Ireland meets its commitments at a European and international level to work towards halting the loss of biodiversity. It will further complement the commitments in Northern Ireland's sustainable development strategy, which highlights biodiversity as one of the key themes. We know that the Departments are already doing a lot of good work in that area; for example, they have been producing biodiversity implementation plans that list various actions that they will take. That will be an important element in meeting the new duty.

11. The Bill will also contain provisions that will abolish the existing systems in Northern Ireland that require anybody that hunts or trades in game species to have a licence. Although the Department of the Environment (DOE) is responsible for legislation in relation to hunting and conservation of game species, the Department for Social Development (DSD) has a legal duty to manage the game licensing system under an old piece of legislation called the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972.

12. The present licensing systems have been in place since the 1800s and have remained fundamentally unchanged since then. We are following some changes adopted in England and Wales in 2007, when the systems there were abolished following recommendations from Lord Haskins's Better Regulation Task Force, which considered the systems to be archaic and of very little value. DSD fully supports those proposals.

13. Finally, we are taking the legislative opportunity to make some amendments to the Environment (Northern Ireland) Order 2002, mainly to enhance the protection and management of ASSIs. The Environment Order was made only in 2002, and although it has significantly improved the means by which we can manage and protect those areas, recent experience has indicated a need for some further changes. The main changes are the introduction of two new offences. A new third-party offence will apply to anyone who damages an ASSI, and it will be an offence for public authorities not to inform the Department when they have given consent to undertake an activity that could damage an ASSI. That is a quick overview of the Bill's provisions.

14. The Chairperson: Thank you very much.

15. Mr Weir: I will try to be brief. Once the Bill passes its Second Stage, we will get into the meat of it at Committee Stage. I suspect that the vast majority of people, including me, will welcome the broad thrust of the Bill. It is a no-brainer to say that we will all be happy to unite behind measures that will help to protect our wildlife and that will place greater penalties on those who are involved in criminal acts. I do not think that there will be any issue with the broad thrust of the Bill.

16. I want to tease out the Department's position on one issue. The Second Stage was originally planned to take place just before Christmas, and at that time, I, and I assume other members, received a detailed briefing paper from the Royal Society for the Protection of Birds (RSPB), which was very useful. I think that the RSPB would give a broad welcome to the proposals. The briefing paper detailed which species of birds should be included in the Bill, and those details will have to be scrutinised. Is the Department prepared to take a flexible approach on those issues? Although a good case has been argued for making such changes, is the Department looking at the matter with an open mind?

17. Mr C Savage: The Department will be flexible. If there are views that certain species should be protected, the Department will look at the scientific case for protecting them. If it feels that the evidence is compelling, those matters will be considered. We must bear in mind that there will be competing views, particularly on so-called quarry species. We must also bear in mind that



the conservation groups and sporting groups can, quite often, be far apart. A judgement call will sometimes be involved.

18. Mr Weir: Will you be in a position to get back to the Committee quickly with the relevant information, bearing in mind that the Committee will have to be guided on amendments to the Bill? Certain species may be mentioned and the Department may have to investigate whether they need greater protection or whether there is a good reason why they should not receive protection. There is no point in the Department saying that it will have to carry out a survey and look at the matter again in six months' time.

19. Mr K Bradley (Department of the Environment): It would depend on the species involved and on the information. However, we would try to incorporate all the information into the review. A five-year review is built into the schedules to the Bill. Therefore, if a species is missed this time around, there will be another opportunity to have it included. The schedules can also be amended by subordinate legislation. If additional accounts or surveys need to be carried out on a particular species in six months' time, that could be revisited following the survey. If the Wildlife and National Environment Bill were passed, the Department could consider amending it through subordinate legislation. The door is always open in that respect.

20. Mr Meharg (Department of the Environment): The RSPB, which has a UK or Britain and Ireland overview, might see particular trends in that geographical area. However, there are different population trends in Northern Ireland, and we have to bear in mind that we are looking at the population in Northern Ireland. The populations of some species are decreasing elsewhere but increasing here.

21. Mr Weir: The flip side of the coin is that a national organisation might be in a position to provide information on surveys carried out elsewhere that may be of interest to Northern Ireland. I appreciate that you co-ordinate with colleagues.

22. Mr Meharg: Yes. To go back to your first point, we have data available on most species that those larger organisations would be interested in. If they suggest species that may be slightly different to the ones that have been referred to in the public consultation, we will be able to provide that information to the Committee and reconsider it.

23. Mr Dallat: The Bill seems to be more about the stick than the carrot. Legislation can stop people doing something or can enforce rules, and this Bill seems to have a right dose of that. Is there any obligation to ensure that the education system, for example, understands what wildlife is about? There is a crazy situation now wherein many children do not know what domestic animals are, never mind wildlife.

24. Many areas that are home to a lot of wildlife are not designated as ASSIs, largely because of the pressures of agriculture and so on. There does not seem to be any protection for wildlife there. Sticking super-dumps in the middle of ASSIs is not a very good way to protect wildlife.

25. There is no reference to any kind of liaison with the Republic. We all know that cockfights and pit bull fights are strategically organised there to escape the legislation of both parts of the island.

26. What is the role of the Ulster Society for the Prevention of Cruelty to Animals (USPCA) and the RSPB, which go to enormous lengths to try to educate the public but do not seem to have any statutory recognition?

27. I speak as someone who lives in the countryside. I do not see enforcement doing anything for the wildlife around me; the badgers and the foxes. I was intrigued by the sentence in your briefing that states the intention of:

"Providing stronger controls in relation to the use of snares."

28. As I understand it, you can no longer use glue traps to catch a mouse, but snares are still legal. Nothing has changed since the 1800s, and, to be honest, this measure is rather late in coming.

29. Where is the carrot to encourage the protection of wildlife, and what about the other issues?

30. Mr C Savage: You asked about educating the public. There is guidance on the Wildlife Order as it stands, although it is now quite old. One of the intentions is to produce new guidance as soon as the Bill is passed. The Northern Ireland Environment Agency also does a lot of good work in educating the public, outside of the legislation.

31. Mr Dallat: What about the Department of Education?

32. Mr C Savage: I am not sure if there are close links between the Northern Ireland Environment Agency and the Department of Education. I am not sure if there is a possibility of getting the matter onto the curriculum, but there is a lot of work going on in the background to promote educational awareness of wildlife. We can continue to do that. I do not think that there needs to be anything specific in the Bill about that, unless there was a strong feeling that a specific duty had to be placed on a Department to educate people and children. I know that the RSPB has raised that issue before.

33. As regards your point about the protection of ASSIs and other sites, there is a range of site designations that district councils are involved in, such as local nature reserves. It is perhaps not possible to use the full range of powers for ASSIs on other lesser sites, but it is still important to protect wildlife on them.

34. You asked about liaising with the Republic of Ireland. The Department is involved in an organisation called the Partnership for Action Against Wildlife Crime. That brings together all the various Departments and non-governmental organisations (NGOs) that have an interest in fighting wildlife crime, and representatives from the Republic of Ireland regularly attend those meetings.

35. The Police Service has the main responsibility for enforcing the wildlife legislation. It recently appointed a wildlife liaison officer, and that officer is actively involved in visiting the various divisions to try to increase awareness within the PSNI of the requirements of the Wildlife Order and the various issues involved.

36. At the moment, there is a campaign to ban the sale and use of snares in Northern Ireland, and our Department and the Department of Agriculture and Rural Development have been lobbied on the issue. At the moment, our Department takes the view that snares remain an important tool in controlling pest species. However, if we are allowing them to be used, we want them to be used in the proper manner so that any threat to animal welfare is minimised.

37. Mr Meharg: I will add a little bit about education and awareness. Although the Department, through the Northern Ireland Environment Agency, has a biodiversity outreach programme that provides information on our wild species and wild habitats, grant aid for funding for wildlife

awareness campaigns is also made available annually to various non-governmental organisations such as the RSPB, the Ulster Wildlife Trust and many local nature conservation charities.

38. Mr K Bradley: I will follow up on the issue of snares. The Minister of the Environment was lobbied by the League Against Cruel Sports, which is campaigning for a total ban on the use of snares. The Minister asked us to check how widely they are used throughout Northern Ireland. The Ulster Farmers' Union in particular responded strongly and said that snares are widely used in the west and south of Northern Ireland during the lambing season to combat foxes, for example. From that point of view, it was decided that the present regime would stay in place.

39. The Chairperson: We have no idea about the extent of that regime.

40. Mr Dallat: I do not belong to any organisation that wants to ban the worm or anything like that, but I am aware that snares are still used, and not always by farmers. I know of a recent case in which a fox ate its leg off to get out of a snare. We live in a modern, civilised society: I will have to reflect on the matter, because I do not understand the justification for snares. They are barbaric.

41. Mr K Bradley: We are looking for a balance. There is a need for predator control on one side of the coin and a need to promote animal welfare on the other. If snares were to be banned outright, we would have to consider what to put in their place.

42. The Chairperson: We have had time since the 1800s to reflect on that question, so I hope that you can come up with a better answer than a balance, Mr Kinahan.

43. Mr Kinahan: I have not been alive for that long.

44. I agree with what was said earlier, and I welcome most of what is contained in the Bill. My concern is about the mechanisms that are involved. The RSPB gave a very good briefing on which birds should be included in the various schedules to the Bill. To take that a step further and consider plants and species, I know of one case on the border in which a large estate has been completely overrun by a plant, but its owners have been told that they cannot cut that plant back. There must be a mechanism through which plants and species can be moved on and off lists quickly, without having to come back to legislation. I have not picked up how flexible the system will be. Does it include a committee or a liaison group that understands flora, fauna and birds and that would work alongside the Department to allow that flexibility to happen?

45. Mr C Savage: There is no existing provision that is as flexible as Mr Kinahan is suggesting, nor is there any provision in the Bill that would allow that to happen. Any changes to the schedules of the Bill must be made by subordinate legislation. That can happen reasonably quickly if a compelling case is made. There would normally be consultation with the various interests anyway; if there was broad agreement, any such amendment could be made quickly. I am not sure whether it is feasible to have something even more flexible than that, which would allow all the relevant stakeholders to express their views about proposed changes to the schedules.

46. Mr Kinahan: We need to examine that.

47. The Chairperson: When will the biodiversity outreach programme give guidance to local authorities about sustainable development? Will that be comprehensive, and how will it be enforced? I do not think that many people, particularly members of the public, have much confidence in the NIEA, its current enforcement powers and how it will enforce the new legislation.

48. Mr K Bradley: The idea is to divide the biodiversity guidance into two tranches. The first tranche of guidance will be issued to public bodies, Departments and non-departmental public bodies so that the legislation can be in place around summertime. It is felt that guidance for local authorities should be issued during the second stage. In deciding on the timing, we have to consider the review of public administration (RPA). Obviously, now is not the best time to issue guidance because councils are rather focused on the outcome of the RPA. The guidance for local authorities will be rolled out to biodiversity officers in local authorities. The NIEA is working proactively to ensure that there is a biodiversity officer in each of the new council areas.

49. Local authorities and/or public bodies will have to report annually to the Department on what they have done to promote biodiversity during that year. There is no formal stick; the DOE cannot bring the Department of Agriculture or whoever else to book over something that has not been done. From Minister to Minister and through the Executive, reports will be made on an annual basis.

50. The Chairperson: Your thought processes on the guidance must be some way along. The Committee would welcome an early opportunity to see the proposed guidance.

51. Mr K Bradley: We intend to let the Committee see the guidance in draft form before it is put out for formal consultation in March or April.

52. The Chairperson: Your briefing paper states there is: "a lot of good work already being undertaken in the public sector in this area. For example, departments have developed Biodiversity Implementation Plans to record practical actions which they are undertaking to promote biodiversity."

53. That is very aspirational. Is it left to Departments to decide to do that, or is it a duty on them?

54. Mr K Bradley: That brings us back to the carrot and the stick. The biodiversity strategy is out there, and it has been for a number of years. The last report that we got from the biodiversity group showed that although the DOE and the Department of Agriculture and Rural Development have done a lot of work, other Departments with large landholdings still have a responsibility. Therefore, we temporarily employed a person to ask Departments to take on board practical actions to promote biodiversity, and that has been fairly successful.

55. Aside from Northern Ireland Departments, the NIO, for example, opened Magilligan prison. Practical and policy actions have been recorded in implementation plans. For example, a new library that is opening shortly in Antrim has bat boxes incorporated onto the building. Such actions are positive. We hope to get a report from each Department by December 2010 on how well they are doing with their plans.

56. The Chairperson: It will be good to share best practice.

57. Mr K Bradley: I agree.

58. Mr McKay: Thank you for your presentation, I apologise for being late. John referred to the issue of snares, and the Ulster Farmers' Union (UFU) has said that snares are widely used in the mid-Ulster region. Has the Department quantified how widely used snares are? How will it enforce what is being proposed, and how much will that cost?

59. Mr K Bradley: The Minister was of a mind to ban snaring, so we contacted UFU officials and other land users to find out how widespread the use of snares is. The information from the UFU

indicated that snares are widely used during lambing season to catch foxes. The legislation requires people to check snares once every 24 hours.

60. Mr McKay: Do you have any figures?

61. Mr K Bradley: No; it was just a matter of talking to those fellows. No numbers were given regarding how many snares are used or how many foxes are caught. The UFU and the Northern Ireland Agricultural Producers Association would probably criticise the Department heavily if we opted for a full ban on snaring. It is not that those organisations are pro-snaring; snaring is merely a means of controlling predators. What alternative is there to snares? That is where they are coming from. It is not that they have a love of snares, it is for the sake of what snares do.

62. Mr McKay: What penalties will be faced by a farmer, or someone else in the country, who is found guilty of breaking the proposed law about snaring and the types of snares that are allowed?

63. Mr C Savage: The penalties outlined in the Wildlife (Northern Ireland) Order 1985 apply to snares. The penalties that we are talking about are a maximum fine of £5,000 and a possible custodial sentence of up to six months. The police are the main enforcement authority, but we work very closely with the main NGOs. The Partnership for Action Against Wildlife Crime is useful in trying to encourage everyone with an interest in wildlife to report to the police any activity that they believe to be unlawful. The Partnership for Action Against Wildlife Crime has devised a standard form that can be completed by people who believe that they have information about unlawful activity. That information is gathered and sent off to the UK's National Wildlife Crime Unit, where all such information and intelligence is collated.

64. Mr McKay: How do the penalties compare with those in other jurisdictions?

65. Mr C Savage: They are the same.

66. Mr Ford: Mention has just been made of the RSPB's concern about the schedules of the Wildlife (Northern Ireland) Order 1985 and the inclusion of particular species in that. In drawing up the proposed amendments, what procedures were followed as regards consultation with NGOs?

67. Mr C Savage: We consulted fully with NGOs, including the RSPB, both formally, through the public consultation process, and informally, prior to the consultation process. We have had a number of meetings with the RSPB and bodies that represent other sporting and conservation interests. It has taken quite a while to get to this point, and it has been a while since the original list was drawn up. We understand that some NGOs may be looking at more recent data. As we go through the process, we will consider any compelling cases for the addition of other species to the list.

68. Mr Ford: That concerns me. It is a necessity for the Committee, for example, to carry out appropriate consultation. The matter seems to have been dragging on forever, and it would be remiss if I did not mention the word "hare".

69. The Bill would amend the Environment (Northern Ireland) Order 2002 with regard to ASSIs. Is that the only aspect of that Order with which the Department is unhappy?

70. Mr C Savage: The Northern Ireland Environment Agency, which is responsible for the administration and protection of ASSIs, may have identified other aspects of that Order relating

to ASSIs that could be changed. It was a case of the Department trying to draw a line and identifying the aspects that we felt were most important to take forward at this point.

71. Mr Ford: That concerns me slightly. As the sole survivor from the Environment Committee of the first mandate of the Assembly, I know that the 2002 Order was an amalgamation of three Bills that were before the Committee at the time of suspension. In a number of cases, the Committee suggested that the final Act might have been a bit more robust than what was proposed by the Department originally. I am thinking particularly of tree preservation orders (TPOs), a topic on which Ian McCrea's father and I had many a happy session with your departmental colleagues. I am slightly perturbed that ASSIs is the only aspect that is seen as worthy of bringing forward in legislation at this stage, given your admission that there are other aspects that need to be addressed and given the Department's legislative programme, from which we can assume that nothing else to deal with wildlife or the natural environment is likely to come forward for around three years.

72. Mr C Savage: Nothing else is planned. I know that the Environment (Northern Ireland) Order 2002 also dealt with issues such as air quality and other matters that the Bill, which deals with conservation, will not consider.

73. Mr Ford: I appreciate that, but some other issues might have been addressed in the Bill. For example, the inadequacies of TPOs could well have been addressed in a Bill such as this one, but the Department has not proposed that.

74. Mr C Savage: As far as I am aware, that issue was never raised, even in the early stages of the process.

75. Mr Ford: If you had listened to the early stages of the Committee's previous discussions, you might well have had plenty of evidence of that issue having been raised.

76. The Chairperson: The departmental officials may well wish to reflect on that and look back on some of the notes from those discussions.

77. Mr Beggs: The Bill proposes that, when authorising and permitting anyone to undertake an operation that may damage any of the features of an ASSI, public bodies will be under an obligation to contact the Department and to show how they have taken on board the concerns of the Department in any of the decisions that they make. I can think of that being relevant to the Northern Ireland Environment Agency and the Planning Service. What other public bodies will be under that obligation? Other than planning, what issues will be covered by that guidance? Furthermore, how will it be ensured that a balanced outcome is reached?

78. I am conscious of a planning issue that arose around five years ago. There was a proposal to extend a small fishing lake, with extensive environmental improvements that would have improved the habitat of a variety of species. The proposal was refused because of opposition from the Northern Ireland Environment Agency. At a site meeting, I asked how long it would take for the habitat to re-establish itself and be improved on what was there. The officer from the Northern Ireland Environment Agency said that it would take two years, and, as soon as he said that, he realised that he could not stand over his decision to refuse the approval. He was preventing environmental improvement and a small fishery from being extended because the habitat would have been disrupted for a brief period, even though it would have been enhanced thereafter. How is it being ensured that a balanced outcome is reached and that a total block is not put on change in an area if such change would result in an improvement in the habitat there?

79. Mr C Savage: Obviously, the provision is about the broad obligation on public authorities. Any body that directly undertakes or gives consent to a planning project that might impact negatively on an ASSI will have an obligation to talk to the Department through NIEA to see whether any significant concerns exist. That will be dealt with on a case-by-case basis. I cannot comment on the case that you raised because I do not know of it, but that is the broad provision for each case.

80. Mr Beggs: What other public bodies might be included?

81. Mr C Savage: The legislation defines that; it is any public authority that has authority to undertake a plan or project. That includes Roads Service and Northern Ireland Water and any public body that carries out activity that could impact on a site. It is important to point out that many of our ASSIs underpin our European sites and that European law requires quite strict protection of the European sites. Therefore, it is quite important that when various public authorities undertake their plans and projects, they talk to the Department so that any concerns about any impact on a site can be identified.

82. The Chairperson: Thank you for your presentation. I have no doubt that we will return to the topic.

83. Mr C Savage: We look forward to working with the Committee at the clause-by-clause stage.

84. The Chairperson: I remind members that key stakeholders have already been invited to comment on the Bill. It may be useful to invite other Departments and local authorities, through NILGA and individually, to comment on the Bill, specifically on the new biodiversity duty that the Bill will introduce. It might also be advisable to seek comment from the PSNI on the enforcement requirements that the Bill will place on it. Are members content that we take that approach?

Members indicated assent.

## 18 February 2010

Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Roy Beggs  
Mr Jonathan Bell  
Mr John Dallat  
Mr David Ford  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithí McKay  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Mr Colum Delaney	Royal Society for the Protection of Birds
Ms Claire Ferry	
Ms Anne-Marie McDevitt	
Professor Ian Montgomery	Queen's University of Belfast

Mr D J Histon Mr Lyall Plant	Countryside Alliance Ireland
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85. The Chairperson (Mrs D Kelly): I welcome you all to this morning's Committee meeting. As you know, we have four briefings today. You have provided a summary of the key issues and a fairly extensive overall briefing. I ask you to highlight the main points in five or 10 minutes, and the Committee members will then ask questions and make comments.

86. Mr Colum Delaney (Royal Society for the Protection of Birds): Thank you for giving the Royal Society for the Protection of Birds (RSPB) the opportunity to address the Committee on what we consider to be a key piece of legislation. We have been calling for a review of the Wildlife (Northern Ireland) Order 1985 for a number of years. I shall pass you to our two experts: Anne-Marie McDevitt is our conservation manager, and Claire Ferry is our senior conservation officer.

87. The Chairperson: Members have been provided with a separate folder on the Bill.

88. Ms Anne-Marie McDevitt (Royal Society for the Protection of Birds): The RSPB has been involved with the Bill for a long time, probably around 10 years. We have been strongly involved in the pre-consultation and consultation stages. We welcome the Bill, which we see as an opportunity to bring the legislation in Northern Ireland up to date and in line with other parts of the UK. It will also help Northern Ireland to meet its requirements under the birds and habitats directives. We have met quite a few bodies to discuss the Bill. We met the British Association for Shooting and Conservation (BASC) and the Minister of the Environment and his officials.

89. We strongly welcome the Bill. We welcome the inclusion of a biodiversity duty for public bodies and the introduction of custodial sentences and increased fines for wildlife crime. However, it will come as no surprise to hear that we want some amendments and some additional clauses.

90. I will go through the main aspects of the Bill that relate to the Wildlife (Northern Ireland) Order 1985. Afterwards, Claire Ferry will go through those that relate to the Environment (Northern Ireland) Order 2002. We will be happy to take any questions that you have.

91. The Chairperson: Thank you.

92. Ms A McDevitt: The first thing that I want to talk about is the removal of the curlew from schedule 2 to schedule 1 of the 1985 Order. We strongly recommend that. The species is threatened globally. It is on the International Union for Conservation of Nature's red list of threatened species. In Northern Ireland, its numbers have declined by two thirds. Between 1987 and 1999, the curlew declined by 60%. In 1999, it was estimated that around only 2,000 pairs were left. We do not have any more recent figures, but we know that the decline continues because we have carried out surveys on key sites, which are the best sites for curlew. If the decline has continued at the rate seen between 1987 and 1999, there may be only a few hundred pairs left in Northern Ireland.

93. The reasons for the decline in the curlew population are well documented. Agricultural intensification is the main reason. Now that the curlew population is at such a low level, we are really concerned about anything else that affects it in Northern Ireland. There is evidence that some of the breeding population over-winters in Northern Ireland, and is, therefore, susceptible to being shot. Given the curlew's perilous conservation status, we strongly recommend that it be moved from schedule 2 to schedule 1



94. Maintenance of the curlew on schedule 2 is at odds with a lot of positive work that is being done for the species. Under agri-environment schemes, the Department of Agriculture and Rural Development is paying for around 5,500 hectares of land to be managed for breeding curlew. At around £100 per hectare, that amounts to around £500,000 each year that is spent on curlew conservation.

95. It should be noted that RSPB has worked strongly with BASC and the Department of the Environment (DOE) for the past two years to try to set up a voluntary moratorium on curlew shooting. That has not been possible because we have not received agreement from all of the shooting clubs in Northern Ireland. The time is now right for the curlew to be given the protection that it deserves.

96. As regards additions to the Wildlife and Natural Environment Bill, we want to see the inclusion of a statutory duty to report on licences in line with article 9 of the birds directive. We would like to see a review of licensing procedures, particularly with regard to general licences. For example, with respect to general licences, we would like to see a requirement whereby an individual who operates under a licence is required to show that circumstances require such action, that lethal control is effective and that no other solution is available.

97. We also want the appropriateness of certain species that are currently on the general licence to be considered. Some are UK priority species and are of conservation concern in Northern Ireland. It seems inappropriate that they are still on the general licence. They include species such as the house sparrow and the starling.

98. Finally, with regard to the 1985 Order, we would like to see a review of the legislation on non-native species. We understand that there may be forthcoming EU directives on non-native species. However, they are unlikely to be brought forward in the short to medium term. Given the importance of controlling non-native species, we would like to ensure that the legislation is reviewed now. The RSPB has been involved strongly in the review of legislation on non-native species in England and Wales and, most recently, in Scotland. We would be happy to assist in the drawing up of robust legislation for non-native species within the Wildlife and Natural Environment Bill.

99. Ms Claire Ferry (Royal Society for the Protection of Birds): As you know, the Bill makes a few changes to the Environment (Northern Ireland) Order 2002. We are quite happy with clauses 27 to 30, which make those changes to the Order, but we have some minor recommendations. We also recommend some additional changes to the 2002 Order to close a number of loopholes and to bring Northern Ireland's legislation into line with that of the rest of the UK. Scotland, England and Wales have separate legislation. They have already made changes in the past few years that have brought their legislation further up to date than that of Northern Ireland.

100. I will not go into all of those changes. They are quite technical. I have included them in our full response, but if you have any questions, I will take them. I would like to draw your attention to a couple of particular issues. One is temporary stop notices and reinstatement notices, which was brought up during consultation but not followed up in the Bill. Reinstatement notices would allow the Department an intermediate route to reinstate the quality of an area of special scientific interest (ASSI) after any damage has occurred. Currently, the Department can use a voluntary mechanism with the landowner, which is excellent. We encourage that. However, if that does not work, the only alternative at present is, effectively, to take a criminal prosecution. That is expensive and time-consuming, whereas a reinstatement notice would provide a halfway house. It has certainly been proposed in similar changes to Scotland's draft wildlife and natural environment Bill, which is under consultation at present.

101. The temporary stop notice would be something very similar to the temporary stop notice that is used in planning, so that if the Department became aware that damage was being done it could put a stop to it straight away and then deal with the consequences. If there was a consent procedure that was required, that could be gone through before the damage has actually taken place. Obviously it is harder to put something right than to prevent it in the first place.

102. The second issue concerns the protection afforded to our most important wildlife sites; the internationally designated sites under the birds and habitats directives, special protection areas (SPAs) and special areas of conservation (SACs). Those are protected to a certain extent under the conservation regulations, but there are two particular examples in Northern Ireland where those SPAs are not underpinned by ASSI designation: the glens of Antrim and the Slieve Beagh SPAs for hen harriers do not have that ASSI underpinning. That means that the Department has no way of controlling certain aspects of work that could be undertaken on those sites that could damage the reasons for their being designated.

103. One easy way to solve that is to allow the provisions of protection that are given to ASSIs under the Environment (Northern Ireland) Order 2002 to apply to SPAs and SACs under the conservation regulations. It would be possible to do that by making an amendment to the 2002 Order. That has happened, in fact, in a case at Glenwhirry, where we are looking to do some work with the Department of Agriculture at Greenmount Hill Farm and Antrim estates. Consideration is being given to management of upland heathland as part of the SPA.

104. The only reason that that went through the correct processes to check that it would not cause damage is because there was a government Department involved, and because the RSPB was pushing for it. If there had been no public body involved, someone could have gone ahead and changed the land management, with a detrimental effect on the species for which the SPA is designated. That does not seem to make any sense: international sites effectively have less protection than national sites.

105. We believe that that is contradictory to the birds and habitats directives; article 6(2) of the habitats directive and article 4(4) of the birds directive put the onus on member states to take positive action to prevent pollution and deterioration of sites. We think that Northern Ireland is leaving itself open in not being compliant with those directives. Those are the two main issues that I want to raise; everything else is contained in our briefing. I am happy to take any questions.

106. Mr Weir: Some of us are struggling a little bit on this, because clearly there is a broad consensus on the general thrust of the legislation. The issues — I am not denying that they are important — seem to be in relation to the detail of ensuring that those things are got right. I have a couple of questions. Presumably, reinstatement — which, as you indicate, is a sort of halfway house — would involve an order compelling the landowner to make good any damage that was done and bring the land back to its previous state; is that correct?

107. Ms Ferry: Yes, but without the requirement of a criminal finding of evidence. I imagine something along the lines of farmers having their single farm payment withdrawn if they are not in compliance. However, that is not a criminal activity.

108. Mr Weir: I understand that. Presumably, if there was any dispute over it, it would be proven on the balance of probabilities. I appreciate the reasons that have been given for moving the curlew from schedule 2 to schedule 1. What additional protections of advantage to the curlew will be provided by schedule 1 compared with the provision that is contained in schedule 2 at present?

109. Ms A McDevitt: Clearly, it would not be able to be shot. [Laughter.] That is the main thing that we are talking about. It is a species that has priority conservation status in Northern Ireland, and is threatened globally, but it is still on the shooting list as a quarry species.

110. Mr Weir: If I understand correctly, there was broad support from the representative organisations for a voluntary moratorium, but the problem was that they were not able to get all of the clubs on board. A minority of clubs were recalcitrant. I appreciate that a voluntary moratorium must be uniform.

111. Ms A McDevitt: It is not that we did not work on that for a long time. That has failed, so we must move towards statutory protection.

112. Mr Weir: The overall detail behind it —

113. The Chairperson: A number of other members wish to speak.

114. Mr Weir: I understand that, but I wish to clarify the process. The legislation contains an awful lot of detail, and you have suggested changes to it. Whoever is drafting the Bill on behalf of the Department may make an initial first cut that contains deficiencies. The RSPB is the lead organisation from the point of view of conservation and protection of wildlife, so have you had ongoing discussions with the Department on the elements of detail? Most of what you said is common sense, and, after discussion, the Department could accommodate that through amendments.

115. Ms A McDevitt: Yes, as I said earlier, we are working closely with the Department. We have sent through data and had meetings. The Department made it clear that it had considered the 1985 Order but did not have as much time to spend on the 2002 Order. Claire has kindly drafted information that could be of great help to the Department, and we would like to continue with it.

116. Mr Weir: Are you getting a reasonably positive response? When the Bill was discussed at Second Stage, I said that a degree of open-mindedness and flexibility from the Department would help to sort out many of the problems. Have you encountered a level of flexibility from the Department to accommodate common-sense changes?

117. Ms Ferry: Yes, I am due to hear back from the Department later this week or next week about specific recent changes in relation to the 2002 Order. We will see what happens, but we will keep working with the Department, and it is aware of what we think.

118. Mr Ford: I congratulate Anne-Marie on her new post. You said that changes were needed on non-native species, but, in your paper and in your comments, you have not spelt out in great detail what those changes should be. I appreciate that you have produced an incredibly long paper, but can you add anything more at this point?

119. Ms A McDevitt: No, most of our general statements are included in the paper. Although the comments are general, they show that a big overhaul of the legislation is needed.

120. Mr Ford: Is that ongoing in the Department?

121. Ms A McDevitt: We have been speaking to the Department, which has told us that new EU directives will be introduced. The problem is with the timescale. Once non-natives are established, they are costly to remove. We want this opportunity to review the legislation to be taken. We understand that it is a big area, but, as we mentioned, we could give assistance with it, since we have gone through this process elsewhere.

122. Mr Ford: If you had anything supplementary to add, it would be helpful. As usual, Peter got his neck in first on the other point that I want to raise. Claire talked about the issue of temporary stop notices and planning terms. Given the way that DOE tends to adopt new legislation proposals, can you cite a precedent from England, Wales or Scotland on the concept of stop notices? You referred to the fact that reinstatement notices were going ahead in Scotland, but is anything already in existence in England and Wales?

123. Ms Ferry: The systems in England, Wales, Scotland and Northern Ireland are all slightly different in the way that the Departments work with landowners and with third parties, both in how they require management and how they deal with damage. None of them are completely comparable. There is no such thing as a reinstatement notice anywhere else, exactly, but that is because England and Wales have a separate system of management agreements, management schemes and management orders. Scotland has nature conservation orders, which are above and beyond anything that we have here. That means that temporary stop notices as such would not apply in England and Wales. In Scotland, it is thought that reinstatement notices would be useful. In England, there are more mechanisms to ensure that that damage does not occur in the first place.

124. Nobody else has temporary stop notices, but they do have nature conservation orders, through which a Minister can specify a number of operations that might take place that are proscribed or that require consent. It is a bit like notifiable operations in ASSIs, but these can be other operations for which anyone, even landowners, would have to seek consent. In Scotland, for example, it is used to stop people from Liverpool cockling on Scottish mudflats. Normally, a notifiable operation would apply only to a landowner, but this order applies to that operation, no matter who does it. They have more options to stop that.

125. Mr Ford: How quickly are those orders implemented in Scotland?

126. Ms Ferry: Nature conservation orders are implemented proactively. One has to have foresight, know what the threat is and have the nature conservation order in place beforehand. Once you have it in place, as soon as someone starts doing that harmful action, you can take an action against them.

127. Mr Dallat: Thank you for the presentation; it was very interesting. You constantly referred to the need to harmonise legislation with neighbouring jurisdictions in England, Scotland and Wales. Has there been any discussion as to how we might harmonise legislation with our neighbours south of the border? Birds and other animals do not have passports.

128. Mr Bell: They manage to smuggle across.

129. Ms A McDevitt: That is a good question.

130. Mr Ford: John wants to bring the Republic up to our standards.

131. Mr Dallat: Think of all the cockfighting and badger-baiting and everything else that conveniently happens close to the border and on either side of it.

132. Ms A McDevitt: We tend to concentrate on the UK because the RSPB is a UK organisation, and therefore, we have expertise available in other parts of the UK. In my experience, we have not had that much contact with the South of Ireland.

133. Ms Ferry: With regard to the application of the EU birds and habitats directives, the reasons why we believe that Northern Ireland is not meeting its requirements stem from a case taken

against Ireland, where the issue of a member state taking proactive steps to ensure that there is no pollution and no deterioration of the quality of habitats was to the forefront of a judge's decision in the European Court. I have gone through that judgement with a fine-tooth comb and I have found examples of where that would equally apply in Northern Ireland. We work with our birdlife partner in the South as well.

134. Mr Dallat: I remember that, in the distant past, the tourist board in the South promoted the shooting of birds in Mayo. Not only did it wipe out all the birds, but all the tree branches as well.

135. Mr Bell: There has obviously been an advance in telescopic sights.

136. Thank you for the presentation and the briefing; both were extremely good. Did you say that there had been a 60% decline in the curlew?

137. Ms A McDevitt: There was a 60% decline between 1987 and 1999.

138. Mr Bell: If that continues, and the change is not made, can you extrapolate, or even make an educated guess, as to where we may be this time next year?

139. Ms A McDevitt: That is what I have tried to do. If there were 2,000 pairs in the late 1990s, and they undergo another two-thirds decline over a 10-year period, we could be talking about only a few hundred pairs. We have evidence from surveys taken between 2002 and 2008 on key sites, which are the best sites for that species, and even in those sites there is a decline, though it is not as sharp a decline as in the wider countryside. The decline continues.

140. Mr Bell: How far does it go? When we are down to 200 pairs, might the bird become extinct in Northern Ireland?

141. Ms A McDevitt: That is a difficult question to answer. There has not been another breeding wader survey in Northern Ireland. There is a very insufficient level of monitoring of the curlew and other breeding waders. We have no accurate figure.

142. Mr Bell: I am trying to get a timeline in my head, to understand what type of action is required to address this.

143. Ms A McDevitt: It is important that we have a more accurate figure, but we know that if the decline continues on key sites, given what we had in the late 1990s, we could be talking about something like 700 pairs now, if not a lot less.

144. Mr Bell: My council constituency takes in the Copeland Islands and the birdlife there. We have had major concerns there. You said that you are looking for the introduction of strong custodial sentences and increased fines. In one sense, I am against custodial sentences because there is already overpopulation in our prison service compared with many parts of Europe. I presume that you have put that in to try to make a stronger deterrent effect. Should we, as a Committee, keep the deterrent effect as strong but go after the assets of the people to replace ?

145. The Chairperson: The Clerk said that the Committee has already indicated its strong support for custodial sentences.

146. Mr Bell: I have just come on to the Committee. [Laughter.] The point has to be made. We are advocating putting people in prison at a cost of £80,000 a year. Through no fault of their own, taxpayers have to fund that out of their own pockets. I stand by the point: it is time to be creative and go after people's assets and force them to repair the damage that they have done

to wildlife. That will hurt them far more. Taxpayers' money should not be used for something that they are not responsible for. We should hit people where it hurts most ? their pocket ? and make them repair the damage that they have done. A magistrate could choose a custodial sentence from a menu of options.

147. The Chairperson: We might be able to sort that out after the devolution of policing and justice.

148. Mr Bell: We are doing our best.

149. Ms A McDevitt: There has been support for this. We want to put a large deterrent in place to show that Northern Ireland takes wildlife crime seriously and to put us on a par with other parts of the UK. It is sometimes not as simple as restoring wildlife. If someone shoots a couple of red kites, how do we make them restore that wildlife?

150. Mr Bell: Sorry to labour the point. I was involved with youth crime in the Youth Service a long time ago before coming here —

151. The Chairperson: Not personally, of course. [Laughter.]

152. Mr Bell: I appreciate your motherly instinct. We should tell young people that if they do criminal damage to society, they will undergo a restorative programme to pay that back, some of which will involve a deduction from pocket money. However, in a bigger way, what is the cost of reintroducing red kite that have been removed? If people go after rare eggs, they should bear the cost of replacement if they are found guilty.

153. The Chairperson: There is some food for thought.

154. Mr Beggs: There is a degree of logic in what Jonathan says. However, ultimately, we need very severe punishments for serial offenders, and we want people to be aware of severe penalties, such as the criminal justice system.

155. You talked about temporary stop notices. I am seeking clarification of the sort of thing that you want to use those notices for. Somebody who uses a bulldozer or a digger to excavate land could be in breach of planning regulations, and the planning stop notice could be used. For what type of activity do you need the special environmental temporary stop notice?

156. Ms Ferry: It could be other kinds of habitat damage, like somebody burning a habitat to manage it without consent. Perhaps it is not listed as a notifiable operation and they thought that they would do it anyway. That could happen on SPAs that are not underpinned by ASSIs.

157. Mr Beggs: You are asking for a temporary stop notice and for a reinstatement notice. Would a reinstatement notice give you enough power and authority so that you do not need the other notice? If you gave someone a requirement for significant replanting, a huge financial sign would be given with that. I am sure that people would stop their activities straight away. Do we need both notices? If so, why?

158. Ms Ferry: They are used in two different circumstances. The stop notice would be to stop straight away something that is happening. A reinstatement notice would be used when we have proved that damage has taken place and that restoration is required. Those are two slightly different circumstances. The articles in the habitats and birds directives state that we must take proactive action to prevent pollution and deterioration. If we wait for damage to happen and just ask for reinstatement, we are not taking the steps to prevent it in the first place, whereas a

temporary stop notice would be aimed at stopping actions as soon as we become aware of them. I am not saying that that would be used frequently. However, it would be good to have among the pile of options that are available to the Department, so that the sites are looked after as well as they can be.

159. Mr Beggs: I did not quite pick up what you said about the glens of Antrim. You said that, presently, there is no ASSI there. I do not know what, if anything, is coming in the future. What specifically do you want to introduce there? What is the area's current designation, and what additional powers do you want?

160. Ms Ferry: Under the birds directive, the glens of Antrim and Slieve Beagh, on the Tyrone/Fermanagh/Monaghan border, are SPAs for hen harriers, and, in the glens of Antrim, for merlin. They do not have ASSIs underneath them. The 2002 Order gives a layer of protection to ASSIs around what operations can take place on that land, and, for certain operations, landowners or others have to apply for consent. As there is no ASSI underneath the SPA status, there is no way to control things such as notifiable operations. Therefore, there is no way to control what happens on that land. Such a thing does not exist for SPAs that do not have an ASSI underneath them.

161. Mr Beggs: Thank you for clearing that up.

162. Mr Boylan: I suppose that one way to protect wildlife would be underground high-voltage cables such as the interconnector. [Laughter.] I must get that in because Hansard is recording the meeting.

163. Mr Bell: What about the worms? You would fry the worms.

164. Mr Beggs: Glow-worms.

165. Mr Boylan: All of the good questions have been asked. I want to talk about what happens outside designated areas. Have you clearly identified sites over a period of time? Obviously, it is the responsibility of the landowner to co-operate, and public buy-in is necessary. Who is fully responsible for that? Beyond farm activities, for example, rambling on the land, how do we ensure that that is clearly identified? There could be problems with that. I am sure that landowners are concerned.

166. Ms Ferry: On designated sites, mechanisms are already in place for landowner damage and management of the site. However, the Bill introduces a secondary offence of reckless damage, which is for third parties. That is because, previously, people could only be prosecuted for damaging an ASSI if it could be shown that they knew it was one. That was the issue around the ploughing of Strangford Lough a couple of years ago. In the first instance of damage, the offender was able to say that they did not know that the area was an ASSI.

167. We cannot necessarily have the Department putting up signs all over the countryside, but now damage caused recklessly by somebody who has not taken due consideration of what they are doing and where they are doing it is covered. In that case, the person could be guilty of an offence. However, it would not be as great an offence as if they had walked straight past a sign that said, for example, "no quad biking".

168. Mr Kinahan: I have difficulty with how we achieve balance. From what has been said, I cannot see how your recommendations to educate everybody will work. Although I would welcome temporary stop notices, reinstatement notices and getting more control, most of it is down to ignorance. When I spoke on the issue in the Chamber, I pushed for stakeholder groups in every area so that people would be constantly talking. However, it comes down to education

and to people knowing about different species and biodiversity. How will you educate people softly, softly so that we know that they have got it wrong on purpose rather than committing an offence through ignorance?

169. Ms Ferry: To a large extent, the Department does that already. It always looks for a voluntary agreement and an explanation. For example, if there is an instance of peat cutting, the Department talks to those involved first, and that is excellent. The Department is doing more work, including a new DVD about ASSIs, and is going out and talking to people. You will be aware that we put on a photographic exhibition here about the value of ASSIs. We run campaigns and talk to our members, and that is very much what we are about.

170. Mr Kinahan: Do you target all farms and owners so that you get to everyone, rather than a small number of people?

171. Ms Ferry: The RSPB can play a role, but the Government also have a role. We have asked that there be a requirement to educate on the importance of biodiversity. The habitats directive contains a clause requiring member states to promote public education on wildlife and biodiversity, and we support that.

172. Mr McKay: Clause 10, which deals with snares, has been discussed at length and will be discussed later with the Countryside Alliance. The RSPB supports the proposals, but do you think that they go far enough, or should there be an outright ban on snares?

173. Ms A McDevitt: During the consultation, we supported the original proposals to make it an offence to use self-locking snares and to introduce a requirement to inspect snares. Our position has not changed.

174. The Chairperson: Members have taken a comprehensive interest in the submission. You said that not all of the EU directives were being adhered to; if you have any further clarification or information for the Committee on the areas that are currently neglected, we will be interested to hear it. Thank you for your attendance.

175. Our next briefing is from the Countryside Alliance Ireland on the Wildlife and Natural Environment Bill. I welcome Lyall Plant, the chief executive of Countryside Alliance Ireland, D J Histon, the chief executive secretary of the Irish Coursing Club, and Professor Ian Montgomery, professor of animal ecology and head of school at Queen's University Belfast. Gentlemen, you are welcome. As with other witnesses, we are grateful for your written briefing. If you take five or 10 minutes to highlight some of the key issues, it will allow members more time to probe and ask questions.

176. Mr Lyall Plant (Countryside Alliance): I thank the Committee for allowing us to address it. We will address some of the concerns that members of the Committee for the Environment raised in relation to the Irish hare, the curlew and the use of snares during the Second Stage of the Wildlife and Natural Environment Bill.

177. Countryside Alliance Ireland is an expert and informed organisation that campaigns for the countryside, country sports and the rural way of life. We represent over 10,000 people throughout the island of Ireland, and we have a combined membership of over 90,000 people throughout the United Kingdom, the majority of whom participate in a form of responsible country sport. We work closely with like-minded organisations such as the Royal Society for the Protection of Birds, the Irish Coursing Club and the British Association for Shooting and Conservation. Our organisation is a proactive member of the Partnership for Action against Wildlife Crime in Northern Ireland, and we work closely with the PSNI and other regulatory bodies to ensure that wildlife crime is wiped out in Northern Ireland.



178. The Department's synopsis of the consultation responses on the issue of the Irish hare shows that 83·78% of the respondents who commented favoured the Department's stance. The respondents believed that the biggest threat to hare conservation comes as a result of lost habitat and agricultural practice, and that appropriate management practices are the most effective way of enhancing and supporting the Irish hare population. We are fully aware that agricultural schemes play an important role in delivering hare conservation, but we also believe that inclusion of the country sports communities is the way forward.

179. The consultation shows that 16·21% of respondents favoured putting the Irish hare on the protected list. A further concern was the effects of predation on the Irish hare population, and we support fully the Department's proposals to move forward on the basis of the favoured option to rely on existing protection measures, which has the full support of the majority of respondents. We also fully support the Department's efforts and proactive conservation measures. As responsible country sports organisations, Countryside Alliance and the Irish Coursing Club hope to, and will, play a vital and fully participative role in achieving the Department's aim.

180. The Irish hare is subject to a special protection Order, which has been renewed annually since January 2004. The reason for its introduction was to increase Irish hare numbers in line with the all-Ireland species action plan. Both we and the Irish Coursing Club have made representations to all Ministers of the Environment on numerous occasions to offer our help and support to assist them in proactive conservation projects and thereby increase the numbers of Irish hare in Northern Ireland. Our most recent offer was tendered to the Minister on 12 August 2009.

181. Concern was also expressed within this Committee that Irish hare numbers are under threat from coursing. However, scientific evidence categorically states otherwise. We want to dispel those concerns with the following substantial data. Various research projects suggest that coursing positively benefits Irish hare numbers. Coursing clubs are scientifically recognised as an important local conservation force. They participate in important research, manage habitats sympathetically and control predation, which helps to conserve Irish hares. They counteract and inform on wildlife crime.

182. Professor Ian Montgomery is head of the school of biology and biochemistry at Queen's University Belfast. He is regarded as the leading expert in Irish hare ecology throughout Ireland. He is on record as saying that he believes that coursing and various forms of hare hunting make a positive contribution to Irish hare conservation through participation in important research, predator control and sympathetic habitat management.

183. Like Professor Montgomery, we believe that sporting activities, as practiced by Irish field-sports communities, are not only sustainable but make a positive contribution to the Irish hare. Our members are uniquely placed to deliver the type of conservation action that is required by the Department to increase Irish hare numbers and to deliver the Department's preferred option.

184. D J Histon is chief executive of the Irish Coursing Club, which was formed in 1916 and regulates the sport of coursing throughout Ireland. Under the organisation's guidance, clubs participate in research, manage habitat and promote conservation initiatives that are aimed at increasing the number of Irish hare in the countryside. They can do that only with buy-in from the Department of the Environment, Heritage and Local Government in the Irish Republic, with which they work closely. They can conduct their activities only on the issue of a licence from the Department.

185. A report that was commissioned by and presented to the Environment and Heritage Service in 2003 states that:

"it is clear that hares can survive the experience of being netted and coursed before release and can resume activity to survive in the wild. ... there is no evidence that coursing at the current level affects population size or distribution of the Irish Hare in Northern Ireland."

186. A lot of the details are included in the brief that we submitted to the Committee. Therefore, I will not go into it any further.

187. The second item that we want to discuss is the status of the curlew. Countryside Alliance Ireland is aware of the decline in curlew numbers in Northern Ireland. However, the loss and damage of its habitat is due to predation, the largest factor in the resident curlew's decline. Curlew nest on damp, brushy grassland. It has strongholds on the shores of Lough Neagh; Lough Erne; islands in lower Lough Erne; the south Sperrins; the Antrim hills and Fairy Water Bogs in County Tyrone.

188. The total UK breeding population is estimated to be at least 99,500 breeding pairs, which is around 40% of the European population. The Irish population is estimated to be between 2,500 and 10,000 pairs, with 1,750 pairs in Northern Ireland in 2000. That figure, as mentioned by the RSPB, shows a decline of 60% from the previous estimate in 1987.

189. Outside the breeding season, the number of curlew in Ireland is swollen by the migration of birds from Britain and northern Europe. Wintering numbers vary, but, in general, a maximum of between 6,500 and 7,000 birds are there during the winter. Studies carried out in 1993 and 1995 indicated that predation accounted for 74% of the chick mortality of curlew in Northern Ireland. That has been strongly supported by the shooting community, delivered by the BASC, which participated in a six-year control programme in north Antrim, along with the RSPB and the Northern Ireland Environment Agency (NIEA), which was completed in 2009. That study confirms that predation accounts for the main loss of curlew in Northern Ireland.

190. It is important to leave the curlew as it is and to encourage inclusive participation by all country sports and conservation organisations, so that they work together to employ proper predator control, habitat management and wardenship, rather than simply opting for a crude and unwieldy banning measure.

191. The Department's synopsis of responses to the consultation on snares indicates that 94.1% of respondents favoured the Department's proposals. Only 5.9% believe that the use of snares should be prohibited altogether. We fully support the Department's proposal to move forward on the basis of the favoured option, and we have the full support of our members on that stance. However, we are fully aware that it is an issue that is close to the hearts of many members of the Committee, and we are in favour of the introduction of a licensing scheme to make the use of snares more professional, more visible and more ethical.

192. The Chairperson: Thank you very much for a comprehensive look at a range of issues.

193. Mr Boylan: I will leave some questions for the rest of the members to ask. I want some clarification on numbers. We have had some issues with that in the past when we have heard presentations and scientific research into how many hares there actually are. The last presentation we received — it may have been 18 months ago or two years ago — was about people standing on the bonnets of cars with binoculars or lamping at night; I use that term loosely. That is how scientific it got. How robust are those figures? What scientific research into the number of hares has actually taken place? We need clarification on that.

194. Professor Ian Montgomery (Queen's University Belfast): It is a little bit more complicated than simply standing on top of vehicles. That is part of the fieldwork that is done by trained people. The estimates are based on distance sampling, which is a recognised ecological and

mathematical method to estimate numbers over a particular area; provided that area is representative, we can extrapolate from it. We started that work in the mid-1990s, when we estimated the number of hares at around 14,000, plus or minus 6,000. That was based on daytime, but it became clear that that was not the best technique. We were fortunate to receive funding from the NIEA and its predecessor to develop the techniques. As we do so, the data becomes more precise and more robust.

195. This year we are completing the final estimate of a series, and we will be back-calculating. I doubt if that will change the overall numbers much, but it will increase the precision with which we estimate. The current figure — which was calculated in 2009 — is around 27,000, plus or minus around 25%. That is not particularly precise, but it is indicative of the actual number. We have estimates for the whole of the island of Ireland, based on similar methods, of between 400,000 and 800,000. Somewhere around 600,000 might be the robust figure. However, it is like chasing jelly; the numbers change quite rapidly. That is one of the major lessons to have arisen from our research. The numbers can go up or down by a factor of three or four in one or two years. We are not exactly sure how or why that occurs. Our earliest estimates happened to be made at a time when numbers were very low. However, there have been a number of years during the past decade when numbers have risen to quite high levels.

196. Mr Ford: The Countryside Alliance's written submission says that the curlew is fully protected elsewhere in the UK, where there are about 100,000 breeding pairs, compared with about 1,700 in Northern Ireland, according to the last estimate, which is now a decade old. On the basis of those figures, is there not a logic to placing the curlew on schedule 1 for full protection, at least temporarily, rather than carrying out further scientific studies, during which the curlew may continue to decline significantly?

197. Mr Plant: The curlew is fully protected elsewhere in the UK, and evidence does not show that shooting has a detrimental effect on the resident population. There has been no scientific study of the wading bird population since 1995. We fully support a voluntary moratorium on shooting curlew, and, to maintain the buy-in from the shooting community, a high-level predator control management activity during the breeding season to ensure that the numbers of curlew increase.

198. Mr Ford: I understood from what the RSPB said that a voluntary moratorium had not worked.

199. Mr Plant: Countryside Alliance Ireland clubs have confirmed to me that they are observing a moratorium on shooting curlew. Our main areas for clubs are Lough Neagh and Carlingford Lough.

200. Mr Ford: Are you saying that the voluntary moratorium has worked, or are you saying merely that your clubs have observed the moratorium, but they do not control all shooting?

201. Mr Plant: Yes.

202. Mr Ford: In other words, it has not worked as a voluntary moratorium.

203. Mr Plant: It did not work because the RSPB did not enter into negotiation with Countryside Alliance Ireland. This is a voluntary act by our organisation to conserve the curlew, and to benefit the habitat of not only the curlew but also the lapwing and Irish hare, because they have similar habitats.

204. Mr Ford: Your submission on the Irish hare states — and I am not sure whether it refers to Countryside Alliance Ireland and the Irish Coursing Club together or separately — that you have:

"members in literally every parish and townland".

205. Mr Plant: That is correct.

206. Mr Ford: How many members do you have in the townland of Barnish, County Antrim?

207. Mr Plant: I do not have my membership database with me.

208. Mr Ford: On what basis do you claim membership in every townland?

209. Mr Plant: We claim membership in every townland because we have members throughout the whole of Northern Ireland, in every county —

210. Mr Ford: A county is a bit larger than a townland.

211. Mr Plant: And in every townland.

212. Mr Ford: How can you make such a sweeping claim about having members in every townland?

213. Mr Plant: I will evaluate the information on our database to clarify that point, and send the information to the Committee.

214. Mr Ford: When you make such a sweeping claim, it is difficult to take account of some of the other things.

215. A Member: You would not think this was the Alliance.

216. The Chairperson: Hold on now.

217. Mr Ford: Even on your figures, Mr Plant, you claim 10,000 members for the Countryside Alliance in Ireland.

218. Mr Plant: Right.

219. Mr Ford: If every one of them was a farmer in Northern Ireland, that would be approximately one third of the farmers in Northern Ireland. We can presume that possibly some of them live in towns, there may be more than one member in some families, and some may even live in the Republic. Therefore, what proportion of the land of Northern Ireland do your members control with regard to the sweeping claims that you have made about your contribution to conservation of the Irish hare, compared with any other landowners?

220. Mr Plant: We do not control any land.

221. Mr Ford: I said your members.

222. Mr Plant: Some of our members are landowners; some are members of coursing or shooting clubs. They carry out that activity only as a result of the goodwill of the farming community of Northern Ireland. Therefore, with the goodwill of that community and the expert conservation measures carried out by our members, our club plays a positive role in the Northern Ireland environment and ecology.

223. The Chairperson: Mr Ford, I think we need to —

224. Mr Ford: I am just asking a simple question. What proportion of Northern Ireland do you control on which to exercise your good conservation measures? A rough answer will do.

225. Mr Plant: One third.

226. Mr Plant: If our membership of 10,000 relates to the number of farmers in Northern Ireland, it is roughly a third of that.

227. Mr Ford: However, that assumes that you have no urban members and none in the Republic. However, the Chairperson thinks I have spoken long enough.

228. The Chairperson: I think you have. Bearing that in mind, Mr Weir, ask only one or two questions, please.

229. Mr Weir: I will ask one large, encompassing one, then. From what I understand of your position on the Irish hare, option 1 on schedule 5 is essentially to maintain the current regulatory status quo — a rolling blanket ban, which is imposed on a yearly basis. If I am picking you up right, you are opposed to that. Is that correct?

230. Mr Plant: No. We agree with the status quo.

231. Mr Weir: The status quo is statutory protection on an annual basis, whereas your submission talks about:

“a lengthy closed season during which it is unlawful to kill or take Irish hares by any means”.

232. Is the current position not that, on a yearly basis, there has been a protection put in place for the Irish hare?

233. Mr Plant: Yes. However, that is a special protection Order under the game laws. The Irish hare is a game species and under the Game Preservation Act (Northern Ireland) 1928, a special protection Order is issued to coincide with the all-Ireland species action plan to deliver its results.

234. Mr Weir: It is special protection, but it protects the Irish hare on an annual basis. Is that not right?

235. Mr Plant: No. Protection is only for a specific period. It is protected during the closed season for breeding. It was only implemented because the first survey for the Irish hare showed that the numbers were low. We were worried about it and we completely agreed with the Minister. We proceeded on a joint basis with him to conserve the Irish hare.

236. Mr Weir: Would you be happy enough with option 1, which is to have the special protection Orders?

237. Mr Plant: Yes, in order to ensure that the all-Ireland species action plan —

238. Mr Weir: There is one thing that I cannot understand in relation to the curlew. You say that your members have, on a voluntary basis, observed a moratorium on shooting curlew?

239. Mr Plant: Yes. We have a moratorium on shooting curlew. We shoot predators that prey on the curlew chicks.

240. Mr Weir: If there is a voluntary moratorium, what is the problem with that becoming a statutory protection?

241. Mr Plant: Some of our members want to benefit the curlew, which is their chosen bird. They wish to protect its habitat, and they go out and do that.

242. Mr Weir: I am talking about a protection purely for the curlew, to stop it being shot. You have no problems with that?

243. Mr Plant: No.

244. Mr Weir: So you have no problem with that moving to schedule 1?

245. Mr Plant: We have no problem with that until we see the scientific evidence. As the RSPB stated, there has been no survey of any wading birds since 1999.

246. Mr Weir: From what I understand, you had a voluntary agreement not to shoot the curlew that could not be enforced across all the clubs. What, then, is the problem with having statutory protection of curlews? If you are willing to agree not to shoot the curlew voluntarily, what is the problem with a statutory ban on shooting it? You have described the proposal of a blanket protection of the curlew as "unwieldy".

247. Mr Ford: He said "cruel and unwieldy".

248. Mr Weir: Personally speaking, I question whether not getting shot would be the thing. Rather than being unwieldy, surely a complete blanket ban on shooting the curlew is the very converse of unwieldy?

249. Mr Plant: This is about participation and involvement for people who want to carry out their activities in a lawful manner. Some people who shoot curlew, and would like to continue to do so, benefit in that the controls for —

250. Mr Weir: I perfectly understand how the case can be made —

251. The Chairperson: There are five other members still to speak.

252. Mr Weir: With respect, it is an important piece of legislation.

253. The Chairperson: It is.

254. Mr Weir: I perfectly understand the argument that it is for the benefit of those people who want to be able to continue to shoot curlew. However, I fail to understand how it can be seen as unwieldy. Surely, not shooting a particular species is a fairly black-and-white situation, whereas the opportunity for it to be shot at some stage is a greater degree of uncertainty. Surely that is more unwieldy.

255. Mr Plant: It is about looking to the future. As I said, it is down to participation. If our members wish to be able to shoot curlew in the future, we, and the Department, need their participation, and that of members of other shooting organisations, to do the proper predator control out there. The Department does not have the available resources to go to every site during the breeding season to protect chicks. Our members do. However, there has to be a light at the end of the tunnel. When our members help to get curlew numbers up, they will be able to shoot them.

256. Mr Weir: That almost sounds like a form of blackmail. Quite frankly, you are saying that we have to do it the way that you want or you cannot guarantee co-operation.

257. Mr Plant: No. Not from my clubs.

258. The Chairperson: There are five other members, so I would appreciate precise questions — and precise answers.

259. Mr McKay: Can you elaborate on your views on snares? Obviously, you propose that a licensing system be put in place.

260. Mr Plant: Sorry, I did not hear the question.

261. Mr McKay: Can you elaborate on the licensing system that you propose?

262. Secondly, can you tell us more about the new snares that are being developed and whether those will be beneficial and more humane? If you are saying that that is a good development, could they be introduced and all the old snares banned outright?

263. Mr Plant: There are 22 full-time gamekeepers in Northern Ireland and 137 clubs that raise and rear pheasants and so forth. The majority of those gamekeepers use snares only during the breeding season, during which time we want to protect birds such as lapwing and curlew. It is estimated that, each year, 30% of all foxes controlled by gamekeepers and shoot managers are caught by snares. Yesterday, I spoke to the gamekeeper on the estate where our office is. He said that, last year, out of 50 foxes, 38 were snared and the rest shot by lamping. A licensing system would mean that, in order to use a snare, people would have to seek a licence from the NIEA and get a registered number. Snares would have to be set in a legal position and marked with that number, so that that snare could be looked at by a wildlife officer who could refer back to the licence that was issued. Shoot managers and gamekeepers have no problem with that whatsoever.

264. At the moment, the Game and Wildlife Conservation Trust is investigating new snares that have a specific breakaway point for non-target species that get into the snare. Also coming on stream is an aircraft-type wire that does not twist, cannot tangle, does not rust, and, therefore, is easier to maintain and of a higher specification.

265. Mr McKay: If those developments come to pass and those snares are introduced, will you support the more lethal forms of snare that currently exist? Surely that would make sense.

266. Mr Plant: Yes.

267. Mr Bell: Is there evidence of any loss or damage to those birds' habitat at Strangford Lough, which takes in a considerable part of my own constituency of Strangford? Your paper says that the largest single factor in population decline is damage to habitats and that Strangford Lough is one of the most important wintering sites.

268. Mr Plant: It is down to farming practices. Over the years, research throughout Northern Ireland has shown that, as land has been drained to make it more productive, habitats have been lost in that way. That happens around Strangford Lough as well.

269. Mr Bell: Is there any link between the Countryside Alliance and groups such as the Ulster Farmers' Union? I imagine that there is considerable crossover between the Countryside Alliance and much of the farming community in Strangford.

270. Mr Plant: We work very closely to promote the agrienvironment schemes and to ensure that farmers sign up to them. That benefits the habitat and creates extra areas where nesting birds can thrive. We promote that to all our members.

271. Mr Bell: Professor Montgomery, your paper says that a detailed research programme is being undertaken. Who is undertaking that? The concluding paragraph mentions "proven scientific evidence". What level of scientific evidence is required before it is considered "proven"? What sort of study needs to be undertaken to provide that information?

272. Professor Montgomery: Sorry; you are quoting from a paper that I do not have in front of me. I am not sure that the question is specific enough.

273. Mr Bell: It says that:

"The poor survival rate of young birds is known to be a key factor in the decline of curlew at Northern Ireland sites and a detailed research programme is being undertaken to establish the exact extent of the problem and provide solutions to it."

274. Professor Montgomery: That is a question for the RSPB, not me. I am not involved in curlew research.

275. Mr Bell: Are you not here to represent the Countryside Alliance?

276. Professor Montgomery: No, I am here as a scientific expert on the Irish hare.

277. Mr Bell: Sorry; that excerpt is from the Countryside Alliance's paper. Can anybody from the Countryside Alliance explain that detailed research programme and the proven scientific evidence?

278. The Chairperson: If you are unable to answer the question now, you can supply the answer at a later time.

279. Mr Plant: The research programme refers to the Glenwhirry project, which was done in conjunction with the RSPB and the BASC and finished in 2009. We are still waiting —

280. Mr Bell: What is the Glenwhirry project?

281. Mr Plant: It is in County Antrim. We believe that it proved, as the previous research in 1993 did, that predation was the cause of the loss of 74% of curlew and lapwing chicks.

282. Mr Bell: Does the "proven scientific evidence" that is mentioned in the concluding paragraph refer to the Glenwhirry project, or do you want an additional project to be undertaken?

283. Mr Plant: I have a copy of that; I will forward it to the Committee.

284. The Chairperson: That is fine.

285. Mr Plant: The 1993 study confirms what was found at Glenwhirry.

286. The Chairperson: Any further information can be sent later.



287. Mr Beggs: Your paper indicates that you believe that hare hunting makes a positive contribution to Irish hare conservation. It then talks about predator control and habitat management. How does hunting hares improve hare numbers?

288. Professor Montgomery: We were fortunate enough to have some contact with a coursing club in County Donegal. This is specifically about coursing, not hunting, which I would distinguish.

289. Mr Beggs: The Countryside Alliance paper refers to "hare hunting".

290. Mr Plant: I will answer that point after Professor Montgomery finishes.

291. Professor Montgomery: As regards coursing, we are about to publish a paper that compares the numbers of hares on coursing club preserves against those on similar habitats in the surrounding area. Effectively, it shows that when habitat differences are taken into account, the number of hares on preserves managed by coursing clubs is about three times greater. Overall, it is greater by a factor of about 18, but when all other confounding variables are taken out, it remains clear that the number of hares is about three times greater per unit area than in unmanaged areas.

292. Mr Beggs: Are there any preserves in Northern Ireland?

293. Professor Montgomery: I am not sure. While there are two clubs, I am not certain that they manage preserves.

294. The Chairperson: Well, if there is any —

295. Mr D J Histon (Countryside Alliance): The two clubs referred to are in Ballymena and Dungannon. Neither of them has coursed in the North since the introduction of the special protection Order. We are a bit like players on the sideline; we are ready to take part in the game. The Committee and the Countryside Alliance want the same thing, which is to ensure a thriving Irish hare population. Coursing clubs, particularly the two in question, can play a positive role in achieving that, a fact that is backed up by independent research conducted by Quercus.

296. We could look at negotiating the terms of how that might happen. I suggest that a joint meeting would be of benefit. We could agree the terms of a licence for the window during which hares could be netted, taking account of their breeding season and other considerations. The Irish Coursing Club is currently conducting a hare husbandry programme that involves producing a DVD. Our second hare seminar will be held this year in Clonmel, and I will make it compulsory for the Ballymena and Dungannon clubs to attend.

297. Mr Beggs asked how hunting benefited the hare. The work of coursing clubs is not confined to the two days of a meeting. It is a 12-month exercise, insofar as a strong hare population must be ensured in order to have hare coursing for those two days. To do that, a club works closely with its local farming community, reporting and preventing illegal hunting, which, in the current environment, does not get aired very much but is a real threat. The hare expertise of coursing clubs, which have existed since 1916, means that we can provide substantial data and work closely with organisations such as Quercus to generate independent scientific data to prove that coursing clubs can benefit the Irish hare population.

298. To look at the bigger picture, roughly 0.5% of the total Irish hare population would be used to accommodate a joint meeting involving Ballymena and Dungannon, and, on conclusion of that

meeting, a healthy and robust hare population would be released back into the countryside to proliferate the breed. In my opinion, that would enhance the overall Irish hare population.

299. Mr Beggs: It has been recognised that there has been a large decline in the curlew population. You have indicated that that is due to changes in agricultural practices. Nevertheless, the decline has been significant, and those that remain, particularly the resident curlew population, face a degree of risk. When your members shoot a curlew, how do they know whether it is a resident or a curlew with a passport? [Laughter.]

300. Mr Plant: I just want to say that none of my members shoot curlew, because there is a voluntary moratorium on them. However, it is the same as asking how you know whether a teal has come in from Russia or somewhere else: you do not.

301. Mr Beggs: The species is under threat.

302. Mr Plant: If the point is to establish whether it is migratory birds or the resident population that are being shot during the game season or the wildfowling season, my instinct as a wildfowler of years ago in Scotland is that most birds shot are migratory. However, that is only as a rule of thumb.

303. Mr Beggs: Do you appreciate that that is very unsatisfactory in terms of the effect on the resident population?

304. Mr Plant: If research was to be carried out and a ringing programme conducted on the resident population, true figures would be available as to what is resident and what is not. I recommend that such work be carried out, and we would work closely with the RSPB and other organisations to ring the chicks to establish what is right.

305. Mr Dallat: I certainly do not question the size or influence of the Countryside Alliance. A long time ago, Ronan Gorman told me that you are a powerful organisation, and he almost convinced me of that.

306. You said that you support the new, humane snares. Your submission says that the snares can restrain animals until they can be humanely dispatched. Does that mean that you release the animals back into the wild, or do you shoot them?

307. Mr Plant: It depends whether the animal is from a target or non-target species. If the animal is from a targeted species, it will be dispatched; it will be shot.

308. Mr Dallat: By "dispatched", you mean "shot".

309. Mr Plant: Yes. If the animal is from a non-target species, you put on special gloves, release the snare and release the animal.

310. Mr Dallat: Why do you not decide that lethal snares are barbaric, cruel and obscene? I say that because I have a childhood memory of coming across a fox that had managed to chew off its leg before it died. Who could support that?

311. Mr Plant: Even we would not support that; that must have been caused by a snare that was not set correctly. We support all legal activities, and we support a licensing system to ensure that snares are set correctly and that everything is above board and professional.

312. The Chairperson: Mr Kinahan has to leave at 12.00 pm, so I will let him ask his question.

313. Mr Dallat: I give way to my superior colleague.

314. Mr Kinahan: You may not feel that way after I speak. [Laughter.]

315. I declare an interest. I do shoot, and I am part of the shooting community.

316. Mr Dallat: I should not have given way.

317. Mr Kinahan: I am probably one of the worst shots that there is.

318. My experience of the shooting community is that they are some of the best people at managing the ground and the habitats and increasing the wildlife. That may seem illogical, but that is the way that the shooting community is. The people of the land look after it. You mentioned the licensing of Irish hares in the long term. I like the status quo, and licensing should be kept in mind. I know that there are three beagle packs, and when I asked how many hares were caught in a year, I was told that they maybe catch one a year, perhaps on a good day. Is licensing the way forward?

319. Mr Plant: Yes, especially for coursing, which gets such bad press across the water. Irish coursing is completely different to that. Along with the Irish Coursing Club, I believe that a licensing system that mirrors the system that operates in the Republic is the way forward. It would be open, transparent and completely professional.

320. Mr Histon: In the Republic, the Minister for the Environment issues netting licences with 22 conditions attached. There is an order that allows coursing matches to take place between the end of September and the end of February. Each meeting must comply with those conditions. Wildlife rangers do not attend every meeting, but they can do so. They supervise the meeting to ensure that the conditions of the licence have been upheld, and they supervise the release of hares back into the wild.

321. We are happy with that structured system because everyone complies to the same standard. Our organisation has its internal rules, coupled with the hare husbandry programme that I mentioned. It is in our interests to ensure that we release healthy hares into the wider countryside, because that enables us to continue with our activity and has major benefits for biodiversity in relation to the hare.

322. Licensing is the way to go, which is why I ask the Committee to consider some type of limited coursing under certain conditions at a joint meeting. We would gladly work with the Committee and the Department on those conditions. That would have a major benefit overall for the Irish hare.

323. The Chairperson: Thank you for coming along this morning and engaging in a fairly robust exchange of views.

324. Mr Boylan: Is there any extra information, such as statistics, that can be passed on to the Committee?

325. The Chairperson: I did say that any further evidence should be sent to the Committee.

326. Mr Histon: I can certainly provide additional information to the Committee.

327. The Chairperson: Thank you.

**25 February 2010**

Members present for all or part of the proceedings:

Mrs Dolores Kelly (Chairperson)  
Mr Jonathan Bell  
Mr John Dallat  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Dr Peter Christie	
Prof Sue Christie	NI Environment Link
Mr Sean Kelly	

328. The Chairperson (Mrs D Kelly): I welcome Professor Sue Christie, director; Mr Sean Kelly, policy officer; and Dr Peter Christie of the Northern Ireland Environment Link (NIEL). Perhaps you would give us a briefing of approximately five or 10 minutes, after which members will ask questions.

329. Professor Sue Christie (Northern Ireland Environment Link): As the Committee knows, NIEL is a networking and forum body for environmental non-governmental organisations (NGOs); therefore, our comments are general and have been agreed by our members. Some of our members have, and will soon, provide much more detailed evidence, which the Committee should consider for greater detail on specific issues.

330. Although we welcome the legislation, it cannot be seen as the solution to all our problems on protecting our biodiversity and natural habitat. Further legislation will be required, and a fully supported guidance and enforcement regime is necessary, as is full commitment by all Departments, to deliver our ultimate goal of biodiversity protection. Legislation and designations are the vital first steps, but they must be followed with a full programme of management, monitoring, enforcement and communications if they are to have any chance of achieving their goals. Unfortunately, such measures require money and other resources. No matter how good our legislation, it cannot achieve its objectives without full follow-up. Furthermore, a fully supported planning system must be in place, including a robust and enforced planning policy statement (PPS) 2, to deliver wildlife protection in Northern Ireland.

331. The duty to further the conservation of biodiversity is highly significant and, potentially, hugely beneficial. However, if it is to fulfil its goals, guidance is required on meaning and implementation, and it must say "shall" not "may" issue such guidance. It requires legal support and interpretation, indicators and monitoring, and there must be consequences such as cost penalties for failure to deliver. In order for those consequences to be understood, a structure that calls organisations to account is required.

332. The biodiversity duty complements and assists in the understanding and delivery of the duty for sustainable development, which requires similar implementation. Therefore, there are opportunities to integrate those two important duties and to provide clear advice and guidance for all public authorities on how to implement and on the consequences of not delivering. Moreover, there must be monitoring mechanisms to ensure that action is being taken.

333. The duty to conserve biodiversity must be reported on every three years, or, possibly, in alternative periods that fit in with other reporting time frames: from time to time is not acceptable. There is a danger that a perceived lack of teeth will mean that, as with the sustainable development duty, public authorities will ignore the duty to conserve biodiversity, and there will be no progress. However, it offers great opportunities to engage people with local biodiversity and to help them to learn why it is important and how they can protect it.

334. The recent Northern Ireland Biodiversity Group (NIBG) report identified significant failings in progress on protecting biodiversity and monitoring progress and improvement and even a severe lack of data with which to assess the state of biodiversity. The duty to conserve biodiversity offers the opportunity to address those issues, but only if it is provided with the authority and practical guidance that is necessary for it to be taken seriously. Words and vague commitments are not enough to protect Northern Ireland's wildlife.

335. The provision of custodial sentences for wildlife crime is most welcome. Only through such a measure, along with punitive fines and penalty regimes, will people recognise the value of wildlife and be sufficiently discouraged from causing it harm. We need to show people that we take wildlife crime seriously. There is a need for further clarification on enforcement mechanisms and funding, as the current provision for one wildlife officer is insufficient to convince potential criminals that they will be caught if they break the law.

336. Northern Ireland Environment Link welcomes the proposed licensing revisions, but greater clarity on procedures is required. There is a need for a central database that contains all information on extant licences in order to ensure proper control across Departments and agencies. We particularly welcome the withdrawal of the "ignorance as an excuse" clause. However, that requires that information on legislation and its outworkings be readily available to all those who may require it.

337. We feel that only a complete ban on snares will address the issue; the timing of checking is neither enforceable, nor does it offer adequate protection to wildlife or domestic animals. Only the banning of possession of snares makes it a legally enforceable measure. If it is not legally enforceable, what good is it?

338. Some review of the protection of individual species is required. Barn owls, swifts, seals, cetaceans and turtles all require additional protection, as does the Irish hare, which is one of our few endemic mammalian species. Other witnesses will provide greater detail on those species. Invasive alien species are a threat that could have significant environmental and economic consequences for Northern Ireland. We feel that the seriousness of the issue is not fully recognised in the Wildlife (Northern Ireland) Order 1985, and urge that a requirement be placed on landowners to control invasive species on their properties. That needs to be supported by awareness-raising programmes that endeavour to halt the introduction of aliens and eradicate them at an early stage if prevention is not totally successful.

339. It should be a serious crime intentionally to introduce any alien species into the wild, and we need powers to ensure the removal of species that are limited but which have the potential to increase. We will need primary legislation to deal with all the issues surrounding the control of invasive species. The potential cost of not keeping invasive species out, or, if that fails, dealing with them severely before they become established, is enormous. Dealing with that issue remains a high priority. Simple pondweeds can cause millions of pounds' worth of damage and must be taken seriously.

340. Northern Ireland Environment Link welcomes the provision of clauses to further protect our areas of special scientific interest (ASSIs). However, it must be recognised that the management of many sites is still inadequate, and, in a climate of budget cuts, we are concerned that the

necessary monitoring and enforcement to support those protective clauses will not take place. Legislation that is not enforced can lead rapidly to people ignoring the law. There are no negative consequences for not doing so.

341. The protection of the wider countryside and undesignated sites is also vital, but that is not addressed in the legislation. If Northern Ireland is to avoid becoming a network of zoos, with a few highly protected sites in a wider countryside that is devoid of wildlife, the recognition of the need for wider landscape, countryside and ecosystem-level management should be explicitly stated.

342. The Chairperson: Thank you for that quick run-through. You will not be surprised to learn that many of your comments have been echoed by other witnesses.

343. Mr Weir: I will pick up on one area that was not touched on. We have heard evidence from the Royal Society for the Protection of Birds (RSPB) about the fate of the curlew, and there is a suggestion that it is mentioned in the wrong schedule to the Bill. Does Northern Ireland Environment Link have any views on the curlew?

344. Mr Sean Kelly (Northern Ireland Environment Link): Through my involvement with the Northern Ireland Biodiversity Group I know that we agree with the RSPB on that issue. Numbers appear to be declining, but it is my understanding that some of the monitoring counts have taken place in the winter months, when numbers are boosted by birds that come over from mainland Europe.

345. Mr Weir: Your position is clear. However, if I am picking up the RSPB's position correctly, there appears to be a degree of contradiction. You are saying that you feel that it is unfortunate that the position on the protection of the Irish hare has not changed. However, the RSPB's submission gave qualified support to option 1, and felt that the current position on the protection of the Irish hare was something that it would go along with. Can you explain the difference of opinion, as the RSPB feeling that it is adequate and your feeling that it is inadequate?

346. Mr S Kelly: It is a question of degree. I do not widely disagree with the RSPB. However, NI Environmental Link would like increased protection given to the Irish hare. There are always debates about what happens to the number of hares, and it is one of the few species for which there is an action plan. It is surprising, therefore, that we have not increased its protection, particularly as we do not have an accurate picture of what is going on.

347. There is also the issue of brown hares and interbreeding. If the species is specific to this island, I do not see why we do not take the risk and give it that extra protection.

348. Mr Weir: I want to play devil's advocate. Obviously, a time frame is built into the reviews. You talked about the need for emergency additional removals from the schedule outside the five-year cycles; however, an amendment to the schedule would require some degree of legislation in relation to that. Surely, if strong evidence came forward outside that period, it would be relatively easy for the Department to put through some degree of change in the regulations fairly quickly. Is there any need for an emergency provision, as opposed to the Department's being in a position to react? If there were strong evidence, I assume that the Department would not wait another three years until the next review. I would have thought that it would be relatively straightforward to put through legislation if it were needed.

349. Prof S Christie: They are two different ways of getting the same result: there should either be provision for immediate action or there should be more frequent reviews, because five years is a long time.

350. Mr Weir: Without knowing the exact clause, if the Department had the opportunity to make subsequent regulations and there could be a reasonably quick reaction, would that be one way of solving that particular problem?

351. Mr S Kelly: Things can happen quickly, and if the Department had the structure and framework to react quickly, that would be a welcome development.

352. Dr Peter Christie (Northern Ireland Environment Link): If it is so easy, why not incorporate a few words in the legislation to make it clear?

353. Mr Weir: Presumably any regulations or a degree of change in the legislation could be brought in quickly. Any piece of legislation can be amended. It may just be a question of achieving the same ends by different routes.

354. Prof S Christie: That brings up the question of legislative timescales and busy legislative calendars and whether it might not be easy to introduce measures urgently.

355. Mr Weir: Regulations can be brought in. This Committee and other Committees frequently have subordinate legislation or statutory rules that have been brought forward on their agendas. As those issues tend to be relatively straightforward amendments, with the best will in the world they can go through the Committee with a nod — with the full public scrutiny of five or 10 minutes — because much of it is fairly straightforward.

356. In general — having done my best to embarrass the Committee Clerk — that does not require weeks of scrutiny in a Committee. That may be one way of doing that. I presume that there must be a wee bit of opportunity for fluidity because, by the same token, we do not want a situation where, every so often, vast amounts of Committee time are taken up on issues that could be moved through in a more timely fashion.

357. Mr Kinahan: Thank you for your comments and the work that you have done. You raised concerns about education or awareness; however, that is a costly approach. However, should we do that through councils? Although some councils have biodiversity officers, others do not, and we should try to give all councils the same mechanism. When I am near a river, I have no idea what half the plants are. We need a big information system that everyone can tap into.

358. At the beginning of the week, I heard mention of hares on the radio.

359. The Chairperson: It was 'Evening Extra'.

360. Mr Kinahan: It said that the Irish hare is expanding in areas where coursing is taking place and that it is not in danger. I am concerned about coursers and their thriving industry, which some people may not like, which employs beaglers who may be involved in other forms of hunting. Should we not ensure that a really good monitoring system is in place and link it to reviews? Reviews should be carried out more often so that if the hare becomes endangered we can deal with it immediately, as we could with plants that need to be banned or removed.

361. Prof S Christie: I fully agree that education is essential. It need not be desperately expensive and it can be an awful lot cheaper than dealing with the effects of an invasive alien gone wrong. Councils have a huge role to play. If the review of public administration proceeds, that role will increase, and additional council powers can be rolled in with community planning exercises to bring people along with us.

362. Every council should have a biodiversity officer to ensure unified delivery. Monitoring is the other side of that. We do not have the information, and, therefore, it is better to err on the side of protection rather than on the side of exploitation, which could lead to a serious problem of low numbers from which there is no recovery. Monitoring is, however, desperately expensive. On the other hand, we might be able to use biodiversity officers, members of the public and NGOs to do some monitoring. There are creative ways around the monitoring and education issues, but they will require investment.

363. Mr S Kelly: I completely agree about working with councils and local schools to improve information and to raise awareness. If we inform people that it is important to protect the environment, they might become unofficial monitors and provide extra eyes. However, if a danger or a pollution issue is reported, resources must be available to ensure that those who have reported the incident know that action has been taken. I often hear anecdotal evidence that people have phoned the helpline to report an issue but that no action was taken. Raising expectations but failing to deliver on them will send out the wrong message — that people can get away with environmental crime. That is not what we are about.

364. Mr Dallat: Given the 100-odd vacancies in the Environment Agency, it seems that the prospect of improved enforcement is not great. However, my question is not about that matter. Your submission states:

"Protection for priority habitats on non-designated sites has not been addressed in the legislation. The loss of biodiversity in the wider countryside is a significant issue that must be addressed."

365. I live in the countryside, and I agree with that assertion. The problem is so serious that wild animals that might not normally coexist are forced into the same areas. Fortunately, the Department of Agriculture and Rural Development is not giving grants for ripping up those places. How can we ensure in legislation that the areas that are not designated as high bogs, for instance, will be protected?

366. Dr P Christie: Even if it is not possible to create a watertight system, it is worth putting provisions into the legislation that show the intention to protect such areas. It is most important to recognise that they have value and that they deserve protection.

367. Prof S Christie: There is a huge hierarchy of designated sites in Northern Ireland, from the world heritage sites down to sites of local nature conservation importance (SLNCI). Recognition of that framework in the legislation would be useful in raising awareness.

368. As climate change begins to bite, that will become ever more significant, because the protected sites may not be suitable for all the animals and plants that they are trying to protect. Therefore the wider recognition of the importance of the countryside through the work of environmental management schemes with DARD, etc, will become increasingly important.

369. Mr Dallat: I do not question your sincerity, but many people say that the road to hell is paved with good intentions. Are good intentions the best we can hope for? In this world of greed, if it becomes financially attractive to rip up what is natural and biodiverse, that is what will happen.

370. Mr S Kelly: Designated and non-designated sites were mentioned. I think that I am right in saying that the report that was produced last year by the Northern Ireland Biodiversity Group stated that even in designated sites some of the structures and habitats are not in good condition. That is a problem with designated sites. You will not be surprised to hear that the picture for non-designated sites is no better.



371. Even though PPS 2, which covers planning and nature conservation, seems to have been about for a long time, nothing has come of it. We have some legislation and some designations, but they do not seem to be operating or applied on the ground. Until there is a clear structure, particularly for planning, and that it is recognised that designated sites are important for climate change and biodiversity, there must be strong evidence for tampering with them. It is important to give designated sites the planning care and attention that they need.

372. Prof S Christie: One can also look at the vertical versus the horizontal. Legislation will, we hope, be enforced if anyone damages a designated site; however, there are also the horizontal aspects, such as work on invasives, forbidding certain activities everywhere or stipulating that certain standards must be enforced everywhere in the wider countryside. That is a way to get additional protection for wider areas.

373. Mr S Kelly: It might also come back to education and awareness. What is and what is not permissible in an array of sites and Departments is covered in many pieces of legislation. Although it is important that ignorance is no longer accepted as a reason for doing something, it would be made easier and more enforceable if people had a central reference point of what is and what is not permissible in designated and non-designated sites.

374. The Chairperson: Thank you for your presentation and for attending the Committee meeting. We have two further briefings this morning, so time is tight.

## 25 February 2010

Members present for all or part of the proceedings:

Mrs Dolores Kelly (Chairperson)

Mr Jonathan Bell

Mr John Dallat

Mr Ian McCrea

Mr Alastair Ross

Mr Peter Weir

Witnesses:

Mr Wesley Aston	Ulster Farmers' Union
Ms Kate Cairns	
Mr Gregg Shannon	

375. The Chairperson (Mrs D Kelly): The next session is a briefing from the Ulster Farmers' Union. I welcome Mr Gregg Shannon, chairman of the legislation committee, Mr Wesley Aston, policy director, and Ms Kate Cairns, who is a policy officer. Good morning. I am sure that some of you are familiar with the format. We are grateful that you submitted a written briefing in advance. You should take five or 10 minutes to talk us through the salient points, after which members will ask questions.

376. Mr Gregg Shannon (Ulster Farmers' Union): As the Chairperson said, since we have submitted our written comments, there is no point in repeating them. We are grateful to the Committee for inviting us to give oral evidence.

377. We fully agree that wildlife in the countryside needs protection, and farmers are making a significant positive contribution to protecting the diversity of the land through agri-environment schemes. There are 1,717 hectares of wild bird cover; 600 km of field boundaries have been

restored; about 6,500 hectares of farmland is used to breed lapwing, curlew, redshank and snipe; and nearly 13,000 hectares of spacious grassland has been encouraged to develop. Through the ages, farmers have been conscious of their environment, and the agri-environment schemes have pushed that further and in a more organised way.

378. We support the need to amend the Wildlife Order. Departments must adhere to all closed periods and all components of legislation. We referred to that in a recent discussion with the Committee for Agriculture and Rural Development in respect of forestry, when the Forestry Division proposed that it should be exempt from the closed periods for the control of invasive and other species in and around forests. We were most unhappy about that, so it does no harm to re-emphasise the point.

379. The same applies to road verges, as road maintenance work can upset the biodiversity for quite some time; it also applies to invasive species. Given the risk of disease, there should be robust checks at entry points into the country, such as ports and airports. As a colleague of mine said, the EU tended to take the attitude that we could share all our problems but that we should not allow any more problems into the EU. That is rather a facetious comment, but there is some truth in it. If we are not careful and wait months for a discussion to see whether more robust checks could be introduced to deal with a problem in a particular area, diseases and invasive species could spread much further than they should. Therefore checks should be as robust as possible.

380. We are worried about the provisions of the Bill that refer to recklessness. An easy option is to say that it is up to the courts to decide. However, it is difficult for a person who is charged with that responsibility to realise in time that he might be doing a reckless action.

381. My other point relates to "knowingly causes" offences. People act knowingly if they are familiar with the Order and the environment well and they are conscious of what might cause problems for wildlife. However, such is the volume of legislation that no one can be expected to know it all. Therefore, it would be useful to have something more definitive.

382. Clause 17 relates to the possession of articles for purposes of committing offences. We need something more explicit to specify that people would be committing an offence if they were going after wildlife rather than be charged for being in possession of a shovel that they will use to clean a sheugh. Someone with a bit of wit would know whether a person was doing an insignificant action that had nothing to do with wildlife.

383. Clause 20 refers to wildlife inspectors. We regard inspectors as a stage below police officers. In most other offences that we could be subject to, the police have to be brought in if a charge is to be brought. We do not like the idea of wildlife inspectors having powers similar to those of police officers. With regard to entry, we have significant biosecurity and health and welfare concerns for our own livestock, which are not described as wildlife but which are just as important. We would prefer to see the schedules reviewed over a period of 10 years rather than five. Changes happen slowly in wildlife.

384. In five years' time, one side might say that nothing had happened and that the schedules must be improved, whereas with a review after 10 years they could realise that they had overreacted. It takes time for things to happen.

385. Another issue for the UFU is ASSIs, which are already tightly controlled; therefore the risk of that work being duplicated by the provisions in the Bill is high. The UFU does not want it to be possible for a person to be fined twice under different pieces of legislation for the same apparent offence.

386. The Chairperson: Would you like to pause to allow the Committee to ask questions? You seemed to be about to move on to the issue of the closed hedge-cutting period, and I wondered why the UFU wanted the end date for that brought forward from 31 August to 31 July. What difference would that make?

387. Mr Wesley Aston (Ulster Framers' Union): Hedge cutting is part of the cross-compliance arrangements under the EU's single farm payment scheme, and in Northern Ireland there is an issue with wetter ground and trying to carry out practical farming activities. If the closed hedge-cutting period runs from 1 March to 31 August, by September it is too late to do some of that work and more damage could be caused to hedges if farmers are only allowed cut them from September onwards.

388. The UFU has always had an issue with that provision, and there are different dates in the rest of the UK and the South of Ireland. The UFU is very keen to move the end date for the closed hedge-cutting period from 31 August to 31 July. Farmers will still have to examine hedges to see whether there are nests in them when they are being cut, but at least they would be allowed to cut hedges rather than adopt an across-the-board approach. The UFU is very keen to move that date back. It raised it before and will do so again.

389. The Chairperson: Has anywhere else 31 July as the end date for the closed hedge-cutting period?

390. Mr Aston: Yes; England and Scotland.

391. Mr Kinahan: Before I begin, I declare an interest as a member of the Ulster Farmers' Union.

392. I am intrigued. The witnesses' submission begins:

"The Ulster Farmers' Union represents approximately 11,000 rural families".

393. In its submission, NIEL said that it:

"manages over 314,000 acres of land."

394. It seems that environmental groups set the rules that farmers must obey, yet farmers look after most of the land. Do you know roughly what acreage those 11,000 rural families cover?

395. Mr Aston: We do not have a specific figure. We know the area of agricultural land that those farmers occupy, but we do not know how much acreage that represents.

396. Mr G Shannon: The vast majority of farmers are included in the 11,000 farming families that the UFU represents. Those farmers may have 50 acres or 500 acres, but that land may not necessarily belong to them. From memory, some three quarters of the total land area of Northern Ireland is covered by members of the UFU.

397. Mr Ford: I thank the witnesses for their useful presentation and submission.

398. The witnesses will find some sympathy from Committee with their concerns about public-sector bodies having the same obligations as others. Therefore, I will make a few points that are more critical of the issues that the witnesses raised. Has the UFU received evidence from the RSPB, or any other wildlife organisation, on what it feels is an appropriate period in which to cut hedges?

399. I accept Wesley's point that land operations are much easier to carry out in August than during a wet September. However, if any research has been carried out on when birds nest in hedges in Northern Ireland it would make it much easier for the Committee to consider the issue.

400. Mr Aston: When the UFU raised that issue some years ago, the Department of Agriculture and Rural Development spoke to the RSPB, which told the Department that there was evidence of birds nesting later in Northern Ireland. However, the UFU has no definitive proof of that, and it understands that the Department has gone back to the RSPB to ask for information on what birds nest at what times.

401. Mr Ford: One of the problems of global warming is that birds nest earlier, which would strengthen the UFU's argument. However, I am unsure whether that necessarily means that there are not also birds that nest later. That kind of issue must be taken into account.

402. Gregg, you referred to people going out equipped for wildlife crime and to people going out equipped to clean a sheugh, and I accept that that is an issue. However, would common sense not enable someone to tell the difference between my brother-in-law walking across a field with a spade and shovel and a dog perhaps, and four gentlemen with two lurchers, a terrier, spades and shovels, who have travelled some distance and turned up on a Sunday morning? I understand your concerns, but I cannot see how, on any application of common sense, people will not be able to make that distinction.

403. Mr G Shannon: Frankly, Mr Ford, we have the same expectations as you about people's common sense. The trouble is that we find that an increasing number of people do not have the sense to appreciate the difference. We are merely discussing that aspect — it has not been enforced — but we have to comply with various other legislative regulations, including the nitrous legislation, for example. People may become annoyed and regard an action as malicious that is mainly due to lack of understanding. That wastes our time, the authorities' time and, to some extent, the wildlife's time.

404. Mr Aston: Farmers have had more inspections and other requirements imposed on them, and there is a fear factor now. There are examples of common sense or practical approaches not having been taken in other areas. There is fear, and that comes through in the Bill.

405. Mr Ford: Clause 28 concerns notification of change of owner or occupier of land that falls within an ASSI. You gave the example of a person who is grazing someone else's sheep on a dairy farm in the short term, and we accept that that is a small-scale issue. However, is it not reasonable that a notification should be made if land is let on a lease of a period of years under a grazing licence or is let in conacre even for the full 11 months?

406. If ASSIs were marked on farm maps, it would be a clear reminder to people to fill in the appropriate forms and so on. You gave an example that is at one end of the scale and, indeed, it would not be reasonable for someone who is merely grazing sheep for two or three weeks to have to make a notification. However, if people who have rented land in conacre engage in field operations that could damage an ASSI, it is not unreasonable to expect those people to make a declaration.

407. Mr G Shannon: I come at the issue from a slightly different angle, Mr Ford. If a new ASSI is to be designated, it should be discussed publicly. People should be advised whether their land is likely to fall within that ASSI, and that will lead to a conclusion eventually. It is up to the Department to notify a landowner if his or her land will be formally included as an ASSI. If a landowner lets land for a long or a short period, it is up to him to advise his tenant that it is an

ASSI and that, as such, the rules that apply to an ASSI must be obeyed. Why would the Department not let all the landowners affected know about the designation of a new ASSI?

408. People do not need a notification before them saying that their land has been let for two weeks or two month; that would only lead to red tape and bureaucracy. If the Department knows that I own the land and tells me that I am not obeying the rules, I would tell my tenant to catch himself on.

409. This is an overkill of information transfer from the Department, which will be 1% or less effective in managing ASSIs.

410. Mr Aston: It is easier for the person who owns the land to know what is happening; one cannot expect a person who leases the land, even for a short time, to be told that information. Similar situations exist in other areas of the agriculture industry. Landowners claim single farm payment on their land, but it is the tenant who farms the land. The rules on cross-compliance relate to the landowner who is claiming on the land. Strictly speaking, the landowner has to tell the tenant exactly what he or she can and cannot do with regard to activities such as spreading slurry. One cannot expect a tenant to know what he or she has to fulfil; the landowner should know that.

411. Mr Dallat: I apologise if this question was asked when I was out of the room. The UFU says that inspectors should have a warrant to enter a farm and that they should be accompanied by a policeman. Why do you want that?

412. Mr G Shannon: It is an extension beyond the powers of entry that others have. DARD inspectors can go on land without a warrant; their powers exist in legislation. They do not need to be accompanied by a policeman. Our view relates more to instances in which evidence is being gathered for prosecutions, if it goes that far. All cases involving the USPCA require the presence of a policeman.

413. Mr Dallat: You must be horrified by some of the scenes of excess that we have seen on television in recent years. Why make it more difficult for people who are trying to make things better? Surely, wildlife inspectors do not need to be accompanied by a gun-toting policeman.

414. Mr G Shannon: I am not suggesting that they do.

415. Mr Dallat: That is what your papers say.

416. Mr G Shannon: A wildlife inspector does not need the powers of a police officer unless he intends to prosecute an individual or seize animals.

417. Mr Dallat: Do you want to hide excesses?

418. Mr G Shannon: No. The health and welfare of wildlife is different from that of farm animals.

419. Mr Dallat: How?

420. Mr G Shannon: Such circumstances require that a policeman be with the inspector.

421. Mr Dallat: Why should wildlife be treated differently from domestic animals?

422. Mr G Shannon: When domestic animals are seized they are taken away for recuperation. However, it would be a major job to seize a wild animal; one would not want to take it out of its habitat.

423. Mr Dallat: One would not want it to be stuck in a snare either.

424. Mr G Shannon: It should be released. Snares are useful, but they have to be run according to legislation.

425. Mr Bell: In the past couple of weeks, we had a discussion about the protection of the curlew bird. The Countryside Alliance said that it was concerned about the loss of habitat. Perhaps this is a cross-cutting theme. Is there any relationship between the UFU, the Countryside Alliance and the RSPB? The farmers whom I know and grew up with, and the majority of farmers, are good guardians of the countryside and want to protect it. There are bad examples everywhere, and they have to be rooted out. Does your organisation have any bilateral relationships with the RSPB and the Countryside Alliance to see whether there are farming practices that damage the habitat and the chances of the likes of the curlew bird?

426. Mr G Shannon: We have discussions with all the relevant organisations, where necessary, to consider the overall effects; at the moment, we are consulting the British Association for Shooting and Conservation (BASC), which represents the shooting fraternity. The countryside has developed over hundreds, if not thousands, of years, so when we talk about preserving wildlife we are talking about preserving the status quo that has been arrived at over those hundreds and thousands of years.

427. Our major problem — the one that we keep referring to whenever we can — is that as the economics of farming and the consumer's requirements change; there is a slow change in the habitats that were maintained by the existing stock and cropping regimes. For example, the water authorities wanted sheep removed from the Mourne because of the risk of cryptosporidium. The problem now is that there are no sheep in the Mourne that formerly tackled the undergrowth. I am told that the situation is getting out of hand. Someone will have to decide whether the risk of cryptosporidium should be controlled through our water treatment systems or by removing stock. If there are no sheep on the land, there will be rabbits that can carry cryptosporidium, so I do not see how the water supply can be guaranteed in any other way than through treatment.

428. Mr Aston: In broad terms, we have had better relations with environmental groups recently. We get heavily involved in ventures such as the development of the countryside management scheme through the Northern Ireland rural development programme. There is more liaison.

429. Mr Bell: I would encourage you to pursue those developments. If anything is happening, it is happening out of ignorance rather than design, but if there is good practice that can be of help, there is a natural reason why the Ulster Farmers' Union and the Countryside Alliance would want to work together.

430. Mr G Shannon: As Wesley said, we have good relations with all the relevant organisations. There are the odd prolonged disagreements on specific issues at the margins of the interests of both sides; hedge cutting is an example. However, it is becoming more difficult for us to accept that, for example, nesting hedgerow birds should be protected into the back end of the season. Apart from anything else, the chances of the second crop of birds surviving into the winter are minimal compared with that of the early birds. It is always the same story: the early bird catches the worm.

431. Mr Kinahan: I want to follow up on Jonathan Bell's question. I mentioned this issue when I spoke in the Chamber on the Wildlife and Natural Environment Bill. Do we need a formal liaison group consisting of the UFU and other groups to meet the Department regularly so that both sets of views are listened to before decisions are made?

432. Mr G Shannon: By "formal", do you mean set out in statute?

433. Mr Kinahan: Yes.

434. Mr G Shannon: We have fairly good relationships with all Departments on all subjects. A formal arrangement would be worth considering, but there is a limit to the time that people could spend on it. Some problems may need a great deal of discussion and an open-minded approach by all concerned. If the review of the schedules to the Bill were to take place every 10 years, there would be virtually no need for contact. It would be fine to have such an arrangement formalised in statute, but it would be difficult to have those meetings every six months or so. Wildlife developments do not happen so quickly.

435. The Chairperson: Thank you very much for your presentation. If you have any additional information for the Committee, please feel free to forward it to the Committee Clerk.

436. Mr G Shannon: Once again, I thank the Committee for giving us the opportunity to give evidence today.

## 25 February 2010

Members present for all or part of the proceedings:

Mrs Dolores Kelly (Chairperson)  
Mr Jonathan Bell  
Mr John Dallat  
Mr Ian McCrea  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Dr John Faulkner Dr Hilary Kirkpatrick Mrs Heather Thompson Mr Andrew Upton	Ulster Wildlife Trust
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437. The Chairperson (Mrs D Kelly): I welcome Dr John Faulkner, vice chairman; Mrs Heather Thompson, chief executive; Mr Andrew Upton, conservation director; and Dr Hilary Kirkpatrick, policy officer. We have received a written briefing from the Ulster Wildlife Trust, and we appreciate that. Perhaps you can take us through some of the salient points before members ask questions.

438. Mrs Heather Thompson (Ulster Wildlife Trust): Thank you for giving the Ulster Wildlife Trust the opportunity to brief the Committee. As you know, we are interested in all habitats, marine and terrestrial, across Northern Ireland. We are a locally based conservation charity with more than 7,700 members, all of whom are active in the work that we do in Northern Ireland. We are the lead partner for the Irish hare species action plan, which members may have some questions on. Today, we will focus on three areas that are raised in our submission. Moreover, we

welcome the protection measures in the Bill for the basking shark and the barn owl in Northern Ireland. We are the lead partner on the barn owl species action plan.

439. We are concerned that, in the clause that deals with biodiversity, there is no mention of the genetic component of biodiversity. We would like that clause to be expanded to include diversity within species, between species and in ecosystems. We agree that the biodiversity strategy needs a set reporting timeline rather than that being left as "from time to time".

440. Dr Faulkner will talk about the biodiversity duty, Andrew Upton will talk about enforcement issues, and Dr Kirkpatrick will talk about strengthening protection for areas of special scientific interest (ASSIs). We also want to speak about the need to simplify environmental legislation, which some of our members said they find difficult to navigate. Our members will have to work out how the Bill — yet another piece of legislation — fits in with the existing legislation. Sometimes it can be difficult for people to see where their compliance is, although they recognise that they have to abide by the legislation.

441. If further issues are raised today, we are more than happy to submit more evidence if necessary.

442. Dr John Faulkner (Ulster Wildlife Trust): I will tell the Committee why we think that the biodiversity duty on public bodies and Departments is an important measure. Loss of biodiversity, along with physical change to the environment and climate change, is one of the critical environmental issues of the century. However, it is difficult to grasp what exactly it means. It is easy to fall into the comfort zone of talking about individual species, which, important though that is, glosses over the fact that there are perhaps more than 40,000 species in Northern Ireland. Sometimes, it helps to think of loss of biodiversity as the gradual homogenisation of life: common things — particularly pests and weeds — becoming more common and scarce flora and fauna becoming scarcer.

443. A great many human activities impinge on biodiversity, and many benefit from it. Of those, farming is perhaps the most important in Northern Ireland, but there are many others: fishing, forestry, mineral extraction, construction, transport, flood management, recreation, gardening, park management, health and the drug industry, and education. Those activities all play their part, and, over the years, the combined effects of those areas of human activity has been the insidious erosion of biodiversity. That was recognised in the Northern Ireland biodiversity strategy of 2002.

444. It cannot be left to one Department to do it all; the Department of the Environment does not have a monopoly on the relevant responsibilities. Therefore, although commendable attempts have been made by public bodies to do something for biodiversity — for example, by district councils and bodies such as Translink — too often, public servants shy away from modifying their proposals on the effect on biodiversity simply because they do not have a statutory duty to do so. That is why it is important to establish a duty: it will place an obligation on people to take account of biodiversity and to further it wherever they can reasonably do so.

445. We are not talking about introducing new functions to Departments; it is about building biodiversity into existing functions. Therefore, it is not a costly addition to Government expenditure. There appears to be a good case for public bodies reporting their activities in some way under the biodiversity duty, and, without being too bureaucratic, I suggest that that could be done every three years. However, whether done through annual reporting systems or through the reporting system in the Northern Ireland biodiversity strategy, it should be considered further. In the trust's view, the provisions in the Bill that deal with biodiversity are among its most important provisions.



446. Dr Hilary Kirkpatrick (Ulster Wildlife Trust): I will keep my submission very brief. The Ulster Wildlife Trust would like to see a strengthening of the protection of areas of special scientific interest in the Bill, as they are the jewels in the crown of our countryside.

447. In 2007-08, 109 instances of damage to ASSIs were recorded; in 2008-09 that figure had risen to 143. Approximately half those instances resulted from action taken by landowners; however, the other half resulted from the actions of third parties, which are more difficult to prosecute under the current legislation.

448. Neither must we underestimate the difficulty of restoration, even if a restoration order is made by a court. Those sites have developed over a very long time, often in conjunction with various human management and farming activities; therefore restoration costs can be considerable. For example, it cost £10 million, with an annual maintenance cost of £250,000 to deal with four badly damaged bog sites in the Netherlands. The Dutch authorities were prepared to pay that because they had lost so many of their peatland sites; nevertheless, that is a very large sum of money. Another example was the creation of a new wetland area to compensate for the Cardiff Bay barrage; it cost almost £6 million in capital works. Furthermore, moving equipment in and out of sites by helicopter to avoid damage could cost £1,000 an hour.

449. We must not underestimate the difficulties of restoration, and, therefore, it is very important to prevent damage occurring in the first place.

450. Mr Andrew Upton (Ulster Wildlife Trust): The Ulster Wildlife Trust welcomes the provisions in the Bill that strengthen enforcement, particularly those that will introduce custodial sentences for the worst offences. The trust also welcomes the fact that the PSNI has had a wildlife liaison officer for the past couple of years, and that the Northern Ireland Environment Agency (NIEA) has a full complement of wildlife officers. That is extremely important.

451. The trust, however, feels that wildlife crime continues to be treated as a non-serious crime. Therefore the reporting of wildlife crime has been affected, which has led to an under-resourcing of the issue. The trust is aware of several instances of the public reporting wildlife crime and not being taken seriously. It is also aware of several PSNI stations not being prepared to issue crime reference numbers, which could lead to under-reporting. Conversely, however, there are instances, such as in Hillsborough, where badger baiting has been taken extremely seriously by the police, and that has led to a noticeable decrease in that activity. That is how the trust wants enforcement to be addressed.

452. The Chairperson: I note that the trust shares the opinion of many others about the curlew and says that the figures are a little skewed because migratory birds are counted along with indigenous species, which does not provide a true picture of the decline in numbers.

453. Will you elaborate on your recommendation that barn owl sites should be protected?

454. Mr Upton: The sites that barn owls use for breeding can be used all year round by birds coming back to roost; however, if a site is disturbed or damaged outside the breeding season, the birds may desert it. That will have a serious effect on the population of barn owls, since there are only 40 to 50 pairs in the Province.

455. The Chairperson: I would like clarification on your call for the legal status of any species where there is a change to the Latin name as a result of research findings.

456. Mr Bell: Dulce et decorum est.

457. The Chairperson: Dulce et decorum est pro patria mori.

458. Dr Kirkpatrick: We are throwing the issue back to the legislators, because the names of some species could alter as a result of further research. Something that was thought to be a species might turn out to be a sub-species, or a sub-species will become a full species. Taxonomists will spend hours studying two plants to make sure that they are, in fact, different. I speak as one who checked 250 bags of sphagnum during my PhD and found that they were all the same species. [Laughter.] It took a fortnight of staring down a microscope. They all looked subtly different, but they were exactly the same thing; however, one can tell only by checking under a microscope.

459. Scientists are involved in that level of taxonomic investigation all the time. We would hate something to be renamed and therefore no longer afforded legal protection because of a technicality. That was the rationale.

460. One example that my colleague drew to my attention was the skate. Research by Spanish biologists suggests that what we think of as the common skate should be two species and that the size variation that people thought was merely large and small skates reflects two different species. If it is, therefore, listed as the common skate, does it have any protection if, subsequently, skate are recognised as separate species?

461. The Chairperson: Thank you; that was helpful.

462. Mr Kinahan: I was intrigued by what you said about half the instances of damage to ASSIs being the fault of landowners. I appreciate that you might only be able to hazard a guess, but what proportion of landowners know that they are doing damage and how many are ignorant of what they are doing? It is hard on farmers who have grown up in a certain way and who may not be aware of their environmental obligations. Do you have any idea how many landowners do what they do on purpose?

463. Dr Faulkner: There is a substantial amount of both. Some landowners do not realise because they did not study the documentation that they were given, and a very few landowners will not have received the documentation at all. From my background in the Northern Ireland Environment Agency, I know that great steps were taken to ensure that every landowner received documentation; in fact, some of it was sent by recorded delivery. Therefore only a small number of landowners will not have had the opportunity to know how to behave.

464. Mr Weir: I was intrigued by what you said about the reclassification side of it of different species on that basis. Obviously we want to ensure that protection is put in place that will allow for any flexibility in changing circumstances. As you say, it would be a slightly ridiculous situation if we set out to protect a species and, due to some sort of external reclassification, a certain number of the species fell outside the protected group.

465. How does international scientific reclassification affect domestic law? Just in terms of the process from a legal point of view, and I do not know if you, I mean, in terms of, be it international scientific reclassification, how does that sort of impact in directly on domestic law, ie, I mean, presumably there is some sort of scientific body which is the official body for this, if they were, in the case of the skate, for example, to reclassify it into two separate sort of species on it, does that become an automatic in terms of sort of international acceptance of that, does it directly have an impact on a legal position or would that then have to be sort of reclassified, if you know what I mean?

466. Dr Kirkpatrick: I accept your point, and, in a sense, that is why we raised the issue. There are international bodies that decide whether something is taxonomically correct. From my

experience in botany, I look to the Royal Botanic Gardens at Kew to decide whether something is a species or has been renamed. That tends to filter into the books used to identify species. There is an international code of biological nomenclature; you could refer to it as the ultimate authority.

467. Mr Weir: You said that, depending on research, one type of skate could be classified as another species. For the sake of argument, I will refer to the two species as the greater skate and the lesser skate. I am trying to establish whether, if that happened and was accepted, it would have automatic legal effect. If the terms "greater skate" and "lesser skate" were used in the scientific community, and if legislation pre-dating that reclassification refers only to "skate", presumably it would still protect both species. Although there may need to be subsequent changes to legislation, in the short term would the legislation that protects skate provide a degree of protection for the greater skate and the lesser skate before there was something in legislation that referred to and differentiated between the two new species?

468. Dr Faulkner: I am not sure whether I can contribute very much to that. However, some 40 years ago, I did research in taxonomy and was involved in helping to decide whether some species were in fact two separate species or hybrids. The process is not clear-cut. It is not as simple as there being a point in time at which everybody stops referring to one species of skate and starts referring to two. A scientific paper will be published proposing the change, and that may or may not be picked up and adopted by others, such as those writing definitive works.

469. Mr Weir: If part of the aim is to protect a species, the danger may be that somebody catching or killing a species could claim that the legislation referred to one species — for the sake of argument, the skate — but that the greater skate and the lesser skate were different species.

470. Dr Faulkner: One can imagine that happening with hares in Northern Ireland, because there are a very small number of brown hares.

471. Mr Bell: Peter knows all about that.

472. Mr Weir: My colleague is more of an expert on the grey hare. [Laughter.]

473. Dr Faulkner: I am reluctant to go down the track of talking about hares. I remember commenting on behalf of the trust on the Wildlife (Northern Ireland) Order 1985, and that debate was dominated by hare issues.

474. Mr Weir: I expect that it is unlikely, but if, for example, scientists decided that there was some degree of cross-breed, for example, a greyish hare. If there was some degree of a scientific development of that nature, and a greyish hare was killed, presumably the argument could be made that that hare did not fall within the protection for the Irish hare.

475. Dr Faulkner: It is more a problem for lawyers than scientists.

476. The Chairperson: Exactly.

477. Dr Faulkner: It is not a scientific issue. However, it is interesting, because there is a dispute among scientists about whether the Irish hare should be recognised as a separate species or as a sub-species. I belong to the sub-species camp, but there are those who suggest that the Irish hare should be designated as a separate species and not classified alongside the circumpolar arctic hare.

478. The Chairperson: Part of your proposal was that the Department should seek to provide clarification.

479. Dr Faulkner: Yes. It is an interesting point that is worth discussing in relation to one or two species. I am not sure how significant it would be —

480. Mr Weir: There may be a PhD in it.

481. Dr Faulkner: For lawyers, perhaps, but not for scientists.

482. Mr Dallat: Could we get off the subject of grey hares, please? [Laughter.]

483. Is the Ulster Wildlife Trust a pre-partition or post-partition organisation? I will tell you why I ask that in a moment.

484. Mrs Thompson: It was established in 1978.

485. The Chairperson: That answers that question.

486. Mr Dallat: You said earlier that a great deal of animal cruelty, such as badger baiting and other terrible things, occurs on the border. Is there parallel legislation in the South, or do you have connections with a similar body in the South so that we could do something to end the use of the political border as a convenient meeting place for the cruel treatment of wild animals? Wild animals do not have passports.

487. Dr Faulkner: In the not very distant past it was suggested that animals were being trapped in Monaghan in order to be coursed in Northern Ireland.

488. Mr Dallat: That is true.

489. Dr Faulkner: The coursing took place particularly in south Tyrone. That should not be happening now, at least not legally. I think that it was illegal under the Republic's legislation, but it was hard to demonstrate that it was happening, and, consequently, to bring prosecutions. To the best of my recollection there are provisions in the Republic's legislation to prevent that happening.

490. Mr Dallat: That is something that we should check out, because we are in a comfortable position now that we can look at each other's legislation and make sure that we eliminate, as far as possible, the opportunities for the criminals who exploit wildlife in the most terrible ways.

491. The Chairperson: It was agreed at last week's Committee meeting that research into the legislative barriers and commonalities should be undertaken, and that has begun.

492. Mr Bell: You said that people who cause environmental damage through unlawful activity should pay for putting it right. I am keen on the principle of restorative justice: those who do the damage should be held accountable. I wonder whether fines are in proportion to the amount of damage; we are probably agreed that they are not. Could research be done on that in future? The costs of habitat restoration can be considerable. Is there any way of quantifying damage and the cost of putting it right? When those issues go before the courts we should be able to go after the criminals' assets in order to put right the damage that they have done.

493. Mrs Thompson: I am sure that you are aware of the debate about putting a value on ecosystems services. That is being discussed at a UK level at the Joint Nature Conservation

Committee (JNCC), and some local work is being done. If it is possible to put a value on those services — and the JNCC is looking at putting a specific monetary value on them — it will be much easier for us to answer that question. However, I know that the JNCC is finding it difficult to do that, because there are so many different levels of service. It is not just about habitat, but about what the habitat does for us in controlling flooding or pollution. That work is well under way, and economists are trying to arrive at a valuation, but it is not just about the value of the services. How do we put a price on the time that it has taken those habitats to develop? That will be the challenge.

494. Mr Kinahan: We have already talked about making lawyers wealthier, but what about the insurance industry? Given the figures involved in repairing and restoring an area, should we encourage some form of insurance? Farmers will never have the sort of money that it takes to make restoration for damages. An insurance system might allow that to happen.

495. Mrs Thompson: Do you mean for inadvertent damage?

496. Mr Kinahan: Yes.

497. Mrs Thompson: The question is whether insurers can take it on. If people are aware of the legislation, compliance issues will be in place. Therefore, I would have thought that it would be very difficult for an insurer to insure, because everything is in place to tell people what they should do.

498. The Chairperson: You said in your opening remarks that we need a more comprehensive guide to educate people about what is permissible and what is not.

499. Mrs Thompson: A great deal of work was done on ASSI legislation in the Environment (Northern Ireland) Order 2002, and case officers have been appointed to landowners so that they are aware of compliance requirements. However, the 2002 Order, the Wildlife (Northern Ireland) Order 1985, the habitats directive and the birds directive are all in place. If someone tries to investigate the legislation that governs the environment, a huge amount of reading will be required to get to the nub of the issue.

500. Therefore, simplification is required. Despite NetRegs, the question is whether information is easy enough to understand in layman's terms to supply people with the information that they need. That area needs attention, especially for people who are in business, such as farmers or horticulturists. They tell us that it is a significant issue for them. They do not have the time to run a business, manage staff and, on top of that, look after legislative requirements, the wording of which is sometimes difficult to penetrate.

501. The Chairperson: Information must be much easier to read and more accessible. Thank you very much for your helpful presentations. Feel free to send further information to the Committee during its deliberations on the Bill.

## **4 March 2010**

Members present for all or part of the proceedings:

Mrs Dolores Kelly (Chairperson)  
Mr Roy Beggs  
Mr Jonathan Bell  
Mr John Dallat  
Mr David Ford

Mr Danny Kinahan  
Mr Alastair Ross

Witnesses:

Alderman Arnold Hatch	Northern Ireland Local Government Association
Ms Rosemary Mulholland	
Ms Ruth Wilson	
Ms Judith Annett	Northern Ireland Biodiversity Group
Dr Bob Brown	
Ms Orla Maguire	
Mr Peter Baillie	Talnotry Avian Care Trust
Mrs Patricia Nevinnes	
Mr Ken Bradley	Department of the Environment
Mr Chris Savage	
Mr Mike Meharg	

502. The Chairperson (Mrs D Kelly): I formally welcome the representatives from the Northern Ireland Local Government Association: my council colleague Alderman Arnold Hatch; Rosemary Mulholland, the biodiversity officer for Craigavon Borough Council; and Ruth Wilson, the biodiversity officer for Antrim Borough Council. I understand that Karen Smyth is also here, in the Public Gallery.

503. You are all very welcome. Your contributions will be recorded in the Hansard Report.

504. Mr Kinahan: Do we need to declare our membership of councils?

505. The Chairperson: We note formally for the record Committee members' membership of councils.

506. I take it, Arnold, that you are going to take the lead.

507. Alderman Arnold Hatch (Northern Ireland Local Government Association): Thank you very much, Madam Chairperson, for facilitating this evidence session. I thank the Committee for inviting us to give our presentation. I am accompanied by Rosemary Mulholland, the head of conservation and heritage in Craigavon Borough Council, and Ruth Wilson, from the biodiversity office in Antrim Borough Council. I am an officer of the Northern Ireland Local Government Association (NILGA), which is why I am here this morning.

508. We welcome the Wildlife and Natural Environment Bill because, quite honestly, the current legislation is quite outdated and was established before there was much talk about climate change or any such issue.

509. It is important that there is a statutory duty to conserve and enhance biodiversity, but the measures in the legislation will only succeed if they are properly resourced. I realise that, in these times, that is difficult. However, the measures need to be resourced and enforced. There is a need for guidance, training and money. I understand that the Northern Ireland Environment Agency (NIEA) budget has been slashed. We have a gap to fill in relation to biodiversity officers. I understand that there are currently seven in the 26 councils, only three of whom are on permanent contracts; the others are on contracts that will expire within the next one or two years. There is a big gap to fill with the new council structure of 11 local authorities, which will come into effect in 2011.

510. There is a big knowledge gap to fill, because of the lack of biodiversity officers. There is also a lack of baseline information. For example, it is very difficult to get the baseline information on invasive species or particular animals or habitats. That may be because the Environment Agency does not have the staff to provide it or because the information does not exist in sufficient detail to allow officers to provide it. A high level of support is required from central government to enable the new councils to begin the process. They will also need guidance on penalties for failure to deliver, because that is where a lot of things fall down. Because of the length of time that has elapsed since the old legislation was introduced, the biodiversity strategy needs to be updated. That strategy is 10 or 12 years old.

511. I will now hand over to Rosemary, who may want to draw particular attention to our submission to the Committee, which points out the need to strengthen the legislation where possible.

512. Ms Rosemary Mulholland (Northern Ireland Local Government Association): Following on from what Councillor Hatch has said, I stress that we are unsure as to exactly what the biodiversity duty will involve. Obviously, a number of councils are at different levels in delivering on biodiversity. Some of them are well advanced, whereas others have absolutely no experience. In the early stages, some matters will need to be spelt out, such as what the duty involves and what is expected of us; how the actions that we carry out will be recorded and monitored, presumably by central government; and how feedback will be given on how we are doing, or not doing, as the case may be.

513. Ms Ruth Wilson (Northern Ireland Local Government Association): At a local government level, support will also be required for raising awareness and training.

514. The Chairperson: Those are valid points.

515. Alderman Hatch: I would like to make a suggestion about funding. Landfill tax is becoming more and more expensive to councils, and they are paying it into the Northern Ireland Assembly pot. There may be a method of transferring some of that income back to local government to help fund the posts that are needed. That would make sense in relation to sustainability. We would also like to think that the Bill will take account of the Sustainable Communities Act 2007, because the issue is wider than one of biodiversity.

516. The Chairperson: That is a good point, and it could work in a similar way to the landfill tax credit scheme, which was used for village enhancement, for example. How much will it cost to employ biodiversity officers in the new council system? Can you give us a ballpark figure, even from a staffing and administrative perspective?

517. Ms Mulholland: It will cost approximately £30,000 a year.

518. Alderman Hatch: If you add on the running costs for 11 offices, it will cost £40,000 a year, which amounts to a total of less than £500,000.

519. The Chairperson: Of the seven biodiversity officers, am I right to say that only three have permanent contracts and the other positions are subject to EU grant funding to councils?

520. Alderman Hatch: They are funded by NIEA.

521. Mr Ford: I thank Arnold Hatch and his colleagues for their presentation and for their useful briefing paper. You referred to the availability of baseline information from the Environment Agency. What level of engagement on baseline information is there between the seven council

biodiversity officers and the Environment Agency? Do you provide them with baseline information, and, if not, how do you get the necessary information?

522. Ms R Wilson: In some areas, there is engagement at local level. However, it is important that baseline surveys are carried out at a Northern Ireland level.

523. Mr Ford: Is that because you think that they are not doing that work at all, or because they are not communicating the fact that they are doing it?

524. Ms R Wilson: It is a resource issue. It costs a lot to gather information for a full-coverage baseline survey.

525. Mr Ford: Do you mean that it is a resource issue at NIEA level, rather than at council level?

526. Ms R Wilson: Yes.

527. Mr Ford: Alderman Hatch also referred to the need to review the biodiversity strategy because it is out of date. There may be general consensus about that, including, I suspect, among NIEA officials, whom I am not looking at behind you. Of course, that comes down to resources and time. The question is what can be done in advance of a full review of the strategy, particularly for individual species that are known to be under threat. Are there any issues that could be addressed at council level first?

528. Ms Mulholland: A number of more up-to-date issues, such as climate change and invasive species, are not included in the existing biodiversity strategy. There is now much greater awareness of how those factors are affecting priority habitats and native species, and they must be included in the Northern Ireland biodiversity strategy. Furthermore, when we develop biodiversity delivery action plans for local authorities, those elements must be included.

529. Alderman Hatch: A lot of things are happening with respect to giant hogweed, for example. If a building contractor knocks down a house with giant hogweed around it, he could spread it virtually anywhere without knowing what he is doing. Therefore, education is required as part of the planning process. In addition, nowadays a certain class of people have ornamental gardens and ponds. However, as I heard last Saturday on 'Gardeners' Question Time', when cuttings of garden pond vegetation are thrown away, the vegetation can grow wild. Rather than having to wait two or three years, or even 10 years, for the introduction of a new Bill, new species should be added to the list as soon as we become aware of them. I am not familiar with the names of those species, but Rosemary and Ruth know them. We need to be aware of that problem.

530. The Chairperson: We need earlier intervention and earlier warning.

531. Mr Ford: In relation to invasive species, you mentioned making recklessness an offence. Last week, we heard evidence from an organisation that was opposed to that. Are you sure that the offence of recklessness, as opposed to proven deliberate action, is required for the Bill to be strong enough?

532. Alderman Hatch: We have seen evidence of trees being deliberately removed from building sites. In order to get started on a site without any hold-ups from environmental agencies, some developers will remove trees. That is reckless and must be addressed.

533. Mr Kinahan: Virtually all my questions have been answered, as David asked the same ones that I was going to ask. I take on board the point about knowledge. Until all of us understand the situation, it is the job of biodiversity officers and councils to try to get as much information



across as possible. I take on board all the points that have been made. One feeling that I have had throughout the process is that we need to talk to stakeholder groups all the time so that we are all educating each other and passing round knowledge on the problem of recklessness.

534. Alderman Hatch: Planning Service officials also need to be aware of some of those issues. A joined-up approach is required.

535. Mr Dallat: Thank you for the presentation, which was interesting, if somewhat worrying. You say that the Bill is ambiguous and vague and that there is no indication of how its measures will be resourced. You also say that there is understaffing, and one begins to wonder whether biodiversity is being taken seriously at all.

536. In your submission, you say that local authorities should work together. I agree with that. Do you have any ideas on how that could be put into legislation, so that, rather than duplication, we have harmony among the different council areas?

537. It is in my mind that we will have 26 councils instead of 11. Does NILGA have any thoughts on that?

538. Alderman Hatch: Mr Dallat, you obviously have more information than we have. [Laughter.]

539. Mr Dallat: I have absolutely no information, which is why I have that opinion.

540. Alderman Hatch: The Minister did not give us that impression when we met him last week at a meeting of the strategic leadership board.

541. In relation to the point that you raised, the key issue is that it is not only local authorities that need to work together; other public bodies need to work together as well. There needs to be a regional group, and NILGA could be the mechanism through which there is a consistency of approach and interpretation across the council areas, regardless of whether there are 26 or 11.

542. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council.

543. In relation to how the measures in the Bill will be funded, I know that there would be concern in local government if further costs were put on ratepayers to fund additional services. I am interested in your idea about the landfill tax. How is landfill tax administered at present? There will be an increase in the money that goes into that pot. Can you give me any pointers on that, or should I take it up with the Department?

544. Alderman Hatch: You should take that up with the Department, because, as the Chairperson pointed out, the landfill tax is administered through measures such as village enhancement. A call can be made on that. The fund, which is financed by ratepayers, will get bigger and bigger. Therefore, it would be good to put something back to preserve and enhance the environment.

545. Mr Beggs: That is something that the Committee should pursue.

546. How do we ensure that there is an appropriate balance between the Northern Ireland Environment Agency and the biodiversity officers in the making of decisions? I know of an application to extend a fishing lake that was turned down by the Planning Service because a NIEA officer said that it would have affected the biodiversity in the area. However, the measures outlined in the new planning application would have enhanced planting and extended the wetland area. It would have done quite a lot to bring about improved biodiversity. That

application was going to be rejected until the officer was asked how long it would take for the environment to recover from the work to enhance the lake. He said that it would take one or two years and, by saying that, he shot himself in the foot. How can we ensure that there is an appropriate balance between protecting biodiversity and enabling improvement work on leisure and tourism facilities and industrial facilities?

547. Alderman Hatch: Rosemary, that is a good question for you. [Laughter.]

548. Mr Beggs: The biodiversity officers should not be of the opinion that nothing can change. At the end of the day, if we are to develop as a community and a society, there will always be change of some sort. In bringing about that change, however, there needs to be appropriate protection in respect of planting and so forth. How do we achieve an appropriate balance?

549. Ms Mulholland: There are a number of issues. To use the lake as an example, account needs to be taken of what important species are there already. In areas where extremely rare species are present, it would be risky or inappropriate to undertake any development that threatens their future. In other cases, a range of wetland species could be further enhanced by the provision of extra habitat. It needs to be dealt with on a case-by-case basis. It is so important to have the baseline data to find out what is in an area, the needs of the particular species or habitat and how we can take forward the development in a way that avoids any lasting effect and that possibly enhances the area.

550. Activities can be undertaken to mitigate the risk. Enhancement work can also be done by providing an extra piece of habitat elsewhere. Generally, there are ways around situations in which development conflicts with wildlife. In some cases, however, the wildlife is just too sensitive to permit development to go ahead. Decisions have to be made on a case-by-case basis.

551. Mr Beggs: Do you agree that biodiversity officers are best placed in councils, particularly if planning moves to councils, so that they do not work in splendid isolation?

552. Ms Mulholland: Under the new legislation, biodiversity officers will be responsible for looking out for breaches of the Wildlife (Northern Ireland) Order 1985, and so forth. However, the NIEA also has a responsibility in that regard. There needs to be a certain amount of working together. All of the interested parties need to come together and decide what can be done.

553. Alderman Hatch: It may be an idea to look at the secondment of NIEA civil servants to local authorities so that there is buy-in and so that all organisations sing from the same hymn sheet. That would be useful in getting the balance right, because there will be accountability to elected members at local authority level, which operates at arm's length to the Assembly.

554. The Chairperson: Given that a new biodiversity duty will be imposed on local authorities, they need to get working relationships right from the outset. Those were some helpful suggestions.

555. Clause 31 is about the abolition of game licences and game dealers' licences. Your submission states that:

"Consideration should be given to a requirement to report on numbers and species of birds taken. This is standard in other European countries and would allow for a better understanding of the level of wildfowling and the potential effects it has on species of wild game birds."

556. How does that work elsewhere?

557. Ms Mulholland: I am not exactly sure how it works elsewhere. When a game licence is issued in other European countries, there is a requirement to report the level of shooting activity that occurs. Apparently, there are also tests to ensure that people know what they are shooting, whether they are shooting at the right time of year and so on. In Northern Ireland, a person can apply for a gun and go out and shoot anything. We often see the aftermath of that.

558. It would be useful to make wildfowlers aware of the numbers of birds that are shot and the effect that wildfowlers have on the overall populations of wild birds. We have all heard about people who go out and shoot 20 or 30 ducks and leave them lying in a pile without ever using them. Those people generate bad press for responsible wildfowlers. There is a need to tighten up the situation a bit. Furthermore, we need all the data that we can get, and it would be useful if the information were reported back.

559. The Chairperson: We can take that matter up with the Department.

560. Mr Kinahan: In Germany, people have to pass a test on game birds, their habits and so on before they get a licence. It is quite a clever system.

561. Alderman Hatch: I am a member of Lough Neagh Partnership, which brings together all the lough's interested parties and stakeholders. I find wildfowlers to be responsible people who are keen to preserve the environment.

562. Mr Kinahan: That is right.

563. The Chairperson: We can pick up that point at a later date.

564. Mr Bell: I endorse the document and declare that I am a member of NILGA.

565. The Chairperson: We had the customary declarations of interest just before you came in, Mr Bell.

566. I thank our witnesses for their evidence. They are welcome to stay for our next two evidence sessions, the first of which is with the Northern Ireland Biodiversity Group (NIBG).

567. I invite Judith Annett, the chairperson of NIBG, Bob Brown, and Orla Maguire to come forward; you are all very welcome. We ask that you spend five or ten minutes outlining the salient points of your presentation and then allow members to make comments and probe your thinking further.

568. Ms Judith Annett (Northern Ireland Biodiversity Group): Thank you, madam Chairperson. It is only a matter of weeks since I was appointed chair of the Northern Ireland Biodiversity Group, so, for the sake of continuity, the outgoing chair, Dr Bob Brown, and Orla Maguire, who is a member of the group and a biodiversity officer for Belfast City Council, have come along to contribute to the evidence session.

569. Northern Ireland Biodiversity Group is a non-statutory advisory body that was set up to co-ordinate and monitor the implementation of the Northern Ireland biodiversity strategy and its associated action programmes. We have 20 members, who were nominated to NIBG from various sectors, including aquaculture, agriculture, education, industry, estates management, local government and construction, as well as people from environmental groups. The chair is appointed by the Minister, and the members are nominated from the various sectors. Hopefully, that has given you some idea of what we do.

570. We welcome the legislative proposals. We believe that they increase the protection of biodiversity and provide important additional tools for the achievement of the relevant national and international targets. In particular, we welcome the new biodiversity duty for all public bodies and the proposed introduction of custodial sentences for wildlife crime. We believe that custodial sentences will prove an important deterrent — we hope that that will be their main purpose — and will be a just punishment for people who ignore the legislation.

571. We have already submitted detailed evidence on the Bill in two parts. We hope that the Committee will consider that evidence and recommend amendments to the Bill accordingly. With your permission, Chairperson, we will present further evidence and then clarify and prioritise some items from our previous submission. We submitted a paper at a very late stage.

572. The Chairperson: I want to draw members' attention to a paper that has been tabled, which is the additional evidence that Judith refers to.

573. Ms Annett: We provided that to save you scribbling madly during the meeting.

574. Turning to the detail of the Bill, we would like to present some further evidence and also clarify and prioritise items from our previous correspondence.

575. Under the biodiversity duty in the Bill, we have already suggested that the biodiversity duty should include the wording:

"to halt the loss of biological diversity".

576. Obviously, that should be within the scope of what the agencies do and control. However, since public bodies have both functions and the potential to influence others in various ways, in clause 1(1), we suggest adding the words "policies or influence", because public bodies have influence and develop policies that affect the work of other organisations. Therefore, we think that the clause would be more complete if those words were added. Some public agencies are intermediary funders for European and other funds, and they have major influence, and there are those that work through influencing others, such as the Department of Agriculture and Rural Development. Therefore, we feel that the words "policies or influence" need to be added to ensure that it is fully encompassed in the Bill.

577. Under clause 1(3)(a), which again refers to the duty to conserve biodiversity, we recommend adding the words "protecting, maintaining" between the words "fauna" and "restoring". It would then read:

"(a) in relation to any species of flora or fauna, protecting, maintaining, restoring or enhancing a population of that species".

578. We think that that provides a better checklist for the job of conserving biodiversity. It is a truism that original biodiversity is better than that which has been destroyed and then restored, and we are worried about the words "restored" and "enhanced" being in the Bill with no reference being made to the protection and maintenance of the original biodiversity. Similarly, we also suggest the addition of the words "protecting, maintaining" before the word "restoring" in clause 1(3)(b), which refers to habitats rather than species.

579. In clause 1(5), we ask you to ensure that the Crown, cross-border bodies and, as things develop, bodies such as Northern Ireland Water be included in the definition of "public body". They all have important roles to play in conserving biodiversity, and two of the bodies that I mentioned are major landowners with significant holdings of good biodiversity lands.

580. We suggest that the biodiversity list that will be published by the Department should be required to take account of agreed European priorities, habitats and species. We are sure that the Department would have done that anyway, but it would be worth including that in the Bill.

581. In clause 3(3), we do not understand why only the Department has to take account of that list, once it is produced. We recommend to the Committee that that should read: "the Department and public bodies". In other words, public bodies should have a particular duty to conserve species and habitats that are within their influence and about which there is most concern.

582. We have already suggested that clause 1(4) should be amended to read the Department "shall" or "should" issue guidance. It would be logical to require public bodies to have regard to that guidance, but that is missing at the moment. There is guidance, but there is no requirement to have regard to it, so we would like that to be added. For consistency, therefore, the preceding points would also lead to an amendment of clause 1(2), which would then read:

"a public body must in particular have regard to any strategy, list or guidelines designated".

583. That would provide people with a clearer picture of what is happening.

584. We propose an amendment to clause 9, which itself proposes an insertion to article 10 of the Wildlife (Northern Ireland) Order 1985. In the proposed new sub-paragraph 4A, we recommend including the words "or injures" following the word "disturbs". The proposed new sub-paragraph would then read:

"recklessly disturbs or injures any wild animal".

585. Clarification of that will depend on what definition is finally given to "disturbs or injures".

586. Finally, in our new evidence we propose that, in the case of snares, the method of management is also covered by the Bill. That can be achieved by adding "or so managed" after "or so placed" in the proposed new wording set out clause 10(3). It would then read:

"of such a nature or so placed or so managed as to be calculated to cause".

587. It is not enough to look at only the fact of the snare; the management of the snare is also an issue, and we do not feel that that is covered particularly well in the Bill.

588. We also recommend the deletion of the words "as to be calculated" in the proposed new wording set out in clause 10(3), which suggests a particular intent that may or may not be present. The method "as to be calculated" suggests that the person has the knowledge to calculate. We see that as unnecessary and as another way out.

589. I want to emphasise briefly key points from the evidence that we submitted previously. One of our concerns relates to the reliability and, indeed, the volume of science and judgment that underpins the concept of the sustainable harvest of wildfowl. There are large areas of Northern Ireland for which no data is available; for example, on the size or nature of the wildfowl bag. Those areas include special protection areas (SPAs), which are sites designated by the European Commission.

590. The number of each species that is shot each year is what we call a wildfowl bag. In most areas, there is no annual or even periodic comparison of overall numbers of species within the numbers that are shot in each area. Therefore, no reliable judgement can be made on the

sustainability of current practice. In changing licensing arrangements under clause 31, the opportunity should also be taken to introduce new measures to ensure that, post-licensing, the practices that are used are sustainable.

591. We have proposed the addition of species from various parts of the Wildlife (Northern Ireland) Order 1985, which include seals, cetaceans and turtles in article 10; and swift, peregrine, hen harrier, merlin, barn owl, chough, white-tailed eagle, osprey and red kite in schedule A1. We ask for an extension of the list of birds that reuse their nests. We have also provided a list of birds that we, in common with the RSPB, believe should be added to schedule 1 to the Wildlife Order. We believe that Atlantic salmon should be added to schedule 6.

592. We have also proposed more flexible arrangements under clause 24 to update schedules of the Wildlife Order in an emergency. The five-year period is adequate in most cases. However, in some cases, particularly with regard to invasive species, action would need to be taken faster than that.

593. Turning to amendments to the legislation on areas of special scientific interest (ASSIs), the Environment (Northern Ireland) Order 2002, we recommend that all of the changes that are proposed should also relate to all of the Natura 2000 sites. We say that because not all of those sites are currently underpinned by ASSI designation, yet we have European commitments to protect such sites. We recommend additional changes to the Environment Order, such as provision for management agreements on land outside ASSIs that has high biodiversity value.

594. We are disappointed that we are not being asked to comment on a complete review of environmental legislation, but rather on a Bill that contains a series of amendments. We, and others, find that, at present, nature conservation and biodiversity legislation is complex and difficult for people to understand. It is not fit for purpose. That leads to difficulties in ensuring that there is compliance. We encourage government to make simple information available on the Bill to assist landowners and businesses, and so on.

595. Northern Ireland has joined with the UK and Ireland in Europe to meet the challenging target of halting biodiversity loss. Given the decline in many species and the unknown status of many others, we must take strong and determined action to control species and habitat loss. You will be aware that we have missed the first target due to compromises, a lack of focus on species and habitat protection, and a lack of resources for conservation action, monitoring and enforcement, which, I am sure, has been mentioned by others. Therefore, we are already missing international commitment targets.

596. When considering proposals that others have made to water down some of that legislation, we encourage you to focus on the fact that retaining natural biodiversity underpins the achievement of many other targets; for example, targets for clean water; clean air; soil productivity; flood regulation; nutrient cycling; climate regulation; human health and well-being; and the economy. Therefore, biodiversity is a basic building block for all of those aims. At present, biodiversity legislation is not good enough.

597. Finally, in order to cover everything that we could not cover in our short presentation, I draw your attention to the NIBG report on the implementation of the Northern Ireland biodiversity strategy. It contains, among other things, our concerns about resourcing biodiversity and about the information that is available on key species in Northern Ireland. Such information is needed to monitor progress.

598. Thank you, Chairperson. Sorry to have taken up so much time.

599. The Chairperson: Thank you very much for a thorough presentation. Although you may not have much time to articulate all of it, you have provided written submissions. Feel free to send us any further information at a later stage if you wish. I am sure that you will be relieved to hear that some of the points that you have made have been reinforced by others in earlier presentations.

600. Mr Dallat: That was one of the most detailed presentations that we have heard. It was very useful. Please do not be offended if I ask about one aspect of it. You say that snares should be checked every 12 hours rather than every 24 hours. In this day and age, do you not agree that snares are barbaric and should not be part of any Bill?

601. Dr B Brown: Personally speaking, I do not like the practice. In some places, however, it is a well-established method of controlling some predatory species of birds, such as hooded crows and magpies. Larsen traps are used on shooting estates to protect quarry species like pheasants and partridges. Those are large cages in which magpies and hooded crows can get trapped, but protected species can also get trapped in them. There is a real threat to those birds if they are trapped with such unwholesome neighbours as magpies. Therefore, a 24-hour inspection cycle is far too long.

602. We strongly support the prohibition of the use of self-locking snare devices, nooses of various types and other similar traps. To echo your words, those are completely unacceptable in a civilised society.

603. Mr Kinahan: Thank you very much for an extremely thorough briefing. I am concerned about all of the changes in wording. I admire the reasons for the changes, but if the legislation requires those changes to be made, additional resources will be needed. I am sure that you realise that. We will have to water down the legislation, but I admire what you said and I take it all on board. One or two of the changes in wording would mean that councils or others would have to take action, but they would not have the resources to do so. We have to find the way forward.

604. Ms Annett: That is true. Some of the biodiversity work results in additional costs. We have biodiversity officers who have biodiversity programmes, all of which costs money. Some of the things that are important in the duty on public bodies are to do with choice and site selection, and so on. They are pre-development choice costs that are not, in fact, costs at that point in time. Very often, if biodiversity is destroyed through a poorly sited development, a lot of money is needed for restoration. If a development is built properly — it is a challenge for the Department to get the guidelines right — a lot of those biodiversity guideline actions will not cost anything. They are about good practice in planning and bringing forward a development, and they are about talking to the right people and becoming informed before work is started.

605. You are quite right about resourcing, and we support any call for more resources for biodiversity. However, it should not be thrown out because there are not currently sufficient resources. There are so many valuable things that can be done at no cost through good practice.

606. Mr Bell: Your presentation, in general, was excellent. We have to take a hard-headed approach, given our dwindling resources. In future, Governments right throughout Europe will have to focus heavily on their resources. In point 12, you said that the additional powers would require greater effectiveness, greater resources and additional numbers of personnel. The Police Service gets additional power —

607. The Chairperson: That is not their note.

608. Mr Bell: That is our note. I apologise.

609. Ms Annett: I was a bit bewildered.

610. Mr Bell: I read in your submission that NIBG is supportive of clause 20, but that it believes that:

"additional and better powers do not constitute greater effectiveness unless they are accompanied by matching resources in terms of personnel and equipment".

611. The police get additional powers from Parliament nearly every year, but they are smarter in their use of those powers, and they use roughly the same numbers. Could we be smarter in our use of the additional powers?

612. If somebody has transgressed, should we look more towards the principles of restorative justice, whereby the perpetrator would pay back the cost of putting right their transgression?

613. Ms Annett: We will address the first part of the question, which relates to clause 20 and wildlife inspectors.

614. Dr B Brown: Some of the points could be addressed by operating more smartly. It would be worthwhile establishing dialogue with the Police Service to find out its views on the issue. However, I think that it will be a more pressing thing. If we raise the stakes and stress the importance of biodiversity through increased penalties, we increase the significance of what we feel about wildlife crime. Therefore, we are giving a strong steer to the Police Service to drive that. Issues such as operating better equipment, smarter processes and better training could be raised with them. However, I still think that the buck will stop with more resourcing.

615. Ms Annett: You mentioned restorative justice. We have not taken that under consideration, but our response today is that it does not necessarily signal what we need it to signal, which is that the initial removal of biodiversity is a very serious matter and that, in many cases, restoration back to the previous condition is not possible. Therefore, it probably sends out the wrong signals.

616. Mr Bell: I am talking about doing something in as far as is possible. If individuals or organisations are transgressing and they have assets, it may not be perfect to put it back. However, the potential fine, or, ultimately, prison sentence, would need to match the level of damage that has been done. Some fines are small. As you rightly said, it will cost an enormous amount of money to get an area even some way back to its original state, if not perfectly back. Therefore, we should go after the assets of those individuals or organisations that are operating illegally to try to get as much back as possible. I disagree with your last point that it would send out the wrong signal. I think that it would send out a stronger signal.

617. Dr B Brown: There are a lot of underlying complexities. Sometimes it is physically impossible to replace things. For example, 10 years ago, a developer removed, almost certainly knowingly, a pocket of woodland for a development, and we suspect that he was well aware that herons were nesting in the tops of the trees. The parents of those eggs will have survived and moved on somewhere else, but the heronry was destroyed and cannot be replaced. On the other hand, maybe there is an opportunity in your suggestion that funds from the perpetrator should be directed towards protecting other areas of woodland where herons may be established.

618. Therefore, there are possibilities, but I echo Judith's point that the key is to instil a culture whereby people examine the problems and challenges first, adopt a responsible attitude on the basis of sound knowledge and do not go in "recklessly", to use a word that has already been discussed.



619. Mr Bell: That is a point well made.

620. The Chairperson: Part of the problem is that some developers could make so much money from conservation areas. Our experience is that court fines are not proportionate to the crime. One example is the illegal dumping of landfill.

621. Mr Beggs: I agree with Mr Bell's point. Frequently, fines are £5,000 or £10,000. I have come across cases where the Planning Service has found that it is not worthwhile pursuing the matter because the cost to the public purse in legal fees would be greater than the fine. Therefore, perhaps there is potential in introducing a punitive measure to ensure that developers put right their failing. That might affect the actions of sizeable developers.

622. You suggest adding the words "protecting" and "maintaining" to clause 1(3)(a) and clause 1(3)(b). I have concerns about the word "maintaining". The current wording in the Bill is "restoring or enhancing". However, it may not always be possible to maintain the population of a species or to maintain a habitat. I am thinking about climate change. In the course of our Committee work, we heard about a small freshwater lake in Wales that lies just a few inches above sea level. If sea levels rise, protecting the lake's biodiversity would be nigh on impossible without prohibitive public expenditure. Therefore, putting in the word "maintaining" might create inordinate costs that would be impossible to justify. There will be changes to the natural environment because of climate change and other factors. One cannot fight nature.

623. Ms Annett: We suggested inserting that phrase because, at present, the Bill deals with the wrong end of biodiversity in that it talks about restoring and enhancing biodiversity. Consequently, apart from a broad duty to conserve biodiversity, there is nothing in the Bill that specifies that a public body with high-value conservation land should protect and maintain that land. The Bill mentions restoring and enhancing, which is fair enough, but a public body that has land with good biodiversity and that is home to a large number of species should be in the business of protecting and maintaining it. I accept that, in some difficult circumstances, exceptions must be made. However, protecting and maintaining that land is all that public bodies would have to do, unless they are involved in activities that damage biodiversity, in which case it must be restored, or they choose to enhance what they have, which would be a higher-cost measure. We would like them, first, to protect what they have, secondly, to maintain it, and thirdly, to act in accordance with clause 3 as currently drafted.

624. Mr Beggs: I understand what you said, and the intent behind inserting the word "maintain" is understandable. Nevertheless, we will have to live with the actions that are specified in the legislation. Do you not accept that your intentions could be achieved if the Bill were to be enacted in the form that is proposed? Frankly, in certain circumstances, the amount of public expenditure required to fight against nature would be undeliverable.

625. Dr B Brown: We have, rightly, although perhaps a little too rightly, focused on individual species. I would argue that we should also look at habitats. Maintaining biodiversity is also about maintaining, for example, a given wetland habitat. By doing so, first, we would have a better chance of maintaining individual species and of making them more resilient to climate change and, secondly, in the same context, by maintaining habitats, we would probably make things better for ourselves. From the habitat perspective, one is able to apply a very robust interpretation of the word "maintain", bearing in mind that climate change will impact on individual species.

626. The Chairperson: We have no further questions or comments. Thank you for your presentation, and if you wish to send in any additional material, feel free to do so.

627. I invite the witnesses from the Talnotry Avian Care Trust (TACT) to join us. I welcome Peter Baillie and Patricia Nevinnes. Good morning.

628. Mr Kinahan: I declare an interest. Although I am not a member of the Talnotry Avian Care Trust, in the past, I have been involved with it through my council.

629. The Chairperson: I invite the witnesses to give evidence for five or 10 minutes, after which members will have time to comment on and ask questions about their presentation.

630. Mr Peter Baillie (Talnotry Avian Care Trust): Thank you for inviting us along this morning. I am Peter Baillie, the chairman of the Talnotry Avian Care Trust board of trustees. I am joined by Patricia Nevinnes, who is the founder of the trust, which is an animal and wildlife trust that exists to care for sick and injured animals and, when possible, rehabilitate them.

631. We wish to make a couple of important points this morning. After Patricia takes members through the presentation, we will be happy to answer any questions.

632. Mrs Patricia Nevinnes (Talnotry Avian Care Trust): Good morning. TACT wildlife centre takes in approximately 1,000 injured wild birds and small mammals annually. Our primary aim is to return as many of those to the wild as possible. We are currently returning approximately 50% of them to the wild. No creature is humanely destroyed unless its quality of life is totally gone. Any animals that cannot be returned to the wild are given a home at the trust. We care for a diverse range of mammals, up to the size of badgers, and birds, including swans, sparrows, birds of prey and seabirds; we take in all of them. About 25% of the animals that we care for die from their injuries or from the stress that can be caused by their not being able to live in confined circumstances. We provide a home for the remaining 25% for the rest of their natural lives.

633. We try to keep the animals' enclosures and pens as natural as possible, because we are dealing with wildlife. We do not hose down concrete surfaces every couple of hours because that does not create a natural habitat for the birds and creatures that live there. As a result of the actions of a local community group, Crumlin Together, which gave us a grant that it had received, we were able to build new enclosures a year ago, and we are still installing some of those.

634. Members will see photographs of some our patients in the presentation.

635. The Chairperson: There are some interesting photographs. I particularly like the one of Polo the badger, which is wearing a funky bandage.

636. Mrs Nevinnes: That badger was most amusing when he got better. When he arrived at the centre, an official from the Department of the Environment phoned me to say that badgers are very dangerous creatures. I just agreed with the official; I had cared for three other badgers by that stage. The first day that two of those badgers arrived, I decided to put them together. However, when I went to get the second badger, I discovered that it was missing, so I asked the first badger where the other one was. The first badger walked down to the fence, stuck its nose out under it and then pulled it back in to indicate that the other badger had crawled underneath the fence. The badger was right.

637. The Chairperson: That was a Dr Dolittle moment.

638. Mrs Nevinnes: Some quite amazing things have happened at the centre.

639. We treat and feed the animals according to their breed. For example, the swans are fed suitable feed and the gannets and cormorants are fed fish and chicken. The care manager told me that when she comes in with a bucket of fish, the cormorants and gannets rush up to her, grab the bucket and hardly let her pass, because they know that she is carrying fish and that they are liable to get something to eat.

640. In the presentation, there is a photograph of a young lady cuddling a fox. That young lady has very big problems. When we submitted an access form to see whether she was all right to work with vulnerable adults — she is a vulnerable adult herself — we received a 12-page response. We put that aside and told her that we could help her. That is what that fox has done for her.

641. Mr Baillie: All the animals that come to TACT are brought in by members of the public. As Patricia said, there is a big benefit in vulnerable adults working with wild animals. They sometimes relate to animals that have suffered or have been injured.

642. The Chairperson: It has a therapeutic effect.

643. Mr Baillie: Yes, very much so.

644. Mrs Nevinnes: We have an extensive education programme that involves creatures that cannot be returned to the wild. About six such animals go out every day with our education work leader, who sees approximately 18,000 children and adults a year. They work in groups with those animals, and people are able to handle and cuddle them. The difference that it makes to those children is amazing. I hope that they respect wildlife in the future; that is important to us. Our submission also contains comments from Jean Hunter, who is a teacher at Dominican College, and from Aine Magee from St Joseph's Primary School in Crumlin.

645. We want the Committee to consider clause 14, "Licences under Article 18", because it is important that there should be a licence to cover the care of sick and injured wildlife. We suggest that that single licence should be a general licence that covers all aspects of our work rather than us having to apply for 250 or more licences each year. The licence should be updated regularly, perhaps every six months.

646. Mr Baillie: I have a couple of final points. A licence to permit the care of sick and injured wildlife is missing from the legislation at the moment. People often expect licences to be geared towards the rehabilitation of animals. Where possible, TACT tries to rehabilitate them, and half are released back into the wild. However, it is always not possible to rehabilitate animals, and some would not survive in the wild. TACT gives them a home. The legislation needs to address that issue and make allowances for it. As Patricia said, 1,000 wild birds and animals come in each year, and it would be helpful if the centre could be granted a licence rather than have to apply for a licence for every individual bird or animal. That is our suggestion to the Committee.

647. Mr Kinahan: Thank you very much for a clear presentation. How many youths or employees work for you and how many people have you taken through the system? Moreover, if there is ever a need for another wildlife Act, should other bodies that are similar to TACT be granted such a licence?

648. Mrs Nevinnes: We have six members of staff and about 40 volunteers. We work very closely with community services, the Youth Justice Agency and groups of disabled people. They all find the work with animals amazingly helpful. It is interesting that people who walk into the centre are amazed at how peaceful it is, given that it is on the edge of Crumlin and that traffic and aeroplanes travel nearby. I do not notice it myself because I live there.

649. Even if members of staff come in not feeling great, they feel like different people within half an hour of arriving.

650. Mr Baillie: I will respond to Mr Kinahan's question about a licence for other groups. All centres that take in numerous animals, such as recovery centres for horses, should have an opportunity to be licensed. We are not asking for that just for TACT.

651. Mr Beggs: I commend TACT and the work that it is doing. I have visited the centre with the Boys Brigade group that I assist, and I know that volunteers from TACT have gone out to visit Boys Brigade groups. Young people are intensely interested in what the group does; it is an excellent way to improve young people's knowledge and understanding of wildlife.

652. You said that, as it stands, the legislation could result in your group having to obtain approximately 300 different individual licences. That would impose a huge administrative burden and would be costly. Would that put your lights out?

653. Mrs Nevinnes: Definitely. That is why we are suggesting that we have one licence to cover us, which could be updated every six months.

654. Mr Beggs: Are you aware of any comparable groups to yours in Northern Ireland?

655. Mrs Nevinnes: We do not think that there is anyone doing exactly what we are doing. There are people who deal with hedgehogs and birds of prey, but we also take in magpies, field mice —

656. Mr Baillie: We will take in anything wild.

657. Mrs Nevinnes: We take in anything that needs help.

658. Mr Beggs: You have highlighted a practical outworking of the legislation's being enacted as it is. It is important that the Committee ensures that that issue is addressed. I am aware that you are surviving on small donations from people who visit your centre or who know you from your outreach work. It would be wrong if legislation were to cause a group such as yours to fold, given the services that you provide.

659. The Chairperson: You have found a level of support for your quest from Committee members.

660. Mr Dallat: Madam Chairperson, this is one of the loveliest presentations that I have ever sat through. It has brought back happy memories of childhood. As I have already told the Public Accounts Committee, I had a pet badger for a while, who was called Hector. I also had a hedgehog, and despite all their prickles, they are the gentlest animals one could ask for, although I have met a few more dangerous ones since. I will visit your centre and I strongly support your suggestion about an overall licence.

661. Mrs Nevinnes: We hope that you might all visit if you have not already done so. I know that there are some people who feel that wildlife cannot exist out of the wild, but I refer you to the photograph in our presentation of the gannet and the cormorant standing at the door of the food store. They had only been at the centre for 24 hours before they discovered the food store. The cormorants are let out every day so that those that can fly away can go. The cormorant in the photograph has a wee fly around and comes back again; he has no intention of going.

662. Mr Bell: He has never had it so good. [Laughter.]

663. The Chairperson: He is a bit like my twenty-something year-olds.

664. In your view, would the single licence need to identify species?

665. Mrs Nevinnes: It should identify species. It is our intention to put on the licence whether an animal had just arrived; whether it had arrived and died; or whether it had been released. That way, such information would be recorded and it would be possible to see at the end of the licence period whether there were still 12 swans, for instance.

666. The Chairperson: Please feel free to send any additional information to the Committee. Thank you for your presentation, and congratulations on your work. I do not live too far from Crumlin, and I hope to call in with you at some stage.

667. Mr Beggs: We ought to flag up this issue with the Department now, rather than wait until later.

668. The Chairperson: Due to our late start, I did not get an opportunity to tell Committee members that departmental officials are here for the meeting, and at this stage I will invite them to come forward to address a few issues. Members will have an opportunity to comment on the earlier presentations and to indicate their thinking on snares, hares and curlews.

669. I welcome Ken Bradley and his colleagues to the meeting.

670. Mr Ken Bradley (Department of the Environment): I am from the Department of the Environment's planning and environmental policy group, and I head up the team that is taking forward the Wildlife and Natural Environment Bill. I am accompanied by Chris Savage, who is also working on the Bill, and Michael Meharg, from the Northern Ireland Environment Agency.

671. The Chairperson: Do you have any information to share with us? Would you like to reflect on some of the presentations and the information that we have received?

672. Mr K Bradley: We were writing furiously behind the scenes on the points that were raised, and, in time, we hope to receive all the written submissions.

673. In relation to the biodiversity duty, there is a balance to be struck between wanting to promote biodiversity and increase the populations of vulnerable species, for instance, and, as Mr Beggs said, not making it too draconian on public bodies and local councils. We are content to look at the wording in the Bill, although we thought that it was fairly good. It was lifted from the Scottish Bill, because it appeared more robust than the wording of the English Bill; it went further. Some bodies have made moves to take it a step further. If the Committee comes up with different wording we will look at that and take it back to the Minister. However, I issue a caveat with that: we do not want to go too far and alienate public bodies and local authorities, because although we are trying to promote biodiversity, we do not want the duty to be too restrictive or costly.

674. We are taking forward guidance, and, towards the end of the month, we hope to hold an event to help develop that guidance. All public bodies and local authorities will be invited to that event. We are also looking at the reporting mechanisms of public bodies and local authorities. It is not only other Departments and the 26 councils that are involved; it is every non-departmental public body. However, we do not want to create a whole industry.

675. The evidence sessions have been interesting, and we will take all the points on board.

676. Does the Committee intend to suggest a change to the wording of the duty?

677. The Chairperson: We have not had the opportunity to discuss that yet. However, following this morning's presentations, I was struck by the point about protecting and maintaining; it is important to strengthen that aspect.

678. On more than one occasion, the point has been made to us about the mishmash of different legislation and how it is very difficult for people who have to comply with it. I hate to use the phrase "one stop shop", but it seems that there is a need for much easier to understand information on responsibilities, particularly for landowners and farmers. The Ulster Farmers' Union made that point, and we heard it again this morning from NILGA.

679. Mr Beggs: Although TACT has an important role in caring for animals that have been injured, it also carries out a very important function by providing education about wildlife to youth groups and schools. We have learned from TACT that, in its current format, the legislation will result in its having to apply for 300 licences, which, with the cost of bureaucracy, will lead to its closure. That should not happen.

680. It is important that there is a mechanism in the Bill to help such a group, which is surviving on individual charitable donations and is carrying out very worthwhile work, particularly in providing education about wildlife. I suspect that there will not be any other group that will easily step into that role. There is no other group that will help foxes that have been injured and have not been set free from snares, for example.

681. When young people see wild creatures up close for the first time, they are very interested. I would be very concerned if legislation resulted in the closure of such a worthwhile organisation. How can you address TACT's concerns about the Bill so that the closure of TACT is not one of its outcomes?

682. Mr Michael Meharg (Department of the Environment): I will have a go at answering that, but anything that I say may make me seem like the Big Bad Wolf.

683. The Chairperson: That is an unfortunate turn of phrase to use when talking about the Wildlife and Natural Bill. [Laughter.]

684. Mr Meharg: I also live very near to Mrs Nevinnes's sanctuary in Crumlin and have seen the animals that she has released over the years. In fact, she has released animals on our farm, so we have worked closely with her. The work that she does is very important in Crumlin; she is a well-respected citizen in the area. We have worked closely with her on licensing over the years. In her presentation, she missed out the important point that NIEA has provided 75% of the cost of her education programme over the past three years. That has been part of our help with biodiversity.

685. Throughout Europe and the UK, the keeping of wild animals has to be very closely regulated, because of the way in which people may wish to do that. Due to that, there are a lot of different licences. There are also licences for collections of animals from which people make some sort of commercial gain. Those licences come under the provisions of the European zoos directive. The inspection that was carried out on Mrs Nevinnes's facility identified that, under the zoos directive, it qualifies as a zoo due to the number of species and their conservation status. That, through the Secretary of State's zoo panel and all that goes with it, has certain implications. We are working with Mrs Nevinnes and the owner of another County Antrim collection to see how we can get through the relevant requirements.

686. Some of the 300-plus licences to which Mrs Nevinnes refers may be required under not just the Wildlife Order but the zoos directive. The Department for Environment, Food and Rural Affairs (DEFRA) in the UK looks after the Convention on International Trade in Endangered Species (CITES). Some endangered species have a high conservation status and require licensing under the Control of Trade in Endangered Species (COTES) legislation, which enforces the provisions of CITES. Again, we are working closely with Mrs Nevinnes on that.

687. The situation is ongoing. We are mindful of what we are being tasked to do, and we must ensure that the licensing systems and all the correct processes are in place. There are three, if not four, different pieces of legislation that require different sorts of licensing for different reasons and purposes.

688. On top of that, members of the public contact us from time to time with concerns that animals are being kept for prolonged periods. A lot of good work is being done to enable animals to be released into the wild again, but animals that are kept for prolonged periods could be prolonging their injuries. Mention was made of keeping gannets, and the nearest gannetry is on Aisla Craig, an island off Scotland. Gannets fly freely throughout Europe. Some that are being kept cannot be released, and some have had wings or legs amputated as a result of being in captivity. If societies or organisations are asking questions about that, it is incumbent on us to follow through on the welfare aspects.

689. The zoos directive states that animals that are kept in captivity must be kept in suitable facilities so that they are not a danger to themselves and so that their welfare is not compromised. We are working closely with Mrs Nevinnes and the Committee to ensure that the blend is right and that the positive work that she does is kept to the fore. Mrs Nevinnes mentioned the 25% of birds that she keeps that unfortunately become distressed and may die, and it is important that we keep the distress and welfare of those animals to a minimum.

690. We are very much involved with the centre, which I hope reassures the Committee on some of the licensing issues. We will consider the questions that have been asked. If there is an issue with the licensing of transient animals that are being cured, rehabilitated and released back into the wild, we want to address it. We want to ensure that it is as easy as possible for that rehabilitation to occur and that there is no cost attached to it.

691. We want to be careful that animals that are being kept long term, some of which have permanent injuries or amputations, are not being used for education purposes because that might send out the wrong message to young people. Animals that are intact and show what the species should be are the ones that should be used for those purposes. That is why we require some ongoing discourse with Mrs Nevinnes.

692. We will consider the recommendation and the questions that have been asked. We do not want to issue 300 licences because that creates a cost for NIEA as well as for the Mrs Nevinneses of this world, so we will take that on board.

693. Mr Beggs: Neither the Department nor Mrs Nevinnes would be interested in the paperwork and cost involved in dealing with licences for transient animals. Have you any idea of the numbers in that particular group? If the number is not 300, what is it? I suggest that consideration be given to devising a better method to deal with transient animals. It might be that licensing the body and having a register that must be kept up to date is another method of capturing the same information. Obviously, that register could be inspected at any time. There ought to be another means of dealing with transient animals that avoids costly individual licences.

694. Mr Meharg: We will look into that. I think that the number would be quite small. Under our legislation, all wild birds are protected, so all wild birds fall under the licensing provisions, whether it is one sparrow or a little clutch of sparrows like the ones in the pictures that Mrs Nevinnes showed to the Committee. At the moment, they all fall under that provision. We will look at that matter because we want to ensure that there is better regulation and that we are not wasting our time. We must ensure that we get the lists and that we know what is on them, and, as you say, that list would be open to inspection if required.

695. Mr Kinahan: I congratulate you on working closely with TACT. Some flexibility needs to be built into the system, as Roy has just said. Equally, some dynamism is needed so that things can happen quickly. I talked to both Mrs Nevinnes and Mr Baillie outside, and they told me that, because of the zoos directive, they have had to take signs down and remove some things from their website. They cannot follow the rules of the directive. As a result, people do not drop in. That is why I made the point about dynamism. Someone needs to look quickly at what stopped them from putting their signs up.

696. Mr Meharg: Legal advice was sought in respect of what constituted a business or the way in which the operation is working. Consideration was given to whether people could become friends of TACT as opposed to being visitors to the site, which would mean that we could have some sort of buy-in to the zoos legislation. Unfortunately, however, recent legal advice suggests that that could not happen. We do not want a second opinion, but we want to see whether the strict ruling from our solicitors' branch could be interpreted in a way that would allow us some flexibility.

697. Mr Ford: There is considerable sympathy around the table for TACT and the work that it is doing. You raised the wider issues around the long-term keeping of animals, and we should work on the fact that officials are looking at what can be done in that regard.

698. Mr Bradley effectively said that the Department thinks that the biodiversity duty is right, even though a number of people who have given evidence to the Committee would like to see it strengthened. It seems to me that, with some aspects of the legislation, the Department is in a position to respond positively to the evidence that we have received, even though the draftsmen no doubt thought that they had drafted the Bill perfectly in the first place. You are still saying that you got other aspects right, even though other people are saying that they are wrong. It would be useful, therefore, if we could identify at an early stage any other areas, besides the specific licensing issue raised by TACT, where there is work that you can usefully do. We could do that before we decide whether to pressurise you on other aspects of the Bill.

699. Mr K Bradley: We put the biodiversity duty in the Bill because we thought that it was the better of the two options in the UK. We thought that it was fit for purpose, and all Departments signed up to that. From the evidence that you have received, it is clear that a number of bodies want to go a few steps further, and it is a question of whether we can accommodate those steps. We are open to that, and we will take that back to the Minister for his agreement. However, there are about three or four permutations from different bodies. Does the Committee have a preferred option?

700. The Chairperson: The Committee has been hearing evidence. We have not formed a view, but there seems to be some sympathy for taking a stronger approach.

701. Mr Ford: I felt that it would be helpful if, at this stage, the Department could respond to the evidence that has been given to us. If there are things that the officials can accept easily, or at least can recommend to the Minister for further consideration, it would save us from going through endless permutations.



702. Mr K Bradley: It is a chicken-and-egg situation.

703. Mr Ford: Yes, it is. It would be a good starting point to let us know which things you think you could accept easily. We then need to look at the balance of evidence that we have received and consider what you are still opposed to.

704. The Chairperson: I suggest that we consider using a mechanism similar to the one that the Committee used for the Local Government (Miscellaneous Provisions) Bill. When we begin clause-by-clause scrutiny next week, the departmental officials could go through the Bill with us and say whether they could accept certain amendments. They could then bring those amendments forward as departmental amendments rather than the Committee bringing them forward.

705. Mr K Bradley: That is fine. We could look at a compromise or a preferred option and take that back to the Minister. That is a good option. I am very happy to do that.

706. Mr Kinahan: I am concerned that if we make the duty in the Bill too strong, we will shut all sorts of doors. Therefore, we need to consider other options. Have you compared our approach with the approach taken in Scotland?

707. Mr K Bradley: I know that the DEFRA wording was slightly watered down. DEFRA did not include any reporting mechanism in its legislation, but we are going that step further. We need some sort of mechanism to say whether public bodies are, or are not, fulfilling the biodiversity duty.

708. Mr Kinahan: Do we know if it has worked?

709. Mr K Bradley: DEFRA is carrying out a five-year review of the impact of the duty. We do not have the results of that yet. It did not want to scare Departments or public bodies off by requiring them to report annually, so it has used a review mechanism. We have gone a step further because we have proposed some sort of reporting system, whether annual or whatever. We are moving from a situation in which there is no duty of any sort on public bodies, so we do not want to make too big a leap. We want something that works and that everyone is happy with, something that makes a difference at the end of the day.

710. The Chairperson: Nonetheless, you stated that you have used the Scottish model, which is a bit stronger than the DEFRA one. In the past, the Committee has criticised the Department for not having a model that is made in Northern Ireland, or, to use a phrase, made in Ulster. We want to have a model that reflects the concerns and wishes of our community.

711. Mr K Bradley: That is fair enough. We can come to some sort of agreement next week.

712. Mr Beggs: It seems that what we have is largely the Scottish model with some additions. Has there been any feedback on how the Scottish model has played out in practice?

713. Mr K Bradley: No. There is no reporting mechanism. That is where it falls down. It is OK to place a general duty on government bodies, but does that make any difference if it cannot be demonstrated that those bodies are fulfilling their duty? Why do it? That is how we look at it. We are looking at how Departments and local authorities can report on matters without using a lot of extra resources or creating a lot of extra work for them. We are looking at how they can do that and, at the same time, make a difference by encouraging and promoting biodiversity.

714. The Chairperson: There is a Scottish equivalent of NILGA.

715. Mr Bell: It is the Convention of Scottish Local Authorities (COSLA).

716. The Chairperson: The Committee could ask about the experience of local authorities in Scotland. That is a piece of research for the Committee to undertake.

717. Mr K Bradley: Do you want to talk about other issues, such as snares?

718. The Chairperson: We will go through it all next week. Thank you.

719. The Committee has received a response from the Examiner of Statutory Rules on the delegated power of the Bill. The examiner has not drawn attention to the secondary-legislation-raising powers or to the level of their scrutiny that is contained in the Bill. We have also been provided with submissions from the British Deer Society and the British Association for Shooting and Conservation. The Woodland Trust has been invited to our meeting on 11 March. Its focus is on deer. Therefore, it may be that only the British Shooting Sport Council (BSSC) needs to be invited to give oral evidence.

720. Furthermore, we have been provided with supplementary information from the Countryside Alliance. At the meeting on 11 March, we could hear from the shooting and conservation trust and the police.

721. The Committee Clerk: We invited the PSNI to respond to our consultation. The PSNI said that it will produce something in writing but that the person who is dealing with that was away from the office and has only just received it. If it would help to move things along, the Committee could invite them to a future meeting to go through the information.

722. The Chairperson: That is about the additional powers for the police and inspectors and the impact that they would have on the PSNI. Given our forward work programme and the tight schedule in relation to the Bill, I suggest that the organisations be invited to the meeting on 11 March. That is the only date that is available, so if they are not able to attend, they would be invited to put forward written submissions.

723. Are members content to note the information that is included in the Committee's report on the Bill?

724. Members have also been provided with a clause-by-clause scrutiny table. The table maps the views that were expressed in the submissions to the relevant clauses of the Bill.

725. The Committee Clerk: I draw the Committee's attention to what we have been trying to do. Members who were here for previous Bills will be familiar with the system. We have mapped the various submissions that the Committee received in writing and orally against each clause so that members can see at a glance the issues that are being raised in relation to those clauses. Where necessary, we will add the information that we have received today.

726. We are now suggesting that the departmental officials come back next week, and possibly the week after, to go through each clause. That will give you an opportunity to ask any outstanding questions before coming to a decision about what you want to do with each clause. That is not the formal clause-by-clause analysis, which will be recorded in due course. In order to help us to work through the process smoothly, members can decide next week or the following week whether they want to accept or amend the clauses or whether they feel that there are more questions to be asked. An updated version of the paper will be given to members next week.

727. The Chairperson: The departmental officials will be here working through it. We will try to tease out the Department's thinking on some of the proposed amendments from interested parties.

## 11 March 2010

Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Roy Beggs  
Mr Jonathan Bell  
Mr John Dallat  
Mr David Ford  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithí McKay  
Mr Peter Weir

Witnesses:

Mr John Hetherington	Premier Woodlands Ltd
Mr Ken Bradley Mr Mike Meharg Mr Chris Savage Ms Rachael Singleton	Department for the Environment

728. The Chairperson (Mrs D Kelly): I welcome Mr John Hetherington. Generally, a witness takes five or 10 minutes to present their concerns, followed by an opportunity for members' questions.

729. Mr Kinahan: I declare an interest: John occasionally helps me with my deer herd.

730. Mr John Hetherington (Premier Woods Ltd): I will start by saying that I hope to wear three hats: I am one of the few registered deer farmers; I am managing director of my woodland company; and I am a recent past chairman of the British Deer Society's Northern Ireland branch. I hope rapidly to convey some of my thoughts and thank the Committee for the opportunity to do so. I will work through the Bill, commenting on some of the clauses. I, and other folk, want to help in any way that we can.

731. I am responsible for land management — largely woodland — throughout the whole of Ireland and GB. To give some idea of the scale involved, we look after roughly 50,000 acres. Clause 1 deals with the duty to conserve biodiversity. To conserve or manage anything, I, as a land manager, must know exactly what I have to manage.

732. Almost all my comments will refer to various species of deer. Under any strategy, there must be clarity about the species and number of deer. No recent information has been published on the spread, species or number of deer. For the record, I am co-author of an all-Ireland survey on the spread and species of deer, which is with scientific peer reviewers in Dublin. Hopefully, it will have gone through that process within the next number of weeks. Unfortunately, however, that has its own speed.

733. There are probably seven species of deer in Ireland. The red deer is considered to be the native species. However, is it truly native? Sika and fallow deer are long established here. Not so

long-established deer include muntjac, Chinese water deer and roe deer. Clarity is needed on which species of deer there are here; otherwise, how can they be sensibly managed?

734. Clause 10 deals with snares. A snare is a useful piece of equipment for land managers and has been used for a long time. With sensible regulation, I strongly support that clause 10 remain in the Bill.

Clause 12 deals with the introduction of new species. Virtually all red deer, which is the only native species, are not actually true Irish red deer; they are hybrids. Therefore, clarity is needed on what constitutes a hybrid. Considering that, for hundreds of years, parks in Ireland, England and Scotland have introduced sub-species of red deer, of which there are, perhaps, 30 throughout the world, what we have is not a genetically pure Irish red deer — if such a thing exists. Therefore, there must be clarity on the introduction of new species.

735. With regard to clause 13, one omission from the Bill is recognition of exemptions to the Wildlife (Northern Ireland) Order 1985 that are granted under the deer farming certificate. I have a photocopy of the deer farming certificate for Castle Upton, which was issued 11 years ago. It exempts the landowner and me, as manager of the deer, from certain provisions of the Wildlife Order. As far as I can see, the Bill is silent on what happens to folk who have exemptions. Further clarity on that issue would be helpful.

736. The Deer Society, which is a welfare organisation, is concerned that poachers could avail of clause 15 as long as they had switched off their vehicles' engines. Vehicles have often been in poaching or in the illegal taking of deer.

737. I understand why that clause is in the Bill: it will help the Forest Service, for example, which has large forests, and its wardens, who can use their vehicles if they see a deer that they want to shoot. Equally, I want the Committee to understand that there are huge concerns that it will help poachers.

738. Clause 16, "Licences relating to deer", must take account of what species we want to preserve and manage. I strongly suggest that red, sika and fallow deer be recognised as the three long-established species. Although other species have not been here for very long, there must be a distinction with regard to licences, because if estates with fine herds of sika, which are Japanese and not native, found that they were destroying the natural heritage, the landowner could derive substantial sporting income from overseas visitors shooting sika stags. The Department could ask the landowner to shoot them all or remove them. It must be clear what species we are talking about.

739. The clause makes no mention of deer fencing. As a forest manager in many Scottish forests, I have to erect deer fences, and there is then no need to shoot deer. There is no mention of that in the Bill as one of the management tools to help to overcome the problem that large numbers of some species of deer will create.

740. There is a lack of clarity in clause 20 about who would become a wildlife inspector. One concern is that members of some voluntary organisations could create a heck of a nuisance. It would help if the Bill stated that the wildlife inspector would be a departmental officer. Clause 20 simply refers to "a person authorised in writing", which could result in someone being a wildlife inspector who was not employed by the Department.

741. Clause 26, "Reduction in close seasons for female deer" is probably the British Deer Society's worst nightmare, because it seriously undermines deer welfare. Someone such as myself who is experienced in managing deer often has to shoot only one deer. However,

someone who had no thought for the deer could shoot the mother, which would leave dependent young pining away and eventually dying of starvation.

742. We strongly suggest that instead of bringing the season forward, the end of the season be extended, simply because, horrible as it is to have to shoot pregnant females, there are no welfare issues at that stage because there are no dependent young. I strongly suggest that that be tied in with some of the Scottish seasons, for example, but it should certainly not be brought forward by one full month.

743. Clause 32 helps to clarify the situation. Some of the preservation Acts are very old and there is a lack of clarity about who can do what. We hold a deer farming exemption certificate for Castle Upton, which has allowed us to trade in deer without a game dealer's licence. However, that is an anomaly. When the Wildlife (Northern Ireland) Order 1985 was enacted, the Department of Agriculture and Rural Development was the authority that issued the exemption certificates; however, it has stopped issuing them. For the life of me, I have no idea why. My application for my farm at home sat on a desk for seven years. Eventually, the Department issued the certificate to me.

744. As long as that farmer's certificate exists, I could legally bring in any species of deer from anywhere in the world. I have highlighted concerns about invasive non-native species for the past 15 years, but nothing has happened. The Wildlife (Northern Ireland) Order 1985 must either be almost scrapped or totally absorbed into the Wildlife and Natural Environment Bill.

745. Wearing yet another hat, I am also a lay magistrate; but I struggle to follow what is in the Wildlife (Northern Ireland) Order 1985 and in the new Bill. I am familiar with the management of land and deer, and I have some idea of how legislation works, and if I struggle, 99% of folk will struggle severely. The Committee must ensure that the legislation clarifies those issues and that it is workable.

746. The Chairperson: Thank you very much, Mr Hetherington. It must be a nice change for you to give evidence rather than hear it. [Laughter.] You propose some very specific amendments to the Bill.

747. Mr Boylan: Thank you very much for your presentation. The legislation is as clear as mud. If you cannot understand it, the rest of us will have some difficulty. There are many arguments for and against the use of snares. We received a presentation from the Countryside Alliance. Most people's impression of a snare is a piece of wire and some unfortunate animal perhaps being trapped for days. Are there any new types of snare? Has technology progressed or are they just an ordinary piece of wire?

748. The legislation states that snares should be checked once every day. Is that acceptable or should they be checked twice a day?

749. Mr Hetherington: Snares are useful because hares create serious problems for foresters. Hares' teeth grow constantly throughout their lives; they have to keep nibbling at things all the time to wear their teeth away. As a forester, I plant rows of trees, and hares nip them all off to wear down their teeth. Snares are crude, but landowners cannot afford, as they might have hundreds of years ago, gamekeepers to control species that do harm. I do not have a strong view on the matter; I simply say that snares are useful, although they ought to be checked at least once, but preferably twice or more, every 24 hours. In certain areas in Scotland, due to walkers' rights, they cannot be used at all; they cannot be used anywhere to which the public has access. For any responsible land manager, therefore, there are limitations. As I say, I have no strong view on the matter, other than to point out that they are useful devices with which to control hare populations.

750. Mr Ford: Thank you for your presentation. You referred to the need to clarify the definition of "hybrid" in clause 12. Will you explain a bit more about what you mean? According to my reading of clause 12, there is no problem. Does it matter whether an animal is defined as an inappropriate species or as a hybrid of that species?

751. Mr Hetherington: I want clarity about which species the Bill is intended to protect. I cannot see anywhere in the Bill that part of its rationale is to protect species of deer. Unless I am mistaken, no clause or schedule refers to red deer of questionable heritage. The Bill should identify the species that it is supposed to protect, particularly deer species. For example, red deer and sika deer are in the same cervus family, and, therefore, they hybridise genetically and their offspring are fertile. I simply want a working definition of the species that are to be protected and of the hybrid species that may not be wanted.

752. Mr Ford: Fair enough, but if neither red deer nor sika deer are named as invasive species, I do not see what the issue is, because a hybrid would not matter either. However, when they give evidence later, we can ask the departmental officials about it.

753. Some people who wish snares to be banned completely put forward evidence that, in certain circumstances, they might be permitted, for example, at lambing time, when there are problems with foxes. You appear to suggest that snares are required permanently. Weather permitting, I hope to plant a couple of trees this weekend, and to avoid problems with rabbits or hares, I will put a tree guard around them. Given that tree guards or, for larger plantations, fencing can be used, why are snares required? Would those measures not be more effective than randomly setting a few snares?

754. Mr Hetherington: Snares are an option. This winter, we had a great deal of snow — there is half a metre of snow in one of the Scottish estates — and fences are rendered useless by frozen snow. Hares and deer can hop over fences, tree shelters and tree guards. If there is any snow at all, hares stand on their hind legs to eat trees, even up to a metre from the ground. I do not have a strong view, but snares are one tool that I would like to be retained.

755. Mr Ford: Assuming that the hares choose to put their necks in the snares before nipping off the trees; snares would be fairly ineffective if the hares nipped the trees first.

756. Mr Hetherington: Precisely.

757. Mr Dallat: I have seen only one hare in the past five years. Where is your farm?

758. Mr Hetherington: Near Enniskillen.

759. Mr Dallat: Therefore you have loads of hares.

760. Mr Hetherington: Yes.

761. Mr I McCrea: They will need passports to get to the Republic of Ireland.

762. Mr Dallat

763. I am not familiar with the farming of deer. What do you do with the poor deer? Do you shoot them?

764. Mr Hetherington: Yes.

765. Mr Dallat: Therefore people get pleasure out of shooting those creatures.

766. Mr Hetherington: No. There is absolutely no pleasure in shooting farm deer.

767. Mr Dallat: Then why do you do it?

768. Mr Hetherington: I enjoy having the deer. I personally take responsibility for their meat, and, to provide some food for my wife and children, I shoot the deer that I farm.

769. Mr Dallat: They are not part of the food chain.

770. Mr Hetherington: I am also a trained hunter, so I can sell them into the food chain.

771. Mr Dallat: Otherwise they get shot and that it is it.

772. Mr Hetherington: Deer populations of all species generally reproduce at a rate of 30% a year; therefore every three years their numbers double. God forbid that a driver should knock down a deer on the road, but unfortunately it happens. Controlling deer numbers is a matter of public safety, and someone has to manage them. I began my working life in the Forest Service, helping in the wildlife branch around Newcastle, where there were many road accidents involving deer. However, because they have been sensibly managed, there are now very few road accidents with them.

773. Mr Dallat: I understand why: you shoot them. That is OK.

774. Mr Beggs: Clause 15 forbids shooting while in a vehicle when it is moving or when its engine is running. I see no problem with that ban; I would like to know why you are dissatisfied with it. Does that provision need to be further extended? Why do you want to ban people from shooting in that fashion?

775. Could the existing wildlife legislation be combined in the Bill to avoid confusion or should there be a completely new one?

776. Mr Hetherington: Most poaching on areas that we manage is effected from the public road. However, we also recognise that criminals do not abide by legislation; no matter what is in the legislation, they pay it no heed.

777. The British Deer Society is concerned about this, for we recognise that most poaching takes place from a vehicle on the public road with rifles and lamps. An authorised person may challenge an individual in suspicious circumstances; however, as long as the engine is switched off and the keys are out of the ignition the individual is not offending. That makes it harder for the wildlife enforcer — wildlife inspectors or the police — to prove an offence.

778. Mr Beggs: Should the clause be extended to prohibit the discharge of a weapon from inside a vehicle? That is one way of proving that an offence took place; discharge would leave residue in the vehicle. Would that cause problems for deer farmers?

779. Mr Hetherington: No.

780. Mr Beggs: It might be a simpler way forward.

781. Mr Hetherington: Yes.

782. Mr Beggs: Can I ask about the confusion with other preservation legislation?

783. Mr Hetherington: There was expectation after the 1985 Wildlife (Northern Ireland) Order was enacted; it was the first piece of legislation to protect deer through the breeding season. Before 1985, there was no such legislation. DARD was made the licensing authority that granted deer farmers exemption certificates.

784. That is not part of DARD's legislation, yet it was deemed the lawful authority to issue the exemption certificate from parts of the Wildlife (Northern Ireland) Order 1985. I believe that such certificates have not been issued for the past five or six years; therefore the small number of deer farming exemption certificates still in circulation creates an anomaly. That is one of the loopholes left wide open to anyone who might wish to abuse what I hope all responsible folk want to avoid: the illegal introduction of invasive species and keeping them in deer enclosures that are often not very secure. I have been talking to Departments about that for years. Under the deer farm exemption certificate, there is no minimum standard for enclosure or fencing; therefore, nothing can be done to stop someone delivering a lorry load of invasive deer to a field with a hedge.

785. I am simply saying that the Bill is silent on the issue; it ought to contain a provision to prevent that happening.

786. The Chairperson: The Committee thanks Mr Hetherington for his evidence. Are members content to ask DARD for clarification on some of the points that have been raised?

Members indicated assent.

787. The Chairperson: The Committee now moves to its initial clause-by-clause consideration of the Wildlife and Natural Environment Bill. We are running half an hour behind schedule. I welcome officials from the Department of the Environment (DOE) — Mr Ken Bradley, Mr Mike Meharg, Mr Chris Savage and Ms Rachael Singleton — and invite them to take us through clauses 1 to 20 of the Bill. Mr Bradley will begin with clause 1, before I ask Committee members whether they have any queries.

788. Mr Ken Bradley (Department of the Environment): We intend to go through the first 20 clauses. I apply two caveats: first, we are presenting the Bill without additional wording that is based on stakeholders' comments. There may be alternative wording that we will need to run past our Minister at some stage. Secondly, some of the proposed wording is fine from a layman's point of view and from ours, but the Office of the Legislative Counsel may take issue with it. Subject to those two caveats, Chris Savage will go thorough each clause and then we will take questions.

789. Mr Chris Savage (Department of the Environment): Good morning. The intention behind clause 1 is to introduce a statutory duty on Departments and public bodies to further the conservation of biodiversity. We received a number of comments from stakeholders on the definitions and the terminology used in the duty, including comments on what "conserving" means in the clause.

790. We want to keep clause 1(1) as plain and simple as possible. It is important to remember that the Department is in the process of producing guidance that will support the duty. That guidance will go into much more detail about the concepts behind definitions. We want to keep the core duty as clear and plain as possible for all public bodies.

791. As to a definition of the term "conserving", the purpose of clause 1(3) is to remind public bodies that "conserving" also means "restoring or enhancing". We believe that most people



understand that "conserving" means "maintaining and protecting". However, the Department is willing to add "maintaining or protecting" to clause 1(3), if the Committee feels it appropriate. Guidance can be used to clarify the issues.

792. Other concerns expressed relate to resources, training and support. As I said, the Department's guidance is being produced, and we will be available to provide advice on any issue to the various public bodies. We do not expect a big-bang approach to the introduction of the legislation. It is a facilitating and enabling measure to raise the profile and visibility of biodiversity, to try to stimulate a culture of change, whereby the public sector considers biodiversity issues in its policies, plans and programmes. That is something that we hope to build up over time in order to achieve success.

793. Clause 2 deals with the biodiversity strategy —

794. Mr Ford: Can we respond to each clause? Otherwise, we will get lost.

795. The Chairperson: Yes. There is no guidance for local councils on sustainability duties. That may not be your direct responsibility, but when will that guidance be issued? I asked before whether it will be published in tandem with the Bill.

796. Mr K Bradley: That is correct. As Chris said, we are producing guidance. We are also holding an event at the end of March to develop our ideas. Guidance will be available at the same time as the Bill becomes law.

797. Mr Ford: We may add references to "maintaining or protecting" biodiversity to subsection (3). That would meet the concerns of some who made representations. It may not be strictly necessary, but it would be helpful.

798. Subsection (4) states: "The Department may issue guidance". However, if the Department proposes to do so, there is a strong case for changing the wording to "shall issue guidance". It may also consider adding "on a regular basis" or a similar phrase. That may be difficult to word, but this will not be a one-off exercise. Guidance will need updating every few years. We should include some form of words that reflects that.

799. Mr K Bradley: I think that we would be happy to change subsection (4) to "shall issue guidance".

800. Mr Ford: Are you happy to include a reference to updating the guidance regularly, or however the Office of the Legislative Counsel phrases it?

801. Mr K Bradley: The guidance is meant to be fairly broad and cite examples of practical experience used elsewhere. I do not expect that there will be much need to update it.

802. Mr Ford: You are surely not suggesting that what was appropriate as guidance to the Wildlife (Northern Ireland) Order 1985 is appropriate in 2010.

803. Mr K Bradley: In England and Wales, the Department for Environment, Food and Rural Affairs (DEFRA) reviews its duty every five years to see what lessons have been learnt. It also produces guidance at the time as well. It follows naturally that reviews such as that produce updated guidance. At the end of the day, we will all be learning and identifying good examples of best practice. We should embrace that, whether or not we insert a mechanism for regular review in the legislation. However, I see no strong objections to our doing that.

804. Mr Ford: I am happy to leave it that. I am saying simply that not much happened from 1985 until now, and I do not want to wait another 25 years before we see even an updating of the guidance.

805. The Chairperson: The definition of a "public body" was also raised with the Committee. Will the guidance include Crown bodies, cross-border bodies and Northern Ireland Water?

806. Mr C Savage: As a statutory undertaking, the definition includes those bodies.

807. Mr Beggs: I again declare an interest as a local councillor. Will you give a more detailed explanation now of "to further the conservation of", rather than wait until the legislation is approved, at which point we may find that we do not like it?

808. Mr C Savage: The whole point of the guidance is to try to explain that term. That is the core term in the legislation.

809. Mr Beggs: Yes, but can you give us an explanation? There may be a problem or there may not.

810. Mr C Savage: It means any actions that a Department or public body can take to enhance biodiversity. It will be easier for some parts of the public sector to enhance biodiversity; for example, it will be easier for bodies or Departments that are responsible for estate management and maintenance. Opportunities will arise to use native species in certain circumstances, at probably no extra cost to those bodies. That is a clear example of something that will probably be quite easy for such bodies to do. It may be more difficult for other parts of the public sector, however. Nevertheless, it will be up to them to enhance their own green housekeeping facilities; for example, by using recyclable materials. That will all lead to enhancing biodiversity.

811. The Chairperson: Before the Committee begins its formal clause-by-clause consideration of the Bill, it would be helpful if, having indicated that you will be proposing amendments to clauses, you could come back to the Committee with the amended clauses.

812. Mr C Savage: The easiest way to proceed may be to add a column to your table of issues for clarification.

813. Mr K Bradley: We could include our proposed amendments in that column and run them past the Minister.

814. The Chairperson: Will you get them back to the Committee before we complete our initial clause-by-clause consideration?

815. Mr C Savage: Yes.

816. The Chairperson: OK. Thank you.

817. Mr C Savage: Clause 2 deals with the biodiversity strategy. The purpose of the clause is to place an obligation on the Department to designate a strategy. Concerns were raised that the designated strategy should be the current Northern Ireland biodiversity strategy. That is the intention of the clause. Its wording merely reflects the need to be flexible for the future, but the clause will underpin the current strategy, which runs from 2000 until 2016.

818. Some stakeholders want the Bill to stipulate a definite reporting cycle, rather than publish a report "from time to time", as the clause states. In practice, the Northern Ireland Biodiversity

Group (NIBG) is charged with producing a report every three years, the most recent of which was produced in October 2009. The reporting cycle is happening, and there are no plans to change how it is done. That said, the Department is willing to change the method of reporting, but we must also be flexible for the future. The issue may be whether that three-year reporting cycle will continue to be appropriate in the medium to long term.

819. Mr K Bradley: We are not even sure whether the Northern Ireland Biodiversity Group will continue.

820. Mr Ford: I accept that to include a three-year reporting cycle in the primary legislation may be a bit tight, but surely suggesting no less than every five years would be helpful. That is unlikely to be excessively short in the lifetime of the Act.

821. Mr K Bradley: That seems sensible.

822. Mr Beggs: I concur. The need to report regularly is mentioned in the summary of responses. However, no mention is made of how often the strategy should be reviewed. Is this an appropriate point at which to put down a marker?

823. Mr K Bradley: The strategy in its present format contains 76 recommendations. Many of them are fairly general. The strategy will run until 2016. I am not sure whether there is a need to review it at present, given that there are six years left on it.

824. Mr Beggs: Planning legislation may require it. Plans, such as the Antrim area plan, can be badly askew. I do not say the strategy must be reviewed at present, but, after 2016 at the very latest, it ought to be reviewed in the light of experience that has been learnt from the legislation. Should we not add that the strategy should be reviewed regularly?

825. The Chairperson: The EU pays great attention to climate change and to directives that will flow from that. The biodiversity strategy is currently out of date, so a requirement for review should be built into the legislation.

826. Mr C Savage: It is a question that we will have to consider. The core provision is that, in requiring the Department to designate a strategy, there has always to be a strategy in place. I do not know that we can rely on three-yearly or five-yearly reviews to give us pointers as to how current strategy should change, but that could inform any review of the strategy. However, we need to consider whether we want to make provision for that in legislation.

827. Mr K Bradley: The strategy's recommendations are fairly general and broad. Departments are now all signed up to biodiversity implementation plans, now that the biodiversity duty is being introduced. One could argue that the actions of Departments already negate the need for a review and that European commitments apply, so we do not have to replicate them in the biodiversity strategy.

828. The Chairperson: If only we had your faith. [Laughter.]

829. Mr C Savage: We accept what the Committee has said about the importance of biodiversity and making progress towards the various European and national targets that we have to halt the loss of biodiversity. The strategy has an important part to play in that. It is a point that we will consider.

830. The Chairperson: We will wait to hear what you have to say.

831. Mr C Savage: Clause 3 will place an obligation on the Department to publish lists of priority species and habitats of conservation importance. The lists are intended to focus attention on those priority habitats and species and to supplement what is in the biodiversity strategy. One or two stakeholders were concerned about ensuring that the lists take account of our European obligations, and I can confirm that they do. All species and habitats of importance are included in our priority lists.

832. Clause 4 deals with —

833. Mr Kinahan: An issue that was raised with me concerned the need for more regular reviews of species, in case one species that has been protected begins to outgrow others.

834. Mr Mike Meharg (Department of the Environment): The biodiversity strategy is a UK-wide strategy, and the Northern Ireland strategy is subject to it. Priority species are reviewed every three years at a UK level.

835. There are some species slightly more or slightly less common here than in the rest of the UK, so we "Northern Irelandise" the lists to ensure that species here are covered. We have just undertaken that process, and the NIBG has signed off on it. The latest list of priority species is due to be published in the next month or so.

836. The Chairperson: The Northern Ireland Local Government Association (NILGA) and other stakeholders commented that the term "reasonably practicable" is too ambiguous and needs to be clarified. The NIBG said that the requirement should be expanded to include public bodies as well as the Department.

837. Mr K Bradley: I do not see a problem with including public bodies as well as the Department in clause 3(2)(c) and (3)(a). To do so would reinforce the biodiversity duty.

838. The Chairperson: Therefore, the Department may accept that amendment. Will you come back to us on that?

839. Mr K Bradley: Yes.

840. The Chairperson: Thank you.

841. Mr C Savage: The purpose of clause 4 is to give new statutory protection to the nests of certain species of bird that habitually use the same nests year after year. They need protection for their nests all year round, as opposed to the current protection, which applies only to the nesting season.

842. The golden eagle is one bird that we had in mind for the Bill. Stakeholders identified other species that they would like to see added to the new schedule 1A to the 1985 Order, and we are happy to include birds such as the red kite, osprey, white-tailed sea eagle and peregrine.

843. The case for including other species is a bit more complicated, because we are not talking about a nest similar to an eagle's, which is a single structure that is built on every year and develops into a significant structure that can be used by many generations. Stakeholders are asking for the nest sites of species such as swifts and hen harriers to be protected. That becomes more difficult because the hen harrier in Northern Ireland can nest in trees or on the ground in an area year after year without necessarily returning to exactly the same spot. Making provision for the protection of such species creates more difficulties. Bearing in mind that there

are special protection areas under the EC habitats directive for those types of species, broad areas are given a general level of protection.

844. Therefore, although the Department is happy to add four or five species to the new schedule, it has issues with the inclusion of others.

845. Mr Ford: May I have the list of species that the Department is considering adding repeated?

846. Mr C Savage: Red Kite, osprey, white-tailed sea eagle and peregrine. We recognise that one or two of those species may not yet be breeding here. However, we must create the schedule now for the future, and that is why some of those species are being listed. Golden eagles may have been sighted here, but there are not yet any reports of their breeding. Nevertheless, that potential exists.

847. Mr Ford: For clarification, hen harrier and swift have been ruled out, while peregrine, white-tailed sea eagle, osprey and red kite are to be included. However, merlin and chough have not been referred to, although they were raised in the evidence.

848. Mr C Savage: The merlin has very similar nesting habits to the hen harrier. The chough tends to nest on rocky patches. I believe that the only breeding pair of choughs in Northern Ireland is on Rathlin Island, so there are difficulties in identifying their nesting areas.

849. Mr Ford: That is all the more reason to ensure that the site is protected.

850. Mr Meharg: The chough does not necessarily use the same nest year after year, in the same way in which birds of prey do. The new schedule specifically makes provisions for birds' nests rather than the area in which they nest. From that point of view, we felt it better, at this stage, to leave chough off the list. However, we will monitor the species mentioned and the success of their nests in years to come. It may be deemed appropriate to include them at the five-year review stage.

851. Mr Ford: The Committee faces a slight dilemma when an organisation with the authority of the Royal Society for the Protection of Birds (RSPB) suggests species about which departmental officials say something differently. However, thanks for clarifying that.

852. The Chairperson: Do you have a question, Deputy Chairperson?

853. Mr Boylan: My question has been answered.

854. Mr McKay: It was also suggested that barn owls should be protected.

855. Mr Meharg: Barn owls would fall into the same category. They are sometimes site-faithful but can also use nest boxes — barrels, and so forth — that are set up for them. Their tendency to move to man-made structures or to structures that are put up specifically for them means that there is not necessarily the need to afford the barn owl the permanent protection that is to be granted to the golden eagle or the white-tailed sea eagle.

856. Mr Ford: Is it not logical to assume that if barn owls are going to particular structures, that indicates that nests are being reused? I would assume that the logic of that is that barn owls should be included in the list of species that the Department has agreed reuse nests.

857. Mr Meharg: They would not be as site-faithful as the other raptors listed. As a species, they generally adapt and move around. The golden eagle and other birds are to be given protection

because the destruction of their nests may leave them unable to breed again at all, whereas barn owls have shown that they are adaptable enough to move to other places and structures. Therefore, the reason for the protection is to save the eyrie, which is the one place that the pair of birds will use. It is not the same for swift, barn owl, merlin or hen harrier as it would be for the other species to which we have given our consideration.

858. Mr Ford: Even though barn owls are under quite significant pressure at present?

859. Mr Meharg: They are, but that is not necessarily because of the loss of nest sites. It is more to do with habitat loss and poisons.

860. Mr Boylan: For clarification, is the report that you will receive in a month about the three-year review of all the species?

861. Mr Meharg: The report will be about priority species in Northern Ireland.

862. Mr Boylan: Obviously, you have an idea of the species that need protection now. If the Committee were to sign off on the Bill now, would it be five years before we can add to the list of species that require protection? Is there any —

863. Mr K Bradley: If we felt the need to add to the list within five years, schedules could be amended by subordinate legislation.

864. Mr Meharg: There are schedules to the Wildlife (Northern Ireland) Order 1985 that give protection, but the priority species lists are not subject to review every five years. If a particular species suffered a catastrophe, we could publish that list at any stage.

865. The Chairperson: You used the term "birds of prey" when talking about nest protection. Is that a comprehensive term that you use instead of listing many species?

866. Mr Meharg: Some birds of prey do not have the same site fidelity.

867. Mr C Savage: In legal terms, individual species would have to be defined.

868. Clause 5 will make it an offence to undertake any reckless action that harms wildlife. It builds on certain offences in the 1985 Order where actions are undertaken intentionally. The main concern was that innocent activity in the countryside, including in the agriculture sector, could be covered by the new offence. The Department believes that responsible activity in the countryside will not be caught by the new offence. Any case would be based on evidence of what is occurring and whether a prosecution is in the public interest.

869. Mr Beggs: Coming at this as someone who owns 25 acres of land and as a local councillor, I am thinking about responsibility for cutting back hedges, keeping open rights of way, and so on. Could local councillors, for instance, be liable if a hedge is cut in which there is a nest? The word "recklessly" is used in clause 5. I am not sure what is classed as being reckless. How could people ensure that they are not affected by the legislation?

870. Mr C Savage: It is up to people to demonstrate that they have taken reasonable action to determine that there is no risk to wildlife before they carry out an activity. Obviously, we have a hedge-cutting season, so I suggest that adherence to that would be an adequate defence, should reasonable action have been taken.

871. Mr Beggs: Does that need to be clarified and included formally in the guidance? You believe that to be an adequate defence, but I want to know to what exactly we are agreeing. Will council staff or landowners have to walk every bit of ground and be well briefed on every species of bird so that they can spot them? I am just trying to determine what would be deemed reckless. What training would otherwise responsible people have to undergo to avoid being caught out by the word "recklessly"?

872. Mr C Savage: We have existing guidance about wildlife in law. We intend to update that guidance once the Bill is enacted, so that will present a good opportunity to give examples of the type of actions that people should take so that they avoid falling within the ambit of the offence.

873. There is no real scope to add anything to the Bill. A judgement would have to be made by the judiciary. However, the Department will produce guidance to support many of the changes.

874. Mr Beggs: I would take more comfort from the proposals if the hedge-cutting season were to be included in clause 5.

875. Mr Meharg: We have never specified a hedge-cutting season in legislation, because birds have such a wide range of nesting times. The Department of Agriculture and Rural Development's good agricultural and environmental condition (GAEC) obligations determine the hedge-cutting season. For health and safety reasons, roadside hedgerows can be cut back at any time of the year. However, we expect contractors, before cutting down trees during the nesting season, to carry out a survey for birds' nests. Contractors are aware of that obligation, and surveys are carried out regularly.

876. Mr Beggs: I have never seen a contractor walking along the side of a road looking for birds' nests before cutting a hedge, and I am not aware of councils telling staff to check hedgerows or of farmers checking them.

877. Mr Meharg: The farming community has GAEC regulations that oblige them to do that, and if that is not done, under one of the statutory management requirements, farmers can be penalised under the single farm payment.

878. Mr Ford: Technically, I should probably declare my wife's shared interest in a family-owned farm.

879. The Ulster Farmers' Union expressed concerns about the word "recklessly". Is the Department satisfied that "recklessly" is defined adequately in common law and, therefore, does not require specific clarification in the Bill?

880. Mr C Savage: In general, the Department is satisfied that "recklessly" is understood in law. Anyone who is involved in legitimate activity in the countryside will not be caught out by a new offence.

881. The Chairperson: To pick up on Mr Beggs's point, does the Department wish to elaborate further on comments submitted to the consultation on duplicating and conflicting cross-compliance requirements?

882. Mr C Savage: I am not sure that there is any duplication. The various cross-compliance schemes require farmers to carry out activities in a certain way, and the Bill is compatible with those obligations and responsibilities.

883. The Chairperson: Nevertheless, the guidance notes could refer people to cross-referencing requirements.

884. Mr C Savage: Yes.

885. Mr Beggs: Before we move on, you were asked whether common law is clear enough about the meaning of "recklessly". I would find it useful if you would make me aware of the common law interpretation of that word.

886. The Chairperson: You can come back to us with the common law interpretation of the meaning of "recklessly".

887. Mr C Savage: The intention of clause 6 is to extend to the Bill some existing offences in the Wildlife (Northern Ireland) Order 1985 to other acts contained in that Order. For example, for someone who permits or causes unlawful acts, the main cause for concern was whether the Bill should refer to employers requiring their employees to carry out an illegal activity. Clause 6 is designed to facilitate situations in which that happens. For example, under the 1985 Order, it is an offence for an employer to require an employee to set poisoned bait to kill a raptor, but it is not an offence for an employer to require an employee to shoot a raptor or to destroy its nest or eggs. That is the type of activity for which we are trying to close loopholes.

888. In particular, people with falconry interests queried the sale of birds of prey.

889. Our system of falconry differs from that in the rest of the United Kingdom, because our definition of wild birds in the Wildlife Order 1985 is different. Our definition includes all captive bred birds as well. Aviculture and falconry are subject to a licensing scheme in Northern Ireland, whereas the scheme in GB is slightly different.

890. Sale is something that we have not allowed to date as a matter of policy, although that could be reviewed, as there is provision in the Wildlife Order 1985 to allow for the sale of captive bred birds. It has not been used as a matter of policy, although if the Committee felt that the Department should consider it, we would look into it. However, it would probably require much consultation with various interests, such as the RSPB — which would be very interested — as well as falconry and aviculture interests.

891. Mr Kinahan: I want to take up the Ulster Farmers' Union comment that consideration should be given to how to treat people who were given permission a long time ago to shoot on someone's land and who use it purely as a mechanism to get a shotgun licence.

892. Mr C Savage: We expect landowners who give certain rights to others to take reasonable action to remind such people of their responsibilities under the Wildlife Order 1985, namely, not to undertake any illegal activity. As long as landowners who gave such rights can demonstrate that they have passed on that message, that is a —

893. Mr Kinahan: I am not sure that most farmers know who was given such rights in the past.

894. Mr Meharg: Shooting licences are renewed every five years.

895. Mr Kinahan: I see. Thank you.

896. Mr C Savage: Clause 7 qualifies defences in relation to offences under article 4. There was general support for that; I do not think that stakeholders raised concerns.



897. The Chairperson: Other than the licensing procedure?

898. Mr C Savage: Sorry: can I deal with that under clause 14?

899. The Chairperson: Clause 8 is generally supported.

900. Mr C Savage: Yes. Clause 9 creates a new offence of disturbing or harassing basking sharks. The main comments by stakeholders were that such protection should be extended to seals, which the Department would be willing to do. Other species mentioned by stakeholders, such as marine turtles and cetaceans, are protected under separate European conservation regulations. The Department plans to review those regulations soon and intends to copy the new offence into that legislation as well.

901. The Chairperson: Several consultees said that there was a plethora of legislation, and that there was no one-stop-shop or easily accessible information. Will the Department take on board those views?

902. Mr C Savage: There are two main pieces of legislation on natural heritage: the Wildlife Order 1985 and the Conservation (Nature Habitats, etc.) Regulations (Northern Ireland) 1995. The conservation regulations concentrate on our European commitments, and the Wildlife Order on national commitments. They are separate because the requirements of European legislation are much stricter, and in some cases it is difficult to apply them to natural species. I heard Mr Hetherington say that there should be a new wildlife Order. The legislative draftsman considered that proposal at the beginning of this process, but he decided that the amendments were not sufficient to require a new wildlife Order.

903. The Chairperson: Can I confirm that Committee members support the additional protection for seals?

904. Mr Ford: I presume that that applies to both species of seal.

905. Mr C Savage: Yes.

Members indicated assent.

906. The Chairperson: We will move on.

907. Mr C Savage: We will now move to clause 10, which relates to snares, on which there are two extreme views. The Department feels that we have to ask whether control of predators in the countryside is necessary, and we believe that it is necessary to protect livestock and agriculture. If that is accepted, the second question is what is the best method of controlling predators. We believe that the best way is to rely on the existing regime and to strengthen it as much as we can in line with the Bill and its potential to introduce further controls.

908. Recently, legislation was passed in Scotland requiring all snares to be fitted with fixed stops and ID tags, thereby strengthening their regulatory regime. We believe that there is a need for snares. The Department fully understands animal welfare concerns and all the alternative methods; however, we believe that snares are the most effective and cost-effective mechanism available to landowners. We have also seen research papers that were produced on behalf of the RSPB from which it was clear that the species of conservation concern, such as the curlew, suffer greatly from predation. There were calls in the research for tighter control, although there was no suggestion about how that could be done; nevertheless, it is an example of the need for predator control in Northern Ireland. There will always be illegal practice, but if we can

strengthen the regulations as much as possible to outlaw bad practice, we can mitigate the risk. That may be the preferred option.

909. The alternative option has been raised of allowing the use of snares only under licence. The Department is willing to consider that, subject to its going to the Minister. Our only concern is that we do not know how many licences or applications there would be, and it could end up being quite a resource-intensive exercise for the Department to monitor.

910. Mr Boylan: Chris set that up really well, so we all need to watch that we do not get trapped. I would like to ask Research Services to look into other measures and how other jurisdictions deal with the issue, because there is a great deal of support for a total ban.

911. The Chairperson: — except from the Committee for Agriculture and Rural Development.

912. Mr Boylan: Perhaps Research Services could do some work on it for us before we make a decision.

913. Mr Kinahan: We have to consider the Scottish method to see how successful it has been. Has it just been introduced?

914. Mr C Savage: Yes. The Scots undertook it because they were also coming under extreme lobbying to ban the use of snares totally. There are huge land management issues in Scotland, and the Scottish Minister considered it for a long time. However, although he decided that there was a fine line, he came down on the side of maintaining their use but trying to ensure that it is regulated as tightly as possible.

915. Mr Kinahan: That sounds sensible.

916. Mr Ford: There is no reference to the Bern Convention and the indiscriminate means of capture. Does the Department have a formal legal opinion on that interpretation?

917. Mr C Savage: No. We have never sought an opinion on it.

918. Mr Meharg: Neither have we been challenged on the fact that snares have been part of the legislation since 1985. As far as I am aware, a legal opinion has never been sought on whether it is indiscriminate or not. Usually snares are set in a run and are targeted at a particular animal.

919. Mr Ford: Yes, but the issue is not the alleged targeting but the practical effects.

920. Mr Meharg: Part of it is the indiscriminate nature of setting the snare up and seeing what you get, whereas targeting a particular species and using field craft has been taken in the past as being non-discriminatory.

921. Mr Ford: If there is no specific opinion in this jurisdiction, is there any opinion elsewhere following on from the Bern Convention?

922. Mr C Savage: We are not aware of any challenges under the convention; any legal challenges would have been at member-state level. The Department is not aware of any challenges against DEFRA, or in even the Republic of Ireland, where the use of snares is still legal.

923. Mr Ford: What useful purpose does the Department see in snaring?

924. Mr C Savage: There are land management and agricultural purposes, and in the conservation of species of high conservation concern, when predator control is highly necessary.

925. Mr Ford: Would that include the management of new woodland?

926. Mr K Bradley: We telephoned several bodies to see how widespread the use of snares is. The Forest Service said that it used them, albeit not extensively, and was asked by neighbouring farmers to use them to safeguard saplings.

927. Mr Dallat: It is assumed that snares are always put down by Farmer Brown, who owns and controls the land. Some of those who use snares get involved in badger and cock baiting, and all the other dreadful things that happen in the countryside, usually at night.

928. Mr C Savage: One provision in the Bill addresses that point, making it illegal for anyone to possess a snare or to set a snare on anyone else's land without their permission. The Bill is trying to tighten up in that area.

929. Mr K Bradley: Two types of snare, the locking snare and spring trap, are banned outright. There are strict enforcement measures in place, therefore, for those two types of snare.

930. Mr Dallat: That does not encourage me to support snaring, but it is useful to know that those who cause suffering on farms will be branded illegal, although I am not sure that they will be terribly concerned.

931. Mr Beggs: I came to this issue with a view to banning snares completely; however, we heard evidence from the Royal Society for the Protection of Birds that snares were a useful conservation tool. The red grouse, I believe, has prospered in the Antrim hills as a result of predator control.

932. Some form of licensing is important to ensure appropriate control of snare use. Do you accept that if someone gives a commitment to check their snares regularly, there needs to be a mechanism to establish who is doing the snaring so that they can be checked and monitored? Does there not also need to be a system of identifying approved snares to ensure that someone is not using snares illegally and to regulate the movement of the snare so that there is not a black market or subculture of snare use? Have you information on the Scottish scheme to identify individual snares? Are they individually tagged?

933. Mr C Savage: Yes. New legislation requires snares to have an ID tag to allow follow-up in monitoring their use; however, some people will use snares illegally even if regulations and bans are introduced. Responsible users in the countryside have to use their eyes and ears to identify illegal users and report their concerns to the relevant authorities. Illegal use will always happen, but we are trying to mitigate bad practice that is due to a lack of training or awareness.

934. We have also given a commitment to produce a code of practice on the use of snares, which will be similar to codes of practice that were introduced in the rest of the UK. That is the most appropriate way of addressing the issue, but we recognise that there could be good arguments for licensing. Ultimately, we will need to get the Minister's view.

935. Mr K Bradley: One could take the view that only responsible people would apply for licences anyway. Therefore, the introduction of a licensing regime would enable a clear distinction to be made between someone who has a licence and who operates snares correctly and those who do not have a licence and may not operate them correctly. We will seek the Minister's view on your concerns.

936. Mr Beggs: Clause 10 refers to: "Any person who, without reasonable excuse—

... has in his possession any snare without the authorisation of the owner or occupier of the land".

937. Could that provision not be easily widened to deal with those in possession of a snare without a licence to operate it? Surely that would make it easier to catch the underhand people who abuse wildlife and use snares without following regulations, undergoing training or being subject to regular checks.

938. Mr K Bradley: You are correct. It would be much clearer for enforcement purposes, because people will either have a licence or they will not. Therefore, a decision could be made irrespective of people's attempts to prove what they use the snares for.

939. Mr Beggs: Have you carried out surveys to find out how many people would be interested? I assume that snares are needed only by gamekeepers and people who use them for very specific purposes. I am not aware of anyone in the local farming community who does any snaring. Does snaring not concern only people who work with specific forms of agriculture such as protecting trees and red grouse?

940. Mr K Bradley: When the Minister — who, like you, is a farmer — asked us to find out the extent to which snares are used, he, too, thought that they were hardly used at all. It was not until we phoned various people that we realised that that was not the case.

941. Geographical location may be a factor in snare use; it may be more prevalent in upland areas, for example. The use of snares may also be more common at this time of year, which is the lambing season. They seem to be used fairly extensively in Fermanagh. I do not know if it is because of tradition, but there seems to be a large disparity between the use of snares in Fermanagh, for example, and north Antrim and south Down, where it is very limited. The spread of snare use is very hotchpotch.

942. The Ulster Farmers' Union knows that snares are there for a purpose, and it will challenge any moves to ban them outright. The view of the Ulster Farmers' Union is that although snares are not used extensively, they are needed.

943. Mr C Savage: If the Committee is of the view that we should adopt the middle ground and introduce a licensing regime, we will reflect that to the Minister.

944. The Chairperson: Licensing is the minimum requirement that the Committee would like to see introduced. We will request research to be carried out on the subject. I note that the UK and the Republic of Ireland are two of only five countries in the EU that permit the use of snares. I also note DARD's suggestion that DOE should assume overall responsibility for traps and snares; that is a nice move, I suppose.

945. Mr C Savage: We had discussions with the Department of Agriculture on that point recently. We are content to accept responsibility for traps and snares, but, again, we need to seek the Minister's view. It would require the transfer of a clause from the Welfare of Animals Act (Northern Ireland) 1972 to the Wildlife and Natural Environment Bill. The provision authorises the use of certain spring traps, which are listed in subordinate legislation. The last piece of subordinate legislation was made in 1996, and before that in 1961. It does not seem to be overly burdensome from our perspective.

946. The Chairperson: There are also points about the use of more humane snares that we should look at.

947. Mr McKay: As it stands, clause 10 is too open-ended or even lax. I would prefer that snares be banned outright, but licensing has to be the bare minimum of regulation. I welcome the new position, but I will still be pushing for a ban on snares. As the Chairperson said, most member states do not use snares at all; Germany, Austria, Holland, among others, see no need for them. What do those countries use to deter predators? Have you looked at those options?

948. Mr C Savage: We are not aware of what methods such countries use; we have done no research on that. We are aware of what happens in the rest of the UK and in the Republic of Ireland.

949. Mr McKay: That is something that we should research.

950. Mr Weir: I think that that is a valuable issue in terms of looking at it. The concern might be, as you might find, actually, is maybe in some European countries it may be actually less humane than what is there in terms of I suspect that in a number of the countries how they would control particular species actually lead bullets type of thing rather than snares on it. However, it is useful to get a degree of comparison and see what is happening elsewhere in relation to that whenever we are finally focusing what our position should be.

951. The Chairperson: The Northern Ireland Biodiversity Group suggested the following amendment to clause 10 (3)(aa): delete the words "as to be calculated" and replace with "or so managed".

952. Mr C Savage: "Or so managed" is a useful phrase that we will consider for inclusion in the Bill.

953. The Chairperson: Clause 11 is supported generally.

954. Mr Ford has to leave shortly —

955. Mr Ford: I do not have to leave as urgently as I thought; I can stay for a while yet.

956. The Chairperson: Let us move to clause 12.

957. Mr C Savage: We can deal with clauses 12 and 13 together as both relate to regulation of non-native species. Their intention is to strengthen our control over the regulation of such species by issuing codes of practice and having the power to ban the sale of certain species. There were some concerns that the framework in the Wildlife (Northern Ireland) Order 1985 is not adequate for the job. There were also requests that obligations should be placed on landowners to control invasive species. Some called for codes of practice.

958. A great deal of work has been undertaken over the past three years under an all-Ireland contract between the Department of the Environment and its counterparts in the South, as many of the issues relating to non-native species arise through lack of education and awareness. Only in recent years has the importance of that area come to the fore. The work under that contract has included education and awareness, creation of a web site, the development of codes of practice for various sectors, the development of risk-assessment processes so that we can identify high-risk and vulnerable species. We believe that the changes in the Wildlife (Northern Ireland) Order 1985, as they stand, will complement that work. However, the Department recognises that there are issues with article 15 and schedule 9 of the Wildlife (Northern Ireland)

Order 1985. Unfortunately, we could not find time at this stage of the process to adopt a radical approach to those provisions in the Order.

959. The European Union has indicated that a directive is possible on controlling invasive, non-native species to protect biodiversity, and that would introduce significant new obligations. With a view to that, we are doing the best that we can to address the issue.

960. The Chairperson: Some consultees asked for clause 13 to place a duty of care on anyone possessing, selling or advertising for sale non-native species.

961. Mr C Savage: If a duty of care is to be placed on anyone selling any non-native species, one thinks of a garden centre, for example, where a huge amount of plants and shrubs are probably non-native. However, only a fraction of those may harm the environment of an area if they were released and became widespread. The intention of the clause is to ban the sale of highest-risk species. That would not be achieved by placing a more general code of practice in such instances.

962. With regard to placing obligations on landowners to control non-native species, some stakeholders may have in mind the Noxious Weeds Act 1912, which requires landowners to remove certain highly poisonous weeds. That is quite an old piece of legislation. Some non-native species such as the sycamore are so widely spread that an obligation on landowners to remove them would be a significant burden.

963. Mr Ford: Is the hybrid of an invasive species easily defined in law?

964. Mr K Bradley: It is probably easier to define legally than scientifically.

965. Mr Meharg: A hybrid is easily defined in law. Schedule 10 of the 1985 Wildlife Order lists the three species of deer — the fallow, red and sika — and states:

"In this Schedule any reference to a species of deer includes a hybrid of that species."

966. Therefore, it is already in legislation.

967. Mr C Savage: Clause 14 deals with licensing provisions, and aims at amending those provisions in cases of further qualifications and when a licence can be issued. This is where I would deal with stakeholders' comments about general licences. Some stakeholders asked whether we check licences issued by the Department. Requirements for new licences will be introduced when the Bill is enacted. The Department last carried out a general review of its licensing regime in 2000, so we would be planning to undertake a similar review. There was concern about the conservation status of pest species of birds that the general licence allowed landowners to shoot. The Department will be reviewing that, but that can be done outside the legislation.

968. Mr Ford: Are you satisfied that none of the RSPB's points needs to be in the Bill?

969. Mr C Savage: The RSPB's concerns can be addressed by the Department's licensing processes outside the Bill. For instance, it asked for a requirement to report on the derogations of the EU wild birds directive. That already exists. There is an annual requirement on member states, including the UK, to report on those derogations, and that happens as a matter of course. However, some of the other concerns can be addressed as part of the licensing process.

970. Concerns were raised about the proposal to issue licences for the disturbance of certain things for development; typically, that will relate to the movement of badger setts to allow for development. The Department has been issuing licences for that for some years, but we are seeking to provide a better legal footing for that process.

971. Mr Ford: Last week, in its presentation to the Committee, the Talnotry Avian Care Trust (TACT) made a further point, but I take it that you have nothing to add to your comments based on what TACT told us.

972. Mr Meharg: No, we are still working with TACT, and we are concerned about what happens to animals when they cannot be returned to the wild. The Wildlife and Natural Environment Bill is all about ensuring that those animals' quality of life is secure.

973. Mr Ford: Can I be cheeky enough to ask whether you have a timescale for concluding those discussions?

974. Mr Meharg: We have just received information back from the EC zoos directive inspection, and we will follow up on that.

975. Mr Kinahan: We did not raise this point last week, but if someone comes across a damaged bird and takes it to TACT because there is nowhere else to take it, and TACT then looks after it, by law, it should not do that. Therefore, what happens?

976. Mr Meharg: Under the legislation, there is an exemption that will allow people to look after an injured animal if the intention is to return it to the wild. A difficulty arises if the animal is deemed to be unfit to go back into the wild, because it then becomes part of a collection. That is where the applicable legislation changes from the Wildlife (Northern Ireland) Order 1985 to the Zoo Licensing Regulations (Northern Ireland) 2003.

977. Mr C Savage: Clause 15 deals with discharging firearms, and so, from vehicles. To develop the Committee's conversation with Mr Hetherington in the previous evidence session, under the 1985 Order, it is illegal to shoot deer from a vehicle. The intention of clause 15 is to allow deer to be shot from a vehicle in certain circumstances; namely if the vehicle is stationary. The clause's primary purpose is to assist land managers to control deer populations. Mr Hetherington made a good point when he raised concerns that that might lead to illegal poaching. However, such activity is already unlawful, and it will continue to be so. The intention of clause 15, therefore, is to allow for better management of the deer population.

978. Mr Kinahan: Should clause 15 be amended to make it illegal to shoot from public roads?

979. Mr C Savage: The provision will be available only to landowners and authorised persons, so, presumably, members of the public would not be entitled to shoot from public roads.

980. Mr Beggs: The point was made that the provision would be very difficult to enforce, because, for example, it would be difficult to prove whether a vehicle's engine had been switched on. Would it not be better to ban all shooting from vehicles?

981. Mr C Savage: Under the 1985 Order, shooting from vehicles is banned. We are attempting to relax that requirement in order to allow landowners and responsible owners to use the cover of a stationary vehicle that is switched off. I take your point about enforcement, but whether people undertake illegal activity is a separate matter, and it is going to happen in any case, especially if they are on land that they should not be on, or even if they do it from a public road.

982. Mr Beggs: Relaxing existing legislation would make it more difficult to gather evidence about whether someone had shot from a vehicle, because that person would be able to say that the engine was switched off and that, therefore, it was OK to shoot. If shooting from vehicles were simply to be banned, it would be possible to gather evidence that shots had been fired from inside a vehicle. My understanding from evidence to the Committee is that clause 15 would make it easier for poachers, because it would give them an excuse. I got the impression that responsible landowners do not shoot from their vehicles.

983. The Chairperson: The bottom line is whether clause 15 is needed at all.

984. Mr C Savage: Around a month ago, we held a deer stakeholders' meeting at which concerns were raised from the welfare side by the British Deer Society (BDS), about which you heard this morning. However, there was consensus around the table from the 15 representatives of the various interests in favour of the clause. The Department of Agriculture and Rural Development is in favour of the clause because it will assist its operation. However, other stakeholders also felt that it was a useful mechanism, given the big estates that we have. The feeling was that the provision will not necessarily lead to an increase in illegal activity.

985. Mr Ford: When Mr Hetherington outlined his views, it certainly seemed to me that a relaxation of the law was not necessarily going to be of any particular benefit. As Roy has just highlighted, anything that has the potential to provide a loophole for poachers is not something that the Committee should be supporting. All that we have on the clause is that NILGA support it and that the BDS, which appears to be the principal stakeholder, has a specific opposition to it. There seems to be no particular reason why the clause as it stands should be supported.

986. The Chairperson: We should perhaps reflect on that.

987. Mr Weir: I take the point that the principal dichotomy is whether the person who is shooting the deer is authorised or unauthorised. That is really the nub of the issue. At present, is it the case that somebody who is authorised to control deer will stop the vehicle, get out on foot, take the shot and then get back in the vehicle? The issue seems to be getting a bit muddled, and I question how necessary the clause is. Is there something else behind it from a practical point of view?

988. Mr C Savage: The only practical advantage it would have is for those responsible for managing deer populations across wide areas of land on which there is vehicular access. It would allow them —

989. Mr Weir: What do landowners do at present? Do they stop the vehicle and get out to take the shot?

990. Mr C Savage: That is the legal requirement.

991. Mr Weir: According to clause 15, one would have to ensure that the vehicle was not moving and that the engine was switched off. There are experts in the field who will know a great deal more about it than I do. However, I am not sure whether clause 15 takes things massively forward.

992. Mr Kinahan: Getting out of the vehicle is likely to spook the deer, and, therefore, we end up back at stalking. Equally, I imagine that the same thing happens when the engine is turned off, because there is a change in the noise, and, as a result, the deer knows that something is happening. We have to find a balance.



993. Mr C Savage: There is a view that using the cover of the vehicle does assist in the shooting of deer. Although deer can become used to vehicles going across land, they are more wary when it come to individual human beings "at loose", so to speak.

994. Mr Beggs: I understand that the vehicle is useful for providing cover when shooting deer. However, I do not understand whether including the clause is advantageous to legitimate deer farmers or advantageous to poachers?

995. Mr C Savage: The Department accepts that point and will consider it.

996. Mr Dallat: I cannot believe that I am getting involved in this discussion. However, are the firearms involved — about which I know nothing — shotguns, sporting rifles or Kalashnikovs? Is there any protection for people who may get the bullet rather than the poor deer? Given what happened to a child in a playground some years ago, is that something that is reflected in the clause?

997. The Chairperson: I will bring in Mr Kinahan because he has a particular insight into this. [Laughter.]

998. Mr Weir: I hope that this is not a plea of mitigation.

999. Mr Kinahan: I am friendly with John Hetherington, and he has a licence to shoot deer with a low-velocity rifle. I farm deer, and, from time to time, they have to be culled. I started with three deer and, because they breed well, I have ended up with 47. Given the size of my land, I cannot afford to have more than 50 deer. Therefore, for various reasons, they have to be shot. However, the rifle used is a low-velocity rifle, and that means that the bullet does not travel far. Therefore, it is ideal for shooting deer. A high-velocity rifle is something completely different, and Mr Hetherington would not get a licence for it. The licence that he mentioned was for a low-velocity rifle.

1000. Mr K Bradley: Schedule 11 to the 1985 Order defines the ammunition and the kind of firearms that one can and cannot use.

1001. Mr Boylan: It is unfortunate that you cannot keep any more than 50 deer, Danny.

1002. Mr Weir: If you are deer number 51, you are in trouble. [Laughter.]

1003. Mr C Savage: Clause 16 provides for a new power for the Department to issue licences for the taking of deer during the closed season for specific purposes, such as to protect public safety, the natural environment or property. Concerns were raised around the assurance that every application will be considered fully on its merits, and the Department decided that there were no alternative solutions to the lethal method. There is no other satisfactory solution, so the Department would have to satisfy itself about that before issuing any licence.

1004. Some of the points made in the earlier evidence session suggested that there was a lack of clarity about which deer the licences referred to. The licences refer to those types of deer listed in schedule 10 to the Wildlife Order, which is concerned with protecting three species of deer in particular. Those are the red deer, sika deer and fallow deer. They are protected by the closed season. Although we do not have conservation concerns about those species, we believe that they are an important part of the natural environment in Northern Ireland. We accept that there will always be an issue about whether they are or ever were non-listed species. For example, one of them has been in Northern Ireland since the 1400s, and another species was

introduced in the 1800s. They have clearly become naturalised, but it is quite clear to us which deer we are talking about protecting.

1005. Other species of deer were mentioned earlier, particularly the muntjac deer. There have been isolated reports that somebody may have brought one or two of them into Northern Ireland. It is a species that we do not want here, because it would cause some devastation to biodiversity. We are intent on including it in schedule 9 to the Wildlife Order as an invasive species. Anyone who releases or allows such a species to escape is creating an offence.

1006. The Chairperson: What about the roe deer and Chinese water deer?

1007. Mr C Savage: Chinese water deer are not included in the Bill, but we are happy to add that species and the roe deer to schedule 9 to the Wildlife Order. Roe deer are strange in that, going back centuries, they were probably the only native species of deer here. However, it has since disappeared. It causes significant damage to forestry. Some interests would like to see those species added to schedule 9 to the Wildlife Order, and we are happy to entertain that notion.

1008. The Chairperson: Does the Committee need to get back to DARD on its comments on secondary legislation?

1009. Mr C Savage: DARD is responsible for a piece of legislation called the Destructive Imported Animals Act (Northern Ireland) 1933, which lists certain animals that people are not allowed to import. The problem with muntjac deer is that there is nothing in law at the moment to prevent people bringing them in and keeping them. If people allow them to escape or release them, they are committing an offence. That may be hard to prove, but we have been in discussion with DARD to see whether the muntjac deer and possibly the Chinese water deer could be added to the 1933 Act, and it has indicated that it is be prepared to consider that.

1010. Mr K Bradley: It would put off the snares. UNABLE TO HEAR THIS CLEARLY — PLEASE CONFIRM

1011. Mr Bell: I do not want to get caught up in that.

1012. Mr C Savage: Clause 17 is concerned with making it an offence for anyone to be in possession of an article for the purpose of committing an offence. There was general support for the clause, but some stakeholders want it to be expanded so that someone attempting to commit an offence is, in effect, committing an offence. That is currently covered in Northern Ireland law under the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, so we do not need to amend the clause to include that concern.

1013. The Chairperson: The Ulster Farmers' Union raised concerns around the breeds of dogs relevant to clause 17.

1014. Mr C Savage: In our consultation, we gave an example of the type of situation to which that offence might apply. The example given was badger baiting, which may involve a gang of people with dogs. We could not put examples in the Bill.

1015. The Chairperson: A bit of common sense is needed.

1016. Mr C Savage: I will deal with clause 18 and 19 together, because they concern police enforcement powers. The police have significant powers under the Wildlife Order, and clauses 18 and 19 enhance those powers. The Ulster Farmers' Union was concerned about biosecurity issues when the police and others go on to land with equipment to take samples. Some controls

are built into the Bill, but I am sure that various pieces of legislation allow police powers of entry on to land to do certain things.

1017. The Chairperson: The Committee asked the PSNI to comment on the matter. It is drafting a response, which will come to the Committee in the next week or two. We may return to clauses 18 and 19 when that response is received.

1018. Mr Beggs: Does the issue of biosecurity need to be built into the Bill? I have an uncle in Scotland who is a large pig farmer, and he does not let anyone at all through his farm gate. People who want to enter must take a shower and be sterilised. Only then can they enter his breeding unit. How will the Bill deal with such biosecurity access?

1019. Mr C Savage: The police may have standard operating procedures for dealing with such issues. I am sure that the police already go on to various pieces of agricultural land. The Department has not checked that with them, but I am sure that the police would recognise such concerns as legitimate. Perhaps the Department can deal with those concerns with the police and outside the legislation.

1020. Mr Beggs: Everyone was acutely aware of biosecurity during the foot-and-mouth disease outbreak. That has passed, however, and people are now generally more relaxed. Due regard to biosecurity must be built into appropriate guidance.

1021. Mr Meharg: The Northern Ireland Environment Agency (NIEA), for example, has biosecurity policies in place for when survey work is being carried out or follow-up farmland visits are being conducted. Sprays, and the circumstances under which they should be used, are identified. Agency staff members are told to use sprays at all times.

1022. Mr Weir: The key issue is the level of biosecurity guidance. There will be circumstances in which the police need to enter under warrant, and they currently do so. If there was thought to have been a murder, the police would not shower and sterilise themselves before investigating. That would be somewhat excessive. Guidelines are necessary. By the same token, I appreciate that, for a routine matter, people cannot just blunder in, perhaps creating more of a problem than that which they were seeking to solve.

1023. Mr C Savage: Clause 20 will expand on wildlife inspectors' existing powers. It was asked earlier who exactly these wildlife inspectors are. The legislation defines them as people authorised by the Department. The Department has no plans to employ wildlife inspectors who are not from the Department. That should allay those concerns. There was an issue about whether wildlife inspectors should have powers of entry at all. Wildlife inspectors have limited powers under the Wildlife Order, and those powers relate only to certain offences around keeping captive-bred birds for the purposes of registration and licensing. They clearly need to have a power of entry to allow them to ensure that the conditions of the licence are being met.

1024. In the past, powers of entry were a condition of the licence. When we were human rights-proofed, however, we felt that we could not human rights-proof the legislation. That explicit power of entry was needed to allow that sort of activity to continue, and that is the main purpose of the clause.

1025. Mr Kinahan: Should wildlife inspectors have a minimum level of training so that we know that they have the necessary knowledge?

1026. Mr Meharg: At present, regional staff members who work with the NIEA are trained before becoming wildlife inspectors.

1027. The Chairperson: Consideration of clause 20 concludes the evidence session. Thank you for your co-operation.

## 15 March 2010

Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Roy Beggs  
Mr John Dallat  
Mr David Ford  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Mr Ken Bradley Mr Mike Meharg Mr Chris Savage Ms Rachael Singleton	Department of the Environment
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1028. The Chairperson (Mrs D Kelly): We move to the Committee's scrutiny of the Wildlife and Natural Environment Bill. I welcome departmental officials Mike Meharg, Chris Savage, Rachael Singleton and Ken Bradley, who are here to provide the Committee with an update on the Bill. The Committee has also been provided with a submission from the PSNI, but, as the response was only received over the weekend, members' comments on that will be added after the clause-by-clause summary of the Bill that will be provided by Mike, Chris and Rachael today.

1029. The agenda for today's meeting initially provided for an examination of schedules to the Bill, and, if there is time, we will go through clause-by-clause summary of clauses 21 to 26. Are the witnesses content that we proceed in that way?

1030. Mr Ken Bradley (Department of the Environment): That is fine. Do you want us to concentrate initially on the curlew and the Irish hare — the two most contentious issues in the schedules — and then move on to consider the schedules individually?

1031. The Chairperson: Are Members agreed with that approach?

Members indicated assent.

1032. Mr K Bradley: I will hand over to Chris to start the ball rolling.

1033. Mr Chris Savage (Department of the Environment): The subject of the Irish hare is clearly a very contentious issue in the Wildlife and Natural Environment Bill. In fact, that has been a contentious issue as far back as 1984 when the Wildlife (Northern Ireland) Order 1985 was first conceived.

1034. In the Department's policy consultation for the Bill, it did not propose changing the statutory status of the Irish hare. It is currently defined as a "game species" and is subject to protection during the close season under the Game Preservation Act (Northern Ireland) 1928.

However, there have clearly been conservation concerns surrounding the population of Irish hare in recent times, and the Department has a species action plan for it that runs from 2000 to 2010.

1035. For the last five or six years, annual surveys have been taken of the Irish hare population that have tried to determine overall trends in the population. The main species action plan target was to double the Irish hare population by 2010, and, going by the results of those surveys, the Department is quite confident that that target is likely to be achieved.

1036. Therefore, although the Irish hare has been the subject of conservation concern, there are some positive indications that the population is stabilising. On that purely conservational basis, the Department does not propose to change the status of the Irish hare, or to include it in schedule 5 to the Wildlife (Northern Ireland) Order 1985, which would afford it full protection. It will continue to rely on its own protection under the Game Preservation Act (Northern Ireland) 1928.

1037. Mr Ford: I am slightly concerned when Chris uses words such as "stabilising," because we all know that the Irish hare population fluctuates quite dramatically from year to year. Can you explain what you mean by "stabilising" in that context?

1038. Mr Mike Meharg (Department of the Environment): When you carry out population surveys you cannot do a census. Therefore, you examine sample areas that are surveyed on a regular basis, and, based on the numbers of animals that are seen, you draw comparators across the whole of the country.

1039. Ten years ago, the population of Irish hares was one hare per square kilometre, and, as Mr Ford has correctly said, through its monitoring, the Department discovered fluctuations in the population and that there have been good and bad years. The population was as high as 6-8 hares per square kilometre during the period of the survey; last year it was two hares per square kilometre, and although the data has not been fully compiled for this year's survey, the initial results indicate an increase on last year's figure. Furthermore, in relation to the stabilising of the Irish hare population, the Department has demonstrated over the last ten years that the population has not declined below the figure we began with and, throughout every year surveyed, it was above the figure that the Department had targeted.

1040. When populations are at such a low level that they become unviable, or certain parts of the population have been isolated, the genetics of an animal become depressed, and to ensure that the Department was addressing those concerns, it carried out surveys with Professor Ian Montgomery's team at Queen's University to examine the genetic strength of the population. The results of those surveys indicate that there has been no inbreeding regression, that the population is still stable and strong, and that the Irish hare has the opportunity to breed when conditions are favourable. The Department was not looking for reasons for the decline in the Irish hare population, but whether a genetic bottleneck or decrease, which could have been a problem, was real.

1041. The Department also included its data in an all-Ireland survey in 2007, in which data was collected in the South of Ireland and compared to ours. Through that comparison, it was found that our data in 2007 showed an almost identical population — approximately four hares per square kilometre — in respect of the whole of the island, and corroborated the fact that the surveys that we were carrying out in the North, which used a slightly different technique to those employed in the South, showed the same results. That is why the Department feels that the population of Irish hare is stable.

1042. Mr Ford: The population may or may not have stabilised at a low level given the level of annual fluctuation, and who knows what that level might be after the past winter. However, it is

also an acknowledged fact that the population of Irish hares was significantly lower during the past decade than it was some decades ago. If this is a conservation issue, there is a real danger in looking at an annual fluctuation or a five-or six-year trend, rather than what we know happened during the previous 50 years.

1043. Mr Meharg: The Department examined the genetics in the Irish hare population to ensure that there was no reason for a limiting in its expansion if conditions were appropriate.

1044. Mr Ford: Yes; you merely said that there was no regression on the genetic side. That is not an indication of anything other than fluctuating stability at a historically very low level. For the benefit of the Hansard report, I note that one of your colleagues has nodded in agreement with that point.

1045. Mr Meharg: I am answering questions on the scientific side. In studies of animals throughout the world, if there is concern that a population has reached the stage whereby low numbers are impacting on the animal's ability to recover, there is a genetic bottleneck or decline in the genetic variation. There is no evidence of that in the Irish hare population in the studies the Department carried out through Queen's University.

1046. Mr Ford: It has not worsened.

1047. Mr C Savage: I was nodding because I was thinking of the reasons why the population of the Irish hare has declined. It is widely acknowledged that the main causes of decline in animal populations are loss of habitat and predation, and not necessarily other more or less significant factors. Building on what Mike said, other proactive actions, such as agrienvironment schemes to improve habitat, will ultimately be the mechanisms by which the Irish hare population will increase.

1048. Mr Ford: It is probably a common point between us that the environmental issues, such as habitat management, are key. Nonetheless, in the discussions that the Assembly and the Committee had when considering the Game Preservation (Amendment) Bill, it was clear that the maximum possible protection should be afforded to the Irish hare. We now have the opportunity to do that.

1049. Mr Kinahan: Let me get this absolutely clear: you say that the population is stable and, if we go on monitoring the Irish hare for the next five years before the Bill comes through, we do not see in the fluctuations the chances of damaging the hare population in the long term. Can the population diminish in the next five years? My feeling is that we should leave it the way it is, but constantly monitor it.

1050. Mr Meharg: Any population of wild animals can increase as well as decrease, somewhat like the monetary value of shares.

1051. We have looked at the conditions over the last 10 years and it would appear that the population has doubled over the period. I can be no more certain on that. It has achieved that in every year that we have monitored since the first survey. As a result of that, we recommend that the status should remain as is. However, over the next five years, monitoring will continue, though probably not at the same level, because costs and resources are factors. During the five-year review, if we identify any dramatic change, we may make different recommendations.

1052. Mr K Bradley: Let me add to those comments. As Mike said, the species action plan is now complete for 2010, so that is in the elements that are being reviewed towards the end of the year. That will contain actions to supplement it.

1053. Mr Kinahan: The only thing is that it should go better.

1054. Mr Meharg: That depends on habitats and other activities.

1055. Mr Kinahan: We are doing our best.

1056. The Chairperson: It looks as though the Committee will return to this issue, whether or not there is consensus and whether the Committee wishes to bring forward amendments. We have heard clearly the Department's views. Thank you for that. We will move on to the curlew.

1057. Mr C Savage: The curlew is currently defined as a quarry species and is listed in schedule 2 of the Wildlife Order (Northern Ireland) 1985.

1058. The curlew population in Northern Ireland has declined sharply in recent years, and it is a species for which there is concern. We have worked with the RSPB and the shooting fraternity to see whether there is middle ground that we can find to protect the curlew in future. Some effort was made to bring in a formal protocol, but we have been unable to achieve that. However, a number of the shooting and wildfowling clubs have imposed voluntary moratoriums on shooting the curlew.

1059. Clearly, it is an issue in which two competing interests are involved. It is difficult to know whether we should conserve it and take it off the quarry list, leave it on the list on a partial basis, or leave it on but continue to work with shooting interests to see whether we can get voluntary buy-in from them, with a view to reviewing the situation again in five years' time. The Department recognises that a fine line must be drawn with respect to the curlew. We are happy to take the Committee's view on it.

1060. Mr Weir: If we were to amend schedule 1 to include the curlew, you would not lose much sleep over it. Is the converse the case? I appreciate what has been said and I know the evidence that we have. First, an attempt was made to establish a voluntary moratorium. Most people bought into that; however, a voluntary moratorium is only useful if it applies across the board. Is there not acceptance among the shooting clubs that there is a problem with curlew numbers?

1061. Mr K Bradley: You are right. Shooting clubs recognise that the species is vulnerable. One could ask, if they are happy with a voluntary moratorium, would they not also be happy with a legislative one? We are easy, either way, on this species.

1062. Mr Weir: Presumably, there is also a flip side. The original idea was to get a voluntary moratorium and have it reviewed in five years. For all the various forms of wildlife, it is difficult to get this right. By definition, it will not be 100% set in stone that any of those species will be the same for the next 100 years. All these things will be subject to review. From that point of view, therefore, if the flip side of the coin were the presumption that the curlew should be protected and included in schedule 1, with the option that if we are to review matters in five or 10 years, it could always be removed from the schedule at that stage.

1063. Mr Meharg: It is fair to say that I used the species action plan for the Irish hare when I was explaining the population stability of the Irish hare. Over the same period of 10 years, there was also an action plan for the curlew, and it has not achieved its targets during that time. Therefore, the Committee should be aware of the flip side of what I have said.

1064. Mr Weir: That seems to suggest that a protection mechanism, by way of schedule 1, would be appropriate.

1065. The Chairperson: By and large, most, if not all, Committee members support the curlew move. Do you want to address any concerns about some of the other species?

1066. Mr C Savage: Yes. We could go quickly through the schedules and address the views of stakeholders. In respect of schedule 1, some stakeholders commented on a number of species and wished to see them added to it. I will quickly run through the individual species that were mentioned. The Department feels that the bullfinch population is widespread in Northern Ireland, and that it can cause widespread damage to orchards. If we were to put it in schedule 1, there might be a concern for orchard owners, particularly in places such as County Armagh. Therefore, we do not recommend its inclusion in schedule 1 at this point.

1067. Mr Boylan: There are a lot of orchard votes.

1068. Mr C Stewart: I must point out that the basis of schedule 1 will change to an extent under the Bill. At the moment, schedule 1 is entitled "Birds which are protected by special penalties". As part of the Bill, we are making all the penalties pretty much the same, so that badge of extra protection will be lost. However, there will still be extra protection under article 5(6) of the Wildlife Order, which deals with certain derogations, which do not apply to schedule 1 birds. Therefore, there is still protection from the farmers' defence.

1069. Stakeholders also mentioned the reed bunting. The Department believes that it is quite widespread and does not feel that there is a compelling case for its addition to schedule 1. However, we are open to adding the whinchat to schedule 1, as well as the lapwing and redshank. The raven's numbers and range have increased over the past 20 years, so, again, we do not feel that there is a compelling case to add it to schedule 1.

1070. Mr Weir: I do not have any particular knowledge of those birds, and I appreciate the specific point that has been made about the bullfinch. However, you are saying that you are happy that numbers are increasing, but could you provide us with information on the actual figures that you have?

1071. Mr Meharg: There is a bird survey, which is carried out every year and has been for the past 15 years or more. It provides year-on-year changes in populations of the more common birds. Therefore, we can look at that and give you the data.

1072. The Chairperson: I take it that the Committee will support the Department on adding the whinchat, lapwing and redshank to the schedule?

1073. Mr Weir: I was only suggesting that for the issues where the Department is saying that it does not feel that there is a need for certain measures.

1074. The Chairperson: We would like to see the evidence for that.

1075. Mr Weir: I do not doubt the word of the Department, but it would be useful to satisfy ourselves on the matter.

1076. The Chairperson: Did you mention the golden plover?

1077. Mr K Bradley: No. Again, the same issues arise in respect of the curlew, only we have less concern about its conservation status at this point in time. It is a quarry species, and we would prefer to keep it as a quarry species, but we will certainly flag it up as one of the priority species to look at in time for the next five-year review.



1078. The Chairperson: The thing is that, five years from now, the golden plover might meet a similar fate to that of the curlew.

1079. Mr Ford: There is a logic deficit. It seems that, although the golden plover will retain its quarry species, its status will be reviewed in five years' time because there is concern about it.

1080. The Chairperson: That is not sufficient. I would ask that that be reconsidered.

1081. Mr Ford: If there is a concern about that species, surely it should be included in schedule 1 for the next five years, after which it should be reviewed. It should not be the other way round.

1082. Mr K Bradley: The Department will consider that.

1083. The Chairperson: OK. Thank you. The evidence about the other species will leave us better informed and able to support, or not, as the case may be, the Department's view. Is that fair enough?

1084. Mr C Savage: Yes. The main comments in relation to schedule 2 were to do with the curlew, which we have touched on. There was support for adding the ruddy duck to the schedule. Some comments were made by stakeholders about the need for some research into the impact of shooting on the status of all quarry birds in time for the next five-year review. It might be difficult and quite costly to carry out a Northern Ireland review. We feel that such a review is best done at a UK or European level. There is an obligation on all member states to abide by the European wild birds directive and monitor the sustainable populations of huntable species. That is something that the UK and Northern Ireland have been working on in the background for some years now. An effort to use game-bag statistics and other similar data collected by various sporting bodies has been one way of monitoring the status of huntable species. There are obligations on us in that area, and work is ongoing between DEFRA and us on that.

1085. The Chairperson: During the Committee's visit to Brussels last autumn, we discovered that the Department of the Environment was not involved in the early stages of policy formation, but had a role in policy implementation. Have you had any involvement in the implementation of any protection directives?

1086. Mr K Bradley: No. We take our lead from DEFRA.

1087. Mr Meharg: When DEFRA is involved in any such policy changes, we feed into the work of the Joint Nature Conservation Committee. It takes views from all the agencies in England, Scotland, Wales and Northern Ireland, and gives its advice to DEFRA. We are involved indirectly, but not directly. That is because it is the UK that is a member of the European Union.

1088. The Chairperson: I understand that, but it is just that there were general concerns. You were quick off the mark there, Mike, to clarify that point. You knew where I was going with it.

1089. Mr C Savage: Schedule 4 to the Wildlife (Northern Ireland) Order 1985 lists the species of birds that aviculture interests can possess. We propose to add a number of species to that list. Some stakeholders are concerned that we should not do that unless appropriate research is undertaken and a proper case is made before any other species are added. Our reasons for doing so are similar to the reasons that we gave in relation to falconry during our previous evidence session. The system in Northern Ireland differs from that in the rest of the UK; anyone in the UK can possess a captive-bred bird without a licence, but, in Northern Ireland, one has to

have a licence to keep such birds. We feel that there is a low risk in adding further species to the list, because those birds are subject to an inspection and monitoring regime. That should allay any fears that stakeholders may have in that regard.

1090. Mr Ford: What is the point in adding anything at all to the list? Is there any evidence that there are people who want to show captive-bred birds?

1091. Mr Meharg: There are well over 100 licensed keepers of such birds who actively show them, particularly in the mid-Ulster area and throughout Northern Ireland. One third of all licence holders are monitored on an annual basis to check that they are adhering to the licence conditions. It is a long-standing activity in the countryside.

1092. Mr Ford: The implication of adding all those species is that not only does that activity exist, but it is something that the Department is trying to encourage.

1093. Mr Meharg: We are looking at standardising licensing across the UK.

1094. Mr Ford: I am sorry. We are a devolved Assembly; that is a completely non-convincing argument.

1095. Mr Meharg: The stakeholders who raised that issue did so on the basis that they kept different numbers of birds on show in Northern Ireland. When they went to show their birds at other —

1096. Mr Ford: Sorry to interrupt; that is their case. What is the Department's case? Is it solely co-ordination across the UK?

1097. Mr C Savage: No. The Department is quite happy to meet the requests of aviculture interests as long as the keeping of the birds does not endanger the wild bird population in any way. That is in comparison with the UK, where the keeping of captive-bred birds is not regulated in any form. Having our system, which allows the interest to show certain birds, keeps their activity going, but it is under the light touch of the our regulation.

1098. Ultimately, our concern is the concentration of wild birds. If there were any threat whatsoever to the wild bird population, we would be taking a much stronger hand.

1099. Some stakeholders wanted three particular species of skate added to the schedule: the white skate, the black skate and the long-nosed skate. We are adding the common skate, but not those other three, because recent research for the NIEA found that there is no historic or contemporary evidence to show the presence of any of those three types of skate in Northern Ireland waters. Therefore, we do not see that there is any need for an addition to the schedule.

1100. One or two stakeholders mentioned bats, but they are fully protected under the conservation regulations as a European protected species.

1101. The issue of pollan was raised. Pollan is subject to commercial fisheries —

1102. The Chairperson: I know that it is, from my next-door neighbours.

1103. Mr C Savage: Those issues have to be fully explored before consideration can be given to —

1104. The Chairperson: I imagine Toome Eel Fishery would want to come and talk about that.

1105. Mr C Savage: I would say so.

1106. Lamprey was also mentioned. Three species were referred to, but we assume that we are talking about the river lamprey.

1107. Mr Meharg: Yes; we have produced a map showing the distribution of lamprey across Northern Ireland. We are content that there are three species: the sea lamprey, which comes into our estuaries; the river lamprey, which is found in many of our rivers; and another lamprey, which has become isolated in Lough Neagh and is treating it as a sea and lives in that area. All of those lampreys appear to be more common than had been suspected. Having worked with fisheries interests and others, who are now under the European water framework directive and having to record fish other than salmonids, they are showing that lamprey are much more common than we thought previously. As the survey is only into its second year, we feel that the population should be looked at again in the fifth year of the five-year review.

1108. The Chairperson: There is a commitment for a five-year review?

1109. Mr C Savage: Yes, it is in the legislation.

1110. The Chairperson: OK.

1111. Mr C Savage: Some stakeholders were wondering why the angel shark would only be protected between nought and six miles of Northern Ireland's coast. That is because of the complications of the European common fisheries policy whereby the common skate is a commercially taken species, and foreign fishermen have the rights to fish within six miles of Northern Ireland waters. Legally, it cannot be given protection under the Wildlife Order beyond the six-mile limit.

1112. The Chairperson: Can that issue be shared with European policy makers and your contacts in DEFRA?

1113. Mr C Savage: DEFRA faces the same issue. It has given it protection, but only out to six miles. I will alert the Committee to an omission in the Bill: the same requirement or qualification will have to be given to protect the common skate. It is not mentioned in the Bill, but that correction will be made.

1114. There were few comments with regard to schedule 8 to the Wildlife Order, other than adding the bluebell, which we are doing.

1115. The Chairperson: Yes, we agreed that it was important to add the native bluebell. Will it be given the same protection as snowdrops and primroses?

1116. Mr C Savage: It must be protected against sale, as with the primrose, and it will also be protected from being dug up.

1117. The Chairperson: I was thinking of 'All Kinds of Everything' and bursting into song.

1118. Mr Boylan: I was afraid that you were going to burst into song.

1119. Mr C Savage: Although stakeholders have not highlighted particular species, our main concern about schedule 9 is whether its structure has taken into account the structure of article 15, which we touched upon last Thursday. The purpose of schedule 9 and the additions is to identify the highest risk species. In our consultation, we had a list that was at least double or

treble the size of the one that is proposed. We decided that many of the listed species have become so naturalised in Northern Ireland that there would be little value in placing them in the schedule.

1120. I mentioned the sycamore last Thursday. That is widespread and is still an invasive species, but the way do deal with that is to make people aware that those species are out there. If they have opportunities to destroy them or take them away, they can do so by all means, but that should be done on a voluntary basis. In respect of adding species to schedule 9, it has to be the highest risk species; the ones that would cause us real problems if they became established.

1121. The Chairperson: Do you want to discuss schedule 2 amendments, after which we will try and get through the clauses? Are we planning to do that this afternoon?

1122. Mr K Bradley: Which one?

1123. The Chairperson: The schedule 2 amendments.

1124. Mr K Bradley: No.

1125. The Chairperson: That is OK. We will just do the clauses. We have only 20 minutes left.

1126. Mr C Savage: There was widespread support for clause 21. No concerns were raised.

1127. The Chairperson: We are on page 24, members.

1128. Mr C Savage: Clause 22 concerns penalties. The purpose of the clause is to increase penalties and give courts the power to impose custodial sentences for wildlife crime for the first time. Some stakeholders commented that penalties should act as a sufficient deterrent. We believe that the new penalties will do so, particularly the custodial sentence powers. There were also general comments about the need to educate the judiciary and provide adequate resources. Obviously, resources fall outside of the remit of the legislation. It is down to the police to try to enforce the legislation.

1129. The Department always seeks to raise the profile of wildlife crime in any discussions that it has with the police. The Partnership for Action Against Wildlife Crime is a body that represents various bodies in Northern Ireland. It is a liaison facility. The police are represented on that body, so we continue to try to raise the profile of wildlife crime.

1130. The Chairperson: The written submission that we received today states that the PSNI fully supports clauses 21 and 22.

1131. Mr C Savage: Clause 23 is about application to the Crown. No concerns were raised about that clause. Clause 24 is a proposal to place a new statutory duty on the Department to review the schedules every five years. The main concern was that some stakeholders felt that five years is too short a time. Some suggested that it should be every 10 years. The Department believes that five years is appropriate because it will allow the conservation status of the species to be considered, and it will be a mechanism to provide alerts that closer monitoring may be needed. That does not necessarily mean that changes have to be made every five years; it is simply a mechanism to alert us to what is going on.

1132. The Chairperson: The Committee is happy enough to accept that.

1133. Mr Ford: Some of the environmental groups raised the point about the possibility of emergency amendments to the schedules. Has the Department considered whether there is any way in which that could be done easily?

1134. Mr C Savage: The Wildlife (Northern Ireland) Order 1985 already contains the power to make changes to the schedules by subordinate legislation. That mechanism has always been there.

1135. Mr Ford: Thank you.

1136. Mr C Savage: Clause 25 gives effect to the amendments in the schedules, about which we have talked. Clause 26 concerns the close season for deer. The Bill proposes to reduce the close season by one month to facilitate effective deer management.

1137. The season runs from 1 March to 31 October, and the Bill proposes to bring the end of the season forward to 30 September. Last Thursday, I said that the Department organised a meeting with stakeholders. Although there was broad agreement that an extension to the close season was needed, the consensus from the meeting was that the closing date of the close season should be changed. The consensus was in favour of delaying the start of the close season by one month until 1 April. One or two stakeholders suggested a half-and-half solution of having the close season run from mid-October to mid-March. We have listened to the views of stakeholders, and we favour the consensus that they reached. We propose an amendment on that basis.

1138. Mr Beggs: I can recall only one piece of evidence that you received recently that expressed concern at that move. Who else has commented on it?

1139. Mr C Savage: The representative from the British Deer Society gave that view last Thursday. A number of estates, including barons' courts, were represented at the stakeholder meetings. They were in favour of delaying the start of the season until 1 April. One estate in County Fermanagh said that the dates for the season depended on the geographical location and that there were issues in lowland areas. Across Northern Ireland in general, it was felt that delaying the start of the season until 1 April was the preferred option.

1140. The Chairperson: Members seem to be in broad agreement with that.

1141. Mr C Savage: I shall now deal with clauses 31 to 36. Clause 31 concerns the abolition of game licences in Northern Ireland. Although the Department is responsible for the game laws, the game licensing system is administered by the Department for Social Development under a different piece of legislation. DSD is in total agreement with the clause. The systems, which have been in place for a long time, are considered archaic.

1142. The main concern arising from the proposal is about the sustainable hunting obligation under the wild birds directive. Concern has been raised that, if game licences are to be abolished, some kind of mechanism should be in place for monitoring the numbers being taken. The obligation in the wild birds directive applies not only to game birds but to quarry birds and wildfowl, which are not caught up in game licences anyway. The old game licences did not place any restrictions on the numbers of birds taken and it did not require any monitoring or reporting of birds taken. We believe that the system is archaic and no longer needed in Northern Ireland.

1143. The Chairperson: If members do not wish to give any views on that, we will move on to clause 32.

1144. Mr C Savage: Clause 32 relates to the removal of the current of when during the year game can be sold. Currently, it can be sold only during the open season. The clause will remove that restriction. The game is becoming known as quite a healthy product, and we do not see any problems with it becoming more widely available, as long as it has been taken legally with the restriction on it.

1145. The Chairperson: During the appropriate season.

1146. Mr C Savage: Yes. One concern was raised that there should be some kind of traceability system for deer to prevent poaching. There are various traceability systems under food hygiene regulations, and DARD is keeping an eye on deer farming because it is an area that has not been subject to regulation in the past. Any concerns or issues arising from the regulation of deer farming should fall within DARD's remit.

1147. The Chairperson: Are members broadly in support of those clauses?

Members indicated assent.

1148. The Chairperson: We have around 10 minutes left. Do you want to talk about schedules 2 and 3?

1149. Mr C Savage: I have covered schedules 2 and 3.

1150. The Committee Clerk: The Chairperson means the schedules to this Bill, as opposed to the Wildlife and Natural Environment Bill.

1151. The Chairperson: It is referred to in your paper.

1152. Mr C Savage: Schedule 2 contains the required amendments to the various pieces of legislation. The abolition of the game licence assistance, for instance, will require changes to the Game Preservation Act and the Miscellaneous Transferred Excise Duties Act. The schedule is basically technical changes and repeals and mechanisms falling out of the proposals in the Bill.

1153. The Chairperson: OK, we will come back to that.

1154. Mr Ford: One point that arose at various times when we considered the current temporary protection Orders for hares was the 1928 Act, which, even as amended, includes powers to ban the taking and killing of, but not possession of, game in the close season. Surely, this would be the opportunity to amend that aspect of the 1928 Act?

1155. Mr C Savage: That is something that we would need to consider.

1156. Mr Ford: People could be found in possession of, for example, a hare, which was covered by a protection Order. However, by claiming that it was taken in the Republic rather than Northern Ireland, they can potentially escape prosecution. It would seem that the possession of a protected animal, as opposed to merely the proven taking or killing, is what is required to ensure that, after an animal is dead, the excuse that it is from Donegal or Monaghan does not apply.

1157. The Chairperson: Or, it wasn't me, gov.

1158. Mr C Savage: That is something that we could certainly consider.

1159. Mr Ford: If one has a tricolour or a Union flag —

1160. Mr Weir: Are there circumstances in which someone could be in lawful possession of such an animal, and that we are not inadvertently walking someone into the fence?

1161. Mr Ford: At present, one could be legally in possession of an animal that was taken elsewhere, but the strong likelihood is that it was taken in Northern Ireland.

1162. Mr Weir: I am not saying that. Could there be circumstances in which someone could be in possession of such an animal, but for an innocent or legitimate reason, for example, a vet?

1163. Mr Meharg: The only situation I can think of is where there was an injured animal. Mrs Nevins would get injured hares from time to time, which she would bring back and release. However, a clause in the Wildlife Order allows for that.

1164. Mr Weir: I am just trying to check from the technical point of view.

1165. The Chairperson: If you are to consider Mr Ford's comments anyway, you will be coming back to us, and we will have a fuller discussion then.

1166. Mr C Savage: Is Mr Ford referring to the Game Preservation (Special Protection for Irish Hares) Order (Northern Ireland) 2003?

1167. Mr Ford: No. That situation arose under that Order, because its language does not ban the possession of a dead hare.

1168. The Chairperson: Are you in a position to comment on the "other issues" element of the clause-by-clause summary of responses?

1169. Mr C Savage: No. We have not had time to consider those.

1170. The Chairperson: That is OK. That concludes the business for the meeting. The Committee will be moving to formal clause-by-clause consideration on Thursday. Thank you very much indeed.

## **18 March 2010**

Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Roy Beggs  
Mr Jonathan Bell  
Mr John Dallat  
Mr David Ford  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithí McKay  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Mr Ken Bradley Mr Paul Byrne Mr Mike Meharg Mr Chris Savage	Department of the Environment
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1171. The Chairperson (Mrs D Kelly): The PSNI's submission about the Bill has been provided in members' packs. Are members content to include that submission in the Committee's final report?

Members indicated assent.

1172. The Chairperson: Also included in the packs is a research paper on snare technology and snaring guidelines, as was requested at the meeting on 11 March. Members have also been provided with a copy of the clause-by-clause analysis table. Paul Byrne, Ken Bradley and Chris Savage from the Department will join us to take us through clauses 27 to 30 and will answer any queries that members may have.

1173. Mr Ken Bradley (Department of the Environment): Thank you very much for inviting us to the Committee this morning. Chris will start our session and we will perhaps ask Paul for clarification on some issues, such as areas of special scientific interest (ASSIs).

1174. Mr Chris Savage (Department of the Environment): Good morning. I apologise for Mike Meharg's absence. He has been delayed.

1175. Clauses 27 to 30 propose amendments to the Environment (Northern Ireland) Order 2002 and are concerned with the declaration and protection management of ASSIs. I will try to place that in context for the Committee. We do not plan to undertake a major review of the Environment (Northern Ireland) Order 2002. The proposed amendments merely further enhance the existing framework. The Wildlife and Natural Environment Bill provides us with a legislative opportunity to make those amendments, which are largely an attempt to maintain parity with the recent changes that were made to the equivalent legislation in England and Wales.

1176. The stakeholders raised specific concerns about certain clauses and some other more general points. I will address both as I go through each clause.

1177. Clause 27 seeks to create two new offences. The first is about public bodies meeting their obligation to inform the Department of areas in which they are giving authorisation or consent to operations that are carried out by third parties. At the moment, if public bodies fail to meet that obligation, there is no sanction upon them. Therefore, we propose to close that loophole. The clause creates a second third-party offence that is designed to deter people from causing damage to ASSIs. That complements the existing offence in the Environment (Northern Ireland) Order 2002. In current cases in which damage is caused by a third party, the third party can be prosecuted only if they knew that what they were doing was causing damage to an ASSI. The new offence does not have the ignorance defence; hence, a lesser penalty applies.

1178. The Chairperson: If members have no comments on clause 27, we will move on to clause 28.

1179. Mr C Savage: Clause 28 concerns notification of change of ownership. The Department is seeking to place a requirement on owners and occupiers to notify the Department when there is a change of ownership or a change in the occupation of the land. The main concern that was raised by stakeholders was that the Department should seek to rely on the Land Registry system, rather than place the onus on owners or occupiers. Members should bear in mind that a



declaration of an ASSI is subject to a statutory charge. The statutory charges regime would inform owners or occupiers of where that has changed, and perhaps their legal representatives would inform them of a charge on the land. However, that is quite different from them notifying the Department about the change. It is important that the Department is kept abreast of changes in ownership or occupation of any land so that new owners or occupiers are fully aware of their obligations under the Environment (Northern Ireland) Order 2002.

1180. Mr Beggs: If it is the duty of Land Registry to know who legally owns a piece of land, why is there a need for the Department to be advised of that? Can arrangements not be made with Land Registry so that the register is automatically updated without an additional layer of bureaucracy?

1181. Mr Kinahan: It is two or three years behind.

1182. Mr Beggs: Is that right?

1183. Mr C Savage: The Land Registry records are not always completely up to date.

1184. Mr Beggs: Why not?

1185. Mr Kinahan: It is because it does not have enough resources.

1186. Mr Weir: Land law in Northern Ireland can be complex in nature. There has been an attempt over the past 10 years to start to modernise it and try to bring portfolios up to date, but in many ways, land law still reflects a sort of neo-feudal type situation. By way of some of the changes being made, for example, the ability of people to buy out ground rent and therefore take the full legal title, it is not as straight forward as it appears.

1187. Mr Beggs: So, there are still no explanations given, but a reason why something else should be changed.

1188. Mr Weir: I see the feudal landlord nodding in agreement with me. [Laughter.]

1189. The Chairperson: One of the best ways to try to find out who owns the mosses is to try and cut turf on them. You will soon find out who owns them then. [Laughter.] Are there any other comments?

1190. Mr Ford: At the risk of extending Peter's point further, will the officials confirm whether that would extend literally as far as an 11-month conacre let, by way of notification having to be given?

1191. Mr K Bradley: No, it would not be on letting; it is purely on sale.

1192. Mr Ford: The term "occupier" might be taken by some to include —

1193. The Chairperson: We might need clarification in the guidance.

1194. Mr Ford: My understanding is that someone involved in conacre was an occupier, although clearly not the owner. That is why I am slightly concerned. If the Department is prepared to confirm that that does not apply, that is fair enough, but we need to be sure.

1195. Mr Weir: The question is about whether it refers to occupiers and does not include conacre. I assume that "occupier" includes someone with a long-term lease. That would mean

that the ownership would not change but would have major alterations on that aspect. It may be worthwhile to add in a subclause for clarification or a definition of "occupier".

1196. Mr C Savage: That is something that we can look at.

1197. Mr Ford: If a person is involved in conacre and the landowner is clearly in control of the land other than the day-to-day operations, that should be all that is required by the Department.

1198. Mr Beggs: There has to be no doubt. If it does not apply to conacre, that ought to be clearly defined rather than be left to a whim or subsequent changes. I prefer a clear understanding. Perhaps it could be dealt with by a ministerial statement on the Bill or whatever is appropriate so that there is no doubt that an additional layer of bureaucracy will not be placed on tenants.

1199. Mr Kinahan: If there were regular meetings with the stakeholders, in other words, the owners of the land plus all those involved, the issues would be resolved, because in talking to them, it would become clear that land is changing hands. There should be six-monthly, yearly or quarterly meetings to keep the information up to date.

1200. Mr K Bradley: That is sensible. Unfortunately, the problem gets worse as more sites are designated and more land is involved. A substantial area of Northern Ireland is designated, and that problem will be exacerbated as more sites come on stream. Each year, 20 to 25 additional sites come on stream.

1201. Mr Kinahan: Each site should be subject to a meeting.

1202. The Chairperson: The overall point is that it is clearly not open to interpretation by an official.

1203. Mr C Savage: Clause 29 concerns giving the power to the Department to place notices and signs on land within an ASSI. Clearly, there may be occasions when it is necessary to do that to maybe warn people about certain operations that are not allowed on that land. For instance, on occasions, we have had to put warning signs up to deter peat-cutters. [Laughter.]

1204. Mr Weir: Does anyone have a guilty past that they want to confess to?

1205. Mr C Savage: The main concern that was expressed by stakeholders was that there could be biosecurity issues, and concerns were also raised about the police powers. The Department has standard operating procedures to mitigate any concerns about that.

1206. One stakeholder recommended that we add additional wording, similar to that used in Scotland, to include words such as "take such other action as considered appropriate". I do not believe that that is necessary. We are quite happy with the existing clause as it provides the power that we require and is something of a catch-all.

1207. Clause 30 deals with the serving of notices and declarations. We want to change the process to ensure that there are no loopholes so that the legal effect of such notices will not be compromised. The main concern of stakeholders was that the Department should continue to be obligated to inform all landowners and occupiers, and that it should take all necessary steps to do so, for instance, by issuing advertisements in the press, sending out notices by registered first-class post and even putting signs up. We do not want any possible legal loophole that could compromise the declaration of a site or the effect of certain management notices.

1208. The Chairperson: If members have no comments or questions, we will move on.

1209. Mr C Savage: A number of general issues were raised about the proposal. Some stakeholders believe that certain aspects that are not included in the Bill should be. There was some concern that the initial policy proposals to introduce stop notices and reinstatement notices have not been included in the Bill. During the process of drafting the Bill, we became aware of developments in GB, where the Regulatory Enforcement and Sanctions Act 2008 has been introduced and there was a wide-ranging review of penalties and sanctions for environmental regimes.

1210. The Department is proposing to prepare similar proposals for Northern Ireland. There will be a wide-ranging review with a view to introducing a wide-ranging and holistic regime of penalties and sanctions, which will apply to all major pieces of environmental legislation. We feel that it is important to await those developments, because they will introduce a more appropriate sanction regime and achieve a better balance for ASSIs between persuasion and sanction. We feel that, on balance, we should not pursue the options at this point, but should await that broad review. We do not believe that there would be a significant risk in the interim to the management and protection of our sites.

1211. Mr Ford: I can see why the Department might feel that that is a tidy way of doing things. Can you give us any predictions of the likely timescale to complete that process? Contrary to what you said, is there not the potential for danger if we leave the legislation on ASSIs lacking because of something that might take five or 10 years to do?

1212. Mr Paul Byrne (Department of the Environment): [Inaudible.]

1213. Mr Ford: I can repeat only that it may be two to three years, and smile and hope.

1214. The Chairperson: A cynic in the making.

1215. Mr Ford: Surely not.

1216. Mr Bell: Not "in the making" surely.

1217. Mr C Savage: One or two stakeholders felt that the overall duty on the Department to designate sites should include specifying the different reasons for doing that; for instance, sites should be representative of diversity in geographic arrangement of natural features. We are aware that Scotland has a similar legislative provision. However, the ASSI guidelines to which the Department operates make several references to the need for ASSI assessments and selections to take into consideration the variety of scales; for instance, to enable the scientific importance of each site to be seen in its regional, national and international context.

1218. Those principles underpin the declarations of ASSIs and have helped to underpin them since 1985. There is no need for it to be enshrined in legislation.

1219. The Chairperson: A witness and representatives from the Northern Ireland Biodiversity Group commented about sites of local nature conservation importance (SLNCI) and about legislative protection for such sites. What is the Department's view on that?

1220. Mr Mike Meharg (Department of the Environment): When the ASSI programme is carried out, the top sites are selected for statutory protection. However, we survey a lot of the sites and, although those that do not quite come up to the mark are important and useful, they have not reached the point of achieving statutory protection. A few years back, we decided to see

whether another level of protection, outside the ASSI programme, could be afforded them. Local councils are involved through their biodiversity action plans, and they focus in on the sites of local nature conservation importance. Therefore, some action is carried out for those sites. Through the planning process and the area plans, the SLNCIs are endorsed as sites where there is a presumption against certain developments or they should be taken into account on hazard maps and so forth. From the outside, those sites were not seen as important enough to merit statutory protection, but they are afforded a level of protection.

1221. The Chairperson: Is there any redress available if the site is used or dumped on?

1222. Mr Meharg: Many of those sites are in public or private ownership. If they are in public ownership, we hope that the council or whomever owns the site will take appropriate action. If the site is in private ownership, we talk to the landowners and explain to them, through local biodiversity officers, that those sites are important. However, there is no statutory protection for them, because they did not meet those higher criteria.

1223. The Chairperson: You are such an optimist, Mike.

1224. Mr Meharg: There have been issues about the number of sites that were put forward as ASSIs, so there are two sides to that. If the site does not make the mark, the situation is as I outlined.

1225. The Chairperson: Am I correct to say that the Department is not considering any legislative protection for such sites?

1226. Mr Meharg: That is correct.

1227. Mr C Savage: It is difficult to see what mechanism could be applied to protect those sites.

1228. Mr Beggs: If no legislative protection is being planned, are there incentives for owners to sensitively manage such sites? Are any environmental grants available?

1229. Mr Meharg: Within the grant-aid programme of the Northern Ireland Environment Agency selection criteria, a site of local nature conservation importance will receive a higher level of priority when grants are distributed.

1230. Mr Dallat: Presumably, these are not grants to drain them?

1231. Mr Meharg: No. These are grants to have the sites protected.

1232. Mr Dallat: I ask because that is what happened in the past.

1233. The Chairperson: It might be useful to liaise with other officials to consider applying more carrot, if there is no stick. Is that judgement to be made by the Department of Agriculture and Rural Development (DARD) or your Department?

1234. Mr Meharg: We make it.

1235. The Chairperson: It might be useful for the Department to take that on board.

1236. Do any other members wish to ask questions about the issues that have been outlined in the tabled paper, or is there anything that the officials want to highlight?

1237. Mr C Savage: There are a number of other issues, including protection for sites of local nature conservation importance and hedge-cutting. We highlighted that the hedge-cutting season is not defined in the Wildlife (Northern Ireland) Order 1985 but in DARD's cross-compliance scheme. The Department has no strong view about whether to reduce the hedge-cutting season; however, if it was felt that it should be reduced, we would like to consult the relevant stakeholders. In the past, the Royal Society for the Protection of Birds (RSPB) successfully lobbied for the season to be extended to the end of August, so, in similar circumstances, consultation would have to take place. In any event, such decisions lie outside the Bill.

1238. Mr Ford: Did we receive further papers on that subject from the Ulster Farmers' Union (UFU)?

1239. The Chairperson: No, but we received papers from the RSPB.

1240. Mr Ford: We received contradictory papers from the RSPB.

1241. The Chairperson: Yes.

1242. Mr Bell: Is the badger vaccination programme just another issue that is being considered?

1243. Mr Meharg: Badgers are protected, and disease control is an issue for DARD rather than us.

1244. Mr Bell: Is that programme included in the submission just for information?

1245. Mr Meharg: We were simply putting forward stakeholders' views, but that issue is for DARD.

1246. Mr Bell: Should we pass that information to DARD?

1247. The Committee Clerk: We can do. It is included here to establish whether it is relevant to the Bill, and the advice is that it is not.

1248. The Chairperson: We could forward the information to DARD.

1249. Mr Bell: Incidentally, how is a badger vaccinated? Do they have to present their cubs before they are six-months old?

1250. Mr Meharg: They are vaccinated using medicated bait.

1251. Mr Dallat: How is wildlife shot at night? Do people blow them off fences?

1252. Mr C Savage: The legislation does not allow shooting at night. Some of the shooting interests wanted to be allowed to shoot during moonlight hours at certain times of the month, when there is a full moon. Many sporting interests want to shoot wildfowl under a full moon. It occurs in GB, but we have never allowed it here. The Department gave the matter some consideration but, from a conservation point of view, it is not a big issue. The greatest concerns would probably come from residents in areas in which night-time shooting might take place so, on balance, we decided not to propose such a change.

1253. Mr Dallat: That sounds like a very wise decision. Even considering it worries me.

1254. Mr Kinahan: I want to return to clause 29. The British Association for Shooting and Conservation (BASC) said that the new powers could be misused to frustrate lawful activity. If someone has shooting rights to land in an ASSI, are they allowed to exercise those rights so long as they follow the guidelines?

1255. Mr K Bradley: It depends on the ASSI's designation. If shooting is not detrimental to the feature, there should be no problem.

1256. Mr Kinahan: It may just be closed. I know of many families in England who hold massive shooting rights in Northern Ireland but, even though they are of value, they are in limbo. I was just wondering how that affects ASSIs.

1257. Mr Byrne: The nature of the ASSI feature determines whether shooting or keeping livestock is appropriate. In most instances, the ASSI, whether notifiable or upwards, will allow shooting to continue. Only in certain circumstances, for example, for certain birds, will restrictions be put in place.

1258. Mr Beggs: I raised this point before, but I am seeking clarification. It is proposed to reduce the close season for deer by changing the close date from 31 October to 30 September, yet in all other regions of the British Isles, the close date is either the 31 October or the 20 October.

1259. Bearing in mind some of the latest evidence that we received from John Hetherington, who questioned the issue, why are we proposing to have a shorter closed season? I have not heard the argument as to why it has been brought forward to the end of September.

1260. Mr C Savage: In the previous discussion, we said that a reduction in the closed season is necessary to allow for proper deer management. The Bill proposes to bring forward the end date of the closed season by one month, to 30 September. However, following discussions with the key deer stakeholders, it was felt that we should make the reduction at the other end of the season. The consensus view was to delay the start of the closed season until 1 April. As I mentioned earlier, the Department intends to propose an amendment to that effect.

1261. The Chairperson: That will be when the deer are in calf.

1262. Mr Kinahan: Yes, just before the deer have their young.

1263. The Chairperson: That would meet some of Mr Hetherington's needs, but at the other end.

1264. Mr C Savage: I did not get the impression that there was any concern about reducing the closed season. The concern related to which end should be changed.

1265. The Chairperson: I think that you dealt with that on Tuesday. We will come back to that during the formal clause-by-clause scrutiny.

1266. Mr C Savage: A couple of other amendments will not yet have been brought to the attention of the Committee. This winter, for the first time, the Department made a severe weather order, under powers in the Wildlife (Northern Ireland) Order 1985, to protect wildfowl. The extreme weather conditions prompted that move. That experience indicated one or two slight legislative changes that we would like to bring forward. For instance, we were not able to put woodcock and snipe into the order, because they are protected under the game laws. There is no provision for severe weather orders under the game laws, so we would like to make a change to allow those two species to be protected by them.

1267. Article 29 of the Wildlife (Northern Ireland) Order 1985 states that we have to consult with district councils before making an order. The purpose of the severe weather order is to act quickly. There would not be time to consult with councils, so we are going to seek a slight amendment so that we will not have that requirement. A separate requirement in the Wildlife (Northern Ireland) Order 1985 requires us to liaise with the shooting interest, and that will remain. That is part of the protocol that the Department follows before making such an order.

1268. The Chairperson: Will those be included in existing clauses, or will you bring forward additional clauses?

1269. Mr C Savage: We will have to bring forward an additional clause.

1270. The Chairperson: We will have that in writing for next week.

1271. Mr Beggs: Is that an order or a question? [Laughter.]

1272. The Chairperson: He said yes. See what you can do.

1273. Mr C Savage: On Monday, we talked about schedules. Some stakeholders wanted Chinese water deer and roe deer to be added to schedule 9. The Department will propose to add them to that.

1274. The Chairperson: OK. That is useful.

1275. Mr Ford: On Monday, I raised the issue of the precise level of protection for the hare during the closed season, with regard to possession of hares. I understood that we would hear back from the Department. I am not as cynical as the Chairperson, so I presume that we will hear from the Department sometime soon.

1276. Mr C Savage: I can confirm that we have checked the Game Preservation (Amendment) Act (Northern Ireland) 2002 and the power within it to allow those special protection orders. It does not mention possession.

1277. Mr Ford: We knew that; what will we do about it?

1278. Mr C Savage: I think that we could commit to making an amendment.

1279. Mr Ford: Good gracious.

1280. Mr Kinahan: We are jumping about a bit. Did you say that the roe deer and the Chinese water deer will be protected?

1281. Mr C Savage: They will be placed on our list of invasive non-native species in schedule 9. We do not want people bringing them in and releasing them.

1282. Mr Kinahan: OK, so it is the opposite.

1283. Mr K Bradley: There are two additional legislative amendments to be considered in context with the Office of the Legislative Counsel. We will try our best to come back next week on those two.

1284. The Chairperson: That is fine; thank you.

1285. We now move to the formal clause-by-clause consideration of the Bill. The officials may remain and answer questions, if so requested, but this is the work of the Committee.

1286. The League Against Cruel Sports has provided the Committee with a tabled paper on the use of snares, which is additional information relating to clause 10. As that paper has not yet been published, members are asked to treat it in confidence. Members have also been provided with an updated version of the clause-by-clause analysis table, which is the tabled paper that we have just been considering, and a copy of the Bill. I intend to go through each of the 36 clauses and the three schedules one by one to seek the Committee's position on them. At this stage, members are giving only their views on the clauses as drafted. To date, no amendments have been made by the Department.

#### Clause 1 (Duty to conserve biodiversity)

1287. The Chairperson: The Department is considering amending clause 1(4) to replace "may" with "will" or "shall". Are members content with the clause, subject to that amendment? I understand that the Committee would like such an amendment to be made. If the Committee wishes to see clause 1 amended, it cannot accept the clause as currently drafted.

1288. In addition, the Department has said that although the definition of conserving includes the concepts of maintaining and protecting, it is considering amending the wording of clause 1(3) to include those terms. The guidance will specify that anyway, so the amendment will simply provide further clarity.

1289. The Committee Clerk: If members want those amendments to be made, they cannot accept the clause as drafted. We can come back to it next week, when we will hopefully have an amendment in writing from the Department. That might be the wisest course of action.

1290. Mr Ford: Can we formally accept the clause today, subject to the amendments to those two subsections?

1291. The Committee Clerk: Given that we do not have the Department's amendments in front of us, the Committee can only make a recommendation.

1292. Mr Ford: Given that the Department has not managed to write the amendments, could we write them?

1293. The Committee Clerk: We could write an amendment and bring it to the Department. However, it would then be a Committee amendment, not a departmental amendment.

1294. Mr Ford: We are back here next week, so we can leave it until then.

1295. The Chairperson: Are members content to defer discussion on the clause until next week?

1296. Mr Beggs: I have made the point previously about a freshwater lake in Wales that is under threat from the rising sea level. Surely there would be an inordinate public expense involved in protecting or maintaining something like that. I have not heard a satisfactory explanation of how the inclusion of those words would impact on the Department's resources or those of other private or local authorities. I wish to be aware of that before we consider including the words "maintaining" and "protecting".

1297. The Chairperson: Will the Department answer that question now?



1298. Mr C Savage: I think that the answer lies in clause 1(1). The duty is meant to be consistent with the exercise of every public body's functions. We do not anticipate that they will have to go to huge lengths to meet that duty. They must do only what is consistent with their functions and scope.

1299. Mr Kinahan: Is it, therefore, better to leave out the terms "maintaining" and "protecting", because "conserving" already covers those concepts?

1300. Mr C Savage: It is our view that conserving involves protecting and maintaining. We have said that we will be producing guidance that will explain those concepts. We do not have huge concerns about putting those terms in the legislation, subject to the draughtsman's agreement.

1301. Mr Ford: The logic was that if there is to be a certain explanation about what conserving includes, it is reasonable to include the terms "maintaining" and "protecting" as part of that explanation.

1302. Mr Kinahan: However, the other argument is that that would make the definition too strong, and would, therefore, add another unnecessary expense.

1303. Mr Ford: I thought that this Committee's function was to strengthen the protection of the environment.

1304. Mr Kinahan: Not always. [Laughter.]

1305. The Chairperson: That wording would meet some of the concerns of some of the environmental organisations.

1306. Mr Beggs: However, the resources are then available to the Department and other bodies.

1307. Mr C Savage: The purpose of clause 1(3) is not to provide a precise definition of "conserving". The word "includes" is key to that clause. It is saying that in conserving, restoring and enhancing are included. It serves as a reminder.

1308. The Chairperson: That is a useful addition. We will defer consideration of clause 1 until we see the Department's amendments.

1309. Clause 1 referred for further consideration.

Clause 2 (The biodiversity strategy)

1310. The Chairperson: Is the Committee content with clause 2? Am I right in thinking that the Department is considering amending clause 2(4) to say that the Department will report every three years?

1311. Mr Ford: The amendment should read: no less than every five years.

1312. Mr K Bradley: That is Mr Ford's amendment, which will be put forward.

1313. Mr Ford: If I have agreed with the Department, you have no mission.

1314. Clause 2 referred for further consideration.

Clause 3 (Biodiversity lists)

1315. The Chairperson: It was requested that clause 3(3) be expanded to include "public bodies". Does the Committee want to defer consideration of clause 3 until we see the Department's amendments?

1316. Mr Boylan: Can we not agree the clause, subject to amendment?

1317. Mr Kinahan: I am sure than we can.

1318. The Chairperson: I would have thought that the insertion of "public bodies" would have been fairly straightforward. Will the Department include that?

1319. Mr K Bradley: The discussion arose because the biodiversity duty applies across the board to non-departmental public bodies and other public bodies, and not just to the DOE. Therefore, we would be content, subject to Office of the Legislative Counsel agreement, to include "public bodies".

1320. The Chairperson: OK, members, the Department is quite clear that the clause includes other public bodies.

1321. Question, That the Committee is content with the clause, put and agreed to.

1322. Clause 3 agreed to.

Clause 4 (Protection of nests of certain birds)

1323. The Chairperson: There will be further amendments to clause 4 to include other species. We will defer consideration until we see the amendment next week.

1324. Clause 4 referred for further consideration.

Clause 5 (Offences: recklessness)

1325. The Chairperson: The Department has provided the Committee with a definition of recklessness. If members are content with that definition, I will put the Question.

1326. Question, That the Committee is content with the clause, put and agreed to.

1327. Clause 5 agreed to.

1328. Clauses 6 to 8 agreed to.

1329. Clause 9 (Protection of basking sharks from disturbance)

1330. The Chairperson: The Department is considering amending clause 9(4)(a) to include both seal species.

1331. Clause 9 referred for further consideration.

Clause 10 (Snares)

1332. The Chairperson: We now move to clause 10, on snares — I knew that there was a trap waiting for me. [Laughter.]

1333. Would members consider suggesting amendments proposing an incremental process of licensing and increasing the inspection time from every 24 hours to every 12 hours?

1334. Mr Kinahan: Is that practical?

1335. The Chairperson: I do not know.

1336. Mr Beggs: If snares continue to be an option, they should be regulated and licensed.

1337. Mr Boylan: If we are going to go down that road, we will support regulating and licensing, but my party supports a total ban on snares.

1338. The Chairperson: Sinn Féin is opposed to the use of snares.

1339. Mr McKay: There is research before us today that we have not considered or read over. The decision should be deferred until we consider the matters arising.

1340. Mr Ford: I concur. What has been presented today leans the balance towards a total ban. Therefore, at the very minimum, there should be a strict licensing regime.

1341. The Chairperson: Next week, there will be a discussion on whether we should support an outright ban or a regulated licensing scheme as a compromise. I would appreciate it if, where relevant, members give the Committee Clerk an indication of their party's stance. She could then bring us wording for amendments for a complete ban and a regulated licensing scheme, and Committee members can decide which they support next week.

1342. Mr Dallat: I am not up to date on this matter. I have my own feelings about snares, but, to be honest, I have not asked the party about its views. Is there still a whole range of traps, such as booby traps and bear traps, lurking about?

1343. The Committee Clerk: There are already some constraints on snares in the Wildlife (Northern Ireland) Order 1985, but the recommendation is that those are taken further. We have had quite a lot of information from stakeholders suggesting that it should go further still or, indeed, that there should be a complete ban. The Committee has been provided with further research and information from one particular stakeholder today, and that might help to inform the Committee's decision.

1344. The Chairperson: Members can read that information and take account of it next week.

1345. Mr Boylan: We requested more information, which we now have, and I think that we need some time to look over that.

1346. Clause 10 referred for further consideration.

1347. Clauses 11 to 13 agreed to.

Clause 14 (Licences under Article 18)

1348. Mr Kinahan: Have we left any room in the Bill to allow for a group licence, to fit how Talnotry Avian Care Trust works?

1349. Mr Meharg: We would prefer not to have group licences, because we have certain concerns about the long-term keeping of animals. Under the Wildlife (Northern Ireland) Order

1985 there is no licence requirement for anyone who wishes to take in an injured animal and release it into the wild when it recovers. That is a perfectly legal activity.

1350. Mr Kinahan: Then we shift to zoo legislation.

1351. Mr Meharg: The situation shifts towards zoo licensing if animals are being kept with a view to forming a collection for a charity or a business.

1352. Question, That the Committee is content with the clause, put and agreed to.

1353. Clause 14 agreed to.

Clause 15 (Discharging firearms, etc. from vehicle)

1354. The Chairperson: We now move on to clause 15, on discharging firearms, etc from a vehicle.

1355. Mr Beggs: What is the party's view on that clause? [Laughter.]

1356. The Chairperson: Yes, what is Sinn Féin's view?

1357. Mr Boylan: Do I have to declare an interest? [Laughter.]

1358. We should defer to Mr Kinahan; he knows a wee bit more about this area.

1359. The Chairperson: On the basis of the evidence from the deer farmers, who have asked that clause 15 be retained, are members content with the clause as drafted?

1360. Mr Ford: I thought that a considerable number of concerns were expressed when we discussed this last.

1361. The Chairperson: Yes, there were.

1362. Mr Kinahan: I thought that we were going to drop it.

1363. Mr Beggs: The evidence that was presented gave me the impression that the insertion of the words:

"when the vehicle is moving or when its engine is running"

1364. allowed a person to discharge a weapon while the vehicle is stationary. The professional person who gave evidence about culling species indicated that he did not have a difficulty with the total ban. The banning of shooting from vehicles would make it more difficult for poachers to operate, because they could not use the defence that their vehicle was stopped when they shot. If that were the case, there should never be firing residue in a vehicle.

1365. The Chairperson: I should point out to members that the PSNI supported the inclusion of the clause.

1366. Mr Beggs: Is the PSNI aware of the other factors? Can we pass on that information to the PSNI?

1367. The Chairperson: We could defer our decision on clause 15.

1368. Mr Boylan: We should defer our decision. We heard from Mr Hetherington; we know that poaching is going on, and he is concerned about that. There seems to be some indecision among members.

1369. Mr Dallat: Are we talking about shooting the deer or shooting the poachers?

1370. The Chairperson: Let us hope that it is the deer.

1371. Clause 15 referred for further consideration.

Clause 16 (Licences relating to deer)

1372. The Chairperson: Does the Department intend to table a further amendment to clause 16 in relation to roe deer and Chinese water deer?

1373. Mr C Savage: It is in connection with schedule 9.

1374. The Chairperson: It will not require any change to clause 16.

1375. Mr C Savage: No, not to clause 16.

1376. Mr Kinahan: I have one concern. DARD said that it is prepared to consider taking responsibility for deer licensing. My experience with DARD, through other matters that I am involved in, is that it is a very slow organisation. I am not sure whether the responsibility for deer licensing should be placed with DARD.

1377. The Chairperson: That is outside the scope of this legislation. We will seek further clarification on that matter.

1378. Question, That the Committee is content with the clause, put and agreed to.

1379. Clause 16 agreed to.

1380. Clauses 17 to 23 agreed to.

Clause 24 (Review of Schedules to the Wildlife Order)

1381. The Chairperson: The Committee supported proposals for five-yearly reviews. As the Department is prepared to do that, no amendment is necessary.

1382. Mr K Bradley: That is correct.

1383. Mr Ford: The Committee supports the clause but not the schedules to which it relates.

1384. Question, That the Committee is content with the clause, put and agreed to.

1385. Clause 24 agreed to.

Clause 25 (Amendments to Schedules 1 to 9 to the Wildlife Order)

1386. The Chairperson: Are members content with clause 25 as drafted?

1387. Mr Ford: Can we be content with clause 25 if we are not content with schedule 1? Can we be content with a clause if we do not yet know the schedule to which it relates? Clause 24 concerns the principle behind the schedule but clause 25 concerns the schedule specifically.

1388. The Chairperson: Perhaps we can defer that and seek clarification?

1389. Mr C Savage: Mr Ford is correct. Members would have to be content with the content of the schedule before agreeing to the clause.

1390. The Chairperson: Thank you, Mr Ford. You must have been getting training.

1391. Clause 25 referred for further consideration.

1392. Clause 26 referred for further consideration.

1393. Clause 27 agreed to.

Clause 28 (Notification of change of owner or occupier)

1394. The Chairperson: Are members content with clause 28 as drafted?

1395. Mr Ford: There is still a need for the clarification of "occupier".

1396. Clause 28 referred for further consideration.

1397. Clauses 29 to 31 agreed to.

Clause 32 (Sale of game)

1398. The Chairperson: Are members content with clause 32?

1399. Mr Ford: Clause 32 is, presumably, where the Department may introduce the amendment about possession of hares.

1400. The Chairperson: Is the Department considering that?

1401. Mr C Savage: That would possibly require a separate clause, because it is not connected to the sale of game. However, it will be in the Bill.

1402. The Chairperson: OK. Therefore, we can anticipate a further clause.

1403. Question, That the Committee is content with the clause, put and agreed to.

1404. Clause 32 agreed to.

1405. Clauses 33 to 36 agreed to.

Schedule 1 (Amendments to schedules to the Wildlife Order)

1406. The Chairperson: We will move on to the schedules. I have been advised to go through, species by species, those that should be included. The golden plover is currently a quarry species. The Department is not minded to include the golden plover, but it is concerned about the numbers and will review that next time. Are members content with that approach?

1407. Mr Weir: Was the golden plover raised earlier in the week? Did departmental officials say that they were flexible on the golden plover, as they are on the curlew?

1408. Mr C Savage: The curlew —

1409. Mr Weir: I remember the curlew. You said that one species fell into a similar category as the curlew.

1410. The Chairperson: It was the whinchat, lapwing and redshank.

1411. Mr Weir: They were keen to shift in three species. They said that they were happy enough to have the curlew shifted in and that they would not lose a great deal of sleep if it was; there was a marginal decision. I am trying to remember whether the golden plover fell into the same position.

1412. Mr C Savage: It is a quarry species, similar to the curlew, but we have proposed taking it off the quarry list. The Committee asked for some up-to-date information on the population data of certain species, which the Department is sending. The golden plover is included in that.

1413. The Chairperson: We cannot defer that to next week, but we could ask the Committee Clerk to prepare a proposed amendment to include the golden plover, which will depend on the information that we receive from the Department. We will have a proposed amendment drafted, and we will consider the Department's paper.

1414. The Department said that it will consider including an amendment to include the curlew. We will defer that matter to await that amendment. We will return to that issue next week.

1415. The bullfinch and reed bunting are widespread and the former may cause damage to orchards. The Department did is not minded to include those species. The whinchat, lapwing and redshank are rare, and the Department will consider an amendment to include them. The Committee wishes to see that amendment. The number of ravens has increased, and the Department is not minded to include that species.

1416. Some amendments are to come forward next week to schedule 2 to the Wildlife (Northern Ireland) Order 1985, so we will wait to see those amendments, one of which will be to remove the curlew. There is also a proposal to add the ruddy duck. The Department's view is that an assessment of the impact of shooting on the status of all quarry species is expensive and would be best done at UK or EU level.

1417. We need to consider removing the golden plover from that schedule as well. Again, the Committee Clerk will draft a proposed amendment and the Committee can decide next week whether to promote that amendment.

1418. Schedule 1 will also amend schedule 4 to the Wildlife (Northern Ireland) Order 1985. The Northern Ireland system differs from the rest of the UK. In Northern Ireland, one third of license holders are subject to annual monitoring and inspection.

1419. Mr Ford: A point was made by the Northern Ireland Biodiversity Group about excluding all insectivorous birds. How suitable does the Department consider that?

1420. Mr Meharg: The concern was about the availability of food, and we understand that the supplies of mealworm or insectivorous food is readily available.

1421. The Chairperson: Schedule 1 also proposes to amend schedule 5 to the Wildlife (Northern Ireland) Order 1985. That schedule relates to the Irish hare. According to the Department, the population has stabilised, and the decline was due to habitat loss. Furthermore, the species action plan is on target. The Department is minded to continue with the current approach, which provides year-on-year protection. Do members wish to see that remain or —

1422. Mr Ford: If that remains the Department's position, I request the Committee Clerk prepares an amendment to include *lepus timidus hibernicus* in that list.

1423. Mr I McCrea: How does that translate?

1424. Mr Ford: It means "the Irish hare".

1425. Mr Kinahan: So that allows us both ways.

1426. The Chairperson: Yes. The Committee may well support and endorse that proposed amendment so that the hare be added to the list of protected species. Let us see what will happen next week.

1427. According to the Department, there is no evidence of white, black or long-nosed skate in Northern Ireland waters. The common skate is known by different names, but only one Latin name. That is most fortuitous, I would have thought.

1428. Bats are already protected under EU legislation.

1429. Pollan is commercially fished in parts of Northern Ireland. The Department will need to explore that before adding to schedule 5.

1430. All three species of lamprey have been found to be more common than expected. The Department has no intention of including those in the schedule, but will review that after five years.

1431. Mr Ford: Is the Department satisfied that it does not need to do anything but review the situation after five years as opposed to adding lamprey to the protected list and review that after five years?

1432. Mr Meharg: Under the water framework directive, there has been a new level of survey of fish species throughout Northern Ireland over the past few years. Up until then, only salmonids were recorded. Since recording other species, it seems that lamprey are much more widely spread than was thought. We feel, therefore, that that monitoring can carry on for the five years, and that it is best to review it at that stage. We do not feel that there is a need to put lamprey into the schedule, not because the numbers were low, but because we feel that they were under-recorded. Once recording started, we found higher than expected numbers. That suggests that they were under-recorded rather than their numbers being low.



1433. Mr Ford: It is, presumably, also possible that numbers fluctuate from year to year, as was suggested may happen with the Irish hare. Therefore, it may be appropriate to consider protection and do the monitoring for five years.

1434. Mr Meharg: We do not feel that there is not a requirement for that.

1435. The Chairperson: OK, there will be a review after five years.

1436. The angel shark cannot be protected beyond six nautical miles because the EU common fisheries policy.

1437. Mr Weir: They can be protected within six nautical miles, but not beyond it.

1438. The Chairperson: Yes.

1439. Mr Weir: Do we put up signs or something? [Laughter.]

1440. The Chairperson: The Department is to provide numbers of species to support its position.

1441. The bluebell will be added to schedule 8 to the Wildlife (Northern Ireland) Order 1985.

1442. The purpose of amending schedule 9 is to identify highest risk species. The Department sees little gain in listing species that have become naturalised and widespread. That is where the Department was considering including deer, so an amendment is required.

1443. Mr Kinahan: Are there not two types of bluebell?

1444. Mr C Savage: There is the native bluebell and the Spanish bluebell. The Spanish bluebell is a non-native invasive species, which is causing some concern. Protection is being provided for the native bluebell.

1445. Mr Kinahan: There is one that we are trying to protect, and one that can be bought at garden centres.

1446. Mr K Bradley: The small Spanish bluebell can be bought at garden centres.

1447. Mr Beggs: Will that be dealt with as an invasive species?

1448. Mr K Bradley: No.

1449. Schedule 1 referred for further consideration.

#### Schedule 2 (Amendments)

1450. The Chairperson: The Committee suggested that special protection orders should include "possession" as an offence, as well as taking and killing. We have dealt with that. Are members happy with schedule 2?

1451. Mr Ford: Not if that is where the further amendment to the Game Preservation Act (Northern Ireland) 1928 will go.

1452. The Chairperson: Is that where it will go? Was that about the hare?

1453. Mr Ford: It is aimed at amending the Game Preservation Act (Northern Ireland) 1928, which is mentioned at the start of schedule 2.

1454. Mr C Savage: Yes, it is likely to be mentioned there.

1455. Schedule 2 referred for further consideration.

1456. Schedule 3 agreed to.

1457. Long title agreed to.

1458. The Chairperson: Thank you very much.

1459. Mr K Bradley: Thank you, Chairperson and members, for your time.

1460. The Chairperson: We hope to continue next Thursday.

1461. Mr Boylan: Before we go, I want to point out that the Irish hare will be an issue for next week's discussion and will be the subject of an amendment. A special protection order has been in place, year-in, year-out. We have been told that their numbers have stabilised, but we need to determine what the exact position is. The special protection order was made because the numbers of Irish hares had been low. If we agree the protection order, it will protect the species for five years. I would like to have as much information as possible before we make a decision on that issue either way.

1462. The Chairperson: Would a population graph that illustrates the measures that must be taken be of any help?

1463. Mr Meharg: We can provide a population graph. The 2010 survey is ongoing. I can try to find out how that information looks at the moment, but it would be unsubstantiated, because the survey is not yet complete. I will forward the 2010 data with a caveat.

1464. The Chairperson: That would be very helpful.

1465. Mr K Bradley: Special protection orders were introduced as a temporary measure to facilitate the species action plan for the Irish hare. The 2010 target is to increase the population from one hare to two hares per square kilometre. If the survey shows that the numbers are still stable, the Department will not propose any further special protection orders.

1466. The Chairperson: It would not propose any special protection orders at all? In that case, the Committee could consider the Department's proposal to remove it altogether, our proposed amendment to retain the special protection orders or a separate amendment.

1467. Mr C Savage: No. The decision is whether the protection order should go into schedule 5 to the Wildlife (Northern Ireland) Order 1985. The special protection order facility will always be there, but we feel that now is the time to make a decision. We hope that we will have no further need for special protection orders.

1468. Mr K Bradley: The special protection orders are only a temporary measure to allow a game species to recover. We took our position on the understanding that the Wildlife (Northern Ireland) Order 1985 would sort out the long-term protection needs for the Irish hare. As a game species, the Irish hare is protected during the closed season.

1469. The Chairperson: OK. You will come back to us next week with further information. Thank you very much.

## 25 March 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Deputy Chairperson)

Mr Roy Beggs

Mr Jonathan Bell

Mr John Dallat

Mr David Ford

Mr Danny Kinahan

Mr Daithí McKay

Mr Peter Weir

Witnesses:

Mr Ken Bradley	Department of the Environment
Mr Chris Savage	
Mr Mike Meharg	

1470. The Deputy Chairperson (Mr Boylan): Members have a copy of the Bill and have been provided with an updated version of the clause-by-clause analysis table. Members have also been provided with various additional pieces of information relating to the Bill. Some of those are contained in members' packs and some have been tabled today, and members can refer to them when discussing the relevant clause. Departmental officials are also here to answer any questions that the Committee might have.

1471. The Committee will go through clauses 1, 2, 4, 9, 10, 15, 25, 26 and 28 and schedules 1 and 2 to seek the Committee's position on each. Today will be the last opportunity for the Committee to discuss the clauses of the Bill unless it wishes to meet again during the Easter recess.

1472. Mr Weir: That is a fairly heavy hint.

1473. The Deputy Chairperson: The Committee must be serious on that point. Arrangements would have to be made if we were to meet during the Easter recess. We will try to move the process forward as positively as possible.

Clause 1 (Duty to conserve biodiversity)

1474. The Deputy Chairperson: Members agreed to defer a decision on clause 1 until they saw the proposed departmental amendments relating to "guidance" in clause 1(4) and "conserving" in clause 1(3), as requested by the Committee. Members have been provided with a copy of the Department's proposed amendments, the first three of which relate to clause 1. Does the Committee agree with clause 1 as amended by the Department?

1475. Mr Kinahan: I thought that "maintaining, protecting" was not going to be inserted after "fauna" in clause 1(3)(a) because it is dealt with by the use of the word "conserving" in clause 1(3).

1476. Mr Ken Bradley (Department of the Environment): The Department proposes to include the wording "maintaining, protecting" in clause 1(3)(a) to avoid any confusion over the word "conserving" in clause 1(3).

1477. Mr Ford: There was some discussion on that point. However, the majority of the Committee felt that the insertion of that wording would be helpful and the Department agreed. Let us register a new agreement.

1478. Mr Weir: Bank it.

1479. Mr Ford: Indeed, let us bank it quickly.

1480. Mr Beggs: Is the Department satisfied that that is something that it and others can deliver? I previously raised the issue of significant changes in other areas due to climate change and suggested that it might not be possible for some areas of biodiversity to be maintained because of the speed of global change. We want to do as much as possible to prevent the loss of habitat, but I do not want to create unrealistic costs to the public or private sectors to maintain something that is not maintainable.

1481. Mr K Bradley: The amendment is just intended to clarify the word "conserving". We felt that the word "conserving" meant maintaining or protecting. The Committee felt that additional wording should be included, so, to answer your question: yes, we are confident that "conserving" means maintaining and protecting.

1482. Mr Beggs: My question was whether you are confident that the public and private sectors can deliver that at an affordable cost?

1483. Mr Chris Savage (Department of the Environment): To return to the wording of clause 1, the duty relates to the functions of the public bodies, and whatever efforts are made have to be consistent with those core functions. We do not see it as being a case of those bodies facing severe sanctions if they fail to maintain something; it is about encouraging them to try to take reasonable steps towards maintaining biodiversity.

1484. Mr Beggs: On that basis, I am content.

1485. Question, That the Committee is content with the clause, subject to the Department's proposed amendments, put and agreed to.

1486. Clause 1 agreed to.

Clause 2 (The biodiversity strategy)

1487. The Deputy Chairperson: Members deferred a decision on the clause until they saw the proposed departmental amendment to limit the reporting period of the strategy. I refer members to the tabled copy of the Department's proposed amendment relating to clause 2.

1488. Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

1489. Clause 2 agreed to.

Clause 3 (Biodiversity lists)

1490. The Deputy Chairperson: I remind members that clause 3 was agreed at last week's meeting. However, I advise members that the Department has since taken on board the Committee and stakeholders' suggestion to expand the requirements in the clause beyond the Department to all public bodies. I refer members to the tabled copy of the Department's proposed amendments relating to clause 3.

1491. Question, That the Committee is content with the clause, subject to the Department's proposed amendments, put and agreed to.

1492. Clause 3 agreed to.

#### Clause 4 (Protection of nests of certain birds)

1493. The Deputy Chairperson: Members deferred a decision on clause 4 until they saw the proposed departmental amendment to include the nests of red kite, osprey, white-tailed eagle and peregrine. I refer members to the tabled copy of the Department's proposed amendment relating to clause 4. Members have been provided with additional information from the Royal Society for the Protection of Birds (RSPB) making the case for the barn owl to be added to the list. I also refer members to the tabled note of the meeting between the Chairperson and the Minister that indicates that the Minister would be prepared to include the barn owl if that were recommended by the Committee.

1494. Are members content with clause 4, subject to departmental amendments to add the white-tailed eagle, the osprey, peregrine and red kite, and, as recommended by the Committee, to include the barn owl?

1495. Mr Ford: If the Minister is willing to accept it, we should bank it.

1496. Mr Beggs: Was there an issue about the barn owl not being nest-specific?

1497. The Committee Clerk: There was. When we asked the Department, the information provided by the RSPB made reference to that. It suggests that although it has been willing to nest in alternative places in other parts of the UK, that has not happened in Northern Ireland.

1498. Mr Mike Meharg (Department of the Environment): The RSPB requested that we include the barn owl. It outlined the evidence, and the Department was not concerned one way or the other. We did not feel that it was necessary to hold back on the protection of the barn owl. The barn owl has shown that it can use alternative nesting sites throughout the world, but we are not so concerned as to keep it off the list. Therefore, we advised the Minister to accept the barn owl onto the schedule.

1499. Question, That the Committee is content with the clause, subject to the Department's proposed amendments, put and agreed to.

1500. Clause 4 agreed to.

#### Clause 9 (Protection of basking sharks from disturbance)

1501. The Deputy Chairperson: I remind members that they deferred a decision on clause 9 until they saw the proposed departmental amendment to add the two species of seal that are found in Northern Ireland. I refer members to the tabled copy of the Department's proposed amendments relating to clause 9.

1502. Mr Ford: On a technical point, the title of clause 9 refers to basking sharks only and will need to be amended to refer to seals.

1503. Mr K Bradley: That is correct.

1504. Mr Ford: However, that is a technical point; we are agreeing the principle.

1505. Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

1506. Clause 9 agreed to.

Clause 15 (Discharging firearms, etc. from vehicle)

1507. The Deputy Chairperson: I remind members that evidence provided by a witness indicated that the inclusion of clause 15 would not benefit deer keepers and may make poaching and wildlife crime easier, and members questioned the need for its inclusion. The Committee agreed to seek advice from the PSNI before making a decision, and I refer members to an e-mail from the PSNI in the tabled papers. We have a choice to make: we can accept the clause as drafted or ask that it be deleted altogether.

1508. Mr Kinahan: We should delete it.

1509. Mr Dallat: What exactly does clause 15 mean?

1510. Mr C Savage: At the moment, it is not lawful to shoot deer from any vehicle. The proposal is to loosen that restriction to allow the shooting of deer from a vehicle provided that it is stationary and its engine is turned off. Its purpose is to assist the management of deer populations through culling.

1511. Mr Dallat: I understand now. I am not very happy about that.

1512. Mr Beggs: If the intention behind clause 15 is to assist people who manage deer stocks on private land, it is strange that two sets of witnesses from such backgrounds have opposed the idea. I had thought that it was included to prevent poachers. I think that that line was used. However, it is clear that poachers cannot shoot from a road anyway, and I am concerned that the clause will grey the area and allow people to shoot from inside vehicles. The police will be under a greater burden to prove whether shooting happened on private land or on a public road. It would be easier to enforce a law whereby people are simply not allowed to shoot from inside vehicles.

1513. Mr C Savage: If the police find evidence that shooting has taken place in a vehicle, the simple test is to determine whether the person in the vehicle is an authorised person. If he is not, that is an illegal act.

1514. Mr Weir: The basic argument is that poachers' actions are illegal irrespective of whether they are carried out in a vehicle, outside a vehicle, in a moving vehicle or in a non-moving vehicle. I do not have particularly strong feelings on the matter. Is the argument that, essentially, the clause directly affects legitimate gamekeepers only and that it loosens the requirements slightly? In practical terms, it might not even make a great deal of difference one way or the other.

1515. Mr C Savage: The Department of Agriculture and Rural Development (DARD) is keen on that clause, but we have no strong feelings on it. We felt that it would be useful.

1516. Mr Beggs: DARD may be keen on the clause, but it is clear from the evidence presented to the Committee that the proposed changes, although well intentioned, will aid and abet wildlife crime and deer poaching. That was the view of the British Deer Society and Mr John Hetherington. On that basis, I propose that the clause is deleted.

1517. Mr Ford: I support Roy Beggs. If other members want to propose differently in the Chamber, they can do so, but the Committee has been given evidence that shows that the clause should be deleted.

1518. Question, That the Committee is content with the clause, put and negatived.

1519. Clause 15 disagreed to.

1520. Clause 26 (Reduction in close seasons for female deer)

1521. The Deputy Chairperson: The Committee deferred a decision on clause 26 until members saw the proposed departmental amendment to shorten the close season for female deer by delaying its start, rather than by shortening it in the autumn. I refer members to the tabled copy of the Department's proposed amendments relating to clause 26.

1522. Mr Kinahan: I declare an interest in that I employ John Hetherington.

1523. The Deputy Chairperson: Is the Committee agreed with clause 26 as amended by the Department?

1524. Mr Dallat: I am not terribly well up on shooting deer, but to shorten the close season means that more opportunities are created for shooting them. I do not believe in shooting deer, so I cannot agree to that clause. I do not want to cause a storm, but I do not want to be on record as being part of that.

1525. Mr C Savage: There was an interesting article on the BBC this morning about the United Kingdom deer population, which is estimated to be two million, and deer are starting to appear in urban areas. That is clearly a problem, and we do not want the deer population in Northern Ireland getting out of control. The Department believes that extending the season is an important controlling mechanism.

1526. The Deputy Chairperson: The Committee notes Mr Dallat's concern.

1527. Mr Ford: The Department gave the Committee significant evidence as to why the close season should be shortened. The Department's original proposal involved significant welfare concerns. The amendment appears to address those concerns, so the amended clause may be better than what was originally proposed, even from John Dallat's perspective.

1528. Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

1529. Clause 26 agreed to.

Clause 28 (Notification of change of owner or occupier)

1530. The Deputy Chairperson: The Committee decided to defer decision on clause 28 until it received clarification from the Department about land ownership. The Department has made clear that the clause does not apply to conacre.

1531. Mr Ford: Assuming that the Department's statement that "occupier" does not include conacre or anything less than an 11-month let is an accurate statement of law, the clause is satisfactory.

1532. Question, That the Committee is content with the clause, put and agreed to.

1533. Clause 28 agreed to.

Clause 10 (Snares)

1534. The Deputy Chairperson: The Department is not minded to amend clause 10, and the Committee agreed to defer it pending further discussion on two options: a complete ban on snares, or licensing their use, with no more than 12 hours allowed to elapse between checks.

1535. I inform members that draft Committee amendments have been provided for either option. There are also three research papers on snaring guidelines, new snare technology, and the use of snares in Europe. There is also a paper on snares from the League Against Cruel Sports (LACS), which was tabled last week. I remind members that they were asked to treat the paper from the League Against Cruel Sports as confidential until published.

1536. We must decide between a ban on snares or licensing arrangements for their use. The topic is now open for discussion.

1537. Mr Kinahan: We should go for the licensing of snares, but with the tightest possible restrictions. There will be rare occasions where a snare has to be an option for a farmer. Therefore, I propose that we go down that route. We need a wording for that. The Scottish system, which uses a tag and a registry, seems sensible.

1538. Mr McKay: We should go for an outright ban. All the evidence to us has shown that snares are a crude means of dealing with pests. Many domestic and other animals have suffered unnecessarily as a result of their use. Snares will not be easy to license. We are either for them or against them, and we should go for an outright ban.

1539. Mr Dallat: I have distant memories of, as a child, seeing the results of the use of snares and I tend to be against their use. In this day and age, with new technology, and so on, there must be something more humane to use than snares. Whether self-locking, unlocking or whatever, snares are still barbaric.

1540. Mr Beggs: I declare a possible interest, not that I have ever used snares or intend to use them. However, I remember, as a primary-school child, going out to feed the hens and finding that they had all been killed. This morning, I assisted with putting young lambs out into a field. We should also be conscious of the mayhem that can be caused by predators, and I want snares retained as a possible option for those who want to prevent such things happening. The Committee was told about the damage done to young trees by wild animals. The licensing of snares is my preference.

1541. Mr Ford: I also think of a memory from school days. I saw a badger, which had been caught in a snare, and which was brought into school and stuffed. In the course of the taxidermy, there had been no need to cut the underside of the body behind the front legs,



because that is how the snare had reacted to the badger. The badger is supposedly a protected species.

1542. At lambing time, there may be problems with foxes in a small number of areas, and I have more sympathy with that situation. However, such problems are rare, and some of the evidence given with respect to forestry amounts to a demand for snaring to continue permanently in a relatively indiscriminate way. I cannot accept that. It is much simpler to institute a complete ban. If there is real evidence that snaring vermin, as opposed to alternatives such as shooting, is necessary, we can re-examine the matter. However, the simplest statement that we can make is a total ban.

1543. Mr Bell: The arguments are complex. On an emotional level, one cannot but prefer a ban on snares. They cause pain to wildlife, and if the issue were as simple as that, instituting a complete ban would be a straightforward tick-box exercise.

1544. I have listened to people who use the countryside day and daily. I do not, but many people in Strangford do. I have spoken to people in the countryside who, in the main, have a love for animals. They have an overwhelming desire to protect the countryside, their livelihoods and wildlife. They are, in many ways, the guardians of the countryside. In my conversations with people in Strangford, no one denies that snares cause great pain, but without exception, they have told me that they want snares retained as an option. Those are people who genuinely care about the welfare of animals.

1545. I am hesitant about opting for a complete ban. The arguments both for and against a ban on snares must be weighed up. This morning, there has been a lot of fluffy talk about potential new technologies. I wish to hear about the proposed solutions to a ban on snares. We understand the problem, but what is the solution? If we banned snares tomorrow, what could be put in their place that is as effective and that has a proven track record of being as good, if not better? If a suitable replacement for snares is found after researching the alternatives, by all means, ban them outright. However, if that work remains to be done, it must be done before we consider an outright ban. It should not be a case of banning snares now and considering the matter later.

1546. From listening to evidence over the past number of weeks from people whose livelihood depends, day and daily, on the countryside, it was clear that snaring is an option for them. Therefore, until we see evidence that an alternative is as good if not better than snares, I think that a rigorous licensing system is possibly the best option available to us.

1547. Mr Kinahan: I concur entirely with Mr Bell's comments. I apologise for my "fluffy" talk earlier; that is a good term. It is difficult for farmers who live in rural areas that are near urban areas to use other options to deal with pests, such as lamping and shooting, which are often as dangerous and as nasty as snares. There is no nice way to deal with pests. I hate snares, but they must not be banned.

1548. On another fluffy point, last Sunday, I lost all my ducks and chickens because I forgot to shut the door. I have no way in which to deal with pests. I, therefore, believe that the snare option should be kept open but that their use should be licensed as tightly as possible.

1549. Mr McKay: I, too, live in a rural community, and none of the farmers who keeps livestock in my area uses snares or ever has. We should be mindful that the majority of the public are against the use of snares, because they view that method as out of date and inhumane. Although I understand some of the concerns that many of the stakeholders raised with the Committee, I think that we should push for an outright ban. There is an onus on the Committee to look into, and push for, alternatives to snares. A ban on snares would help to put pressure on

those within the industry to come up with alternatives. If snares are not banned, the industry will continue to use that methodology and those people will feel as though there is no onus on them to come up with an alternative. There is also an onus on the Committee to do away with that out-of-date and crude form of managing threats to livestock. We should, therefore, opt for an outright ban.

1550. Mr Bell: You made a big statement there, Mr McKay. You said that none of the people in north Antrim uses snares.

1551. Mr McKay: Nobody uses them in the rural community where I am from.

1552. Mr Bell: You said that nobody in your area uses snares.

1553. Mr McKay: I am not aware of anybody using them.

1554. Mr Bell: You are not aware of anybody: that is an entirely different point. I agree that we should consider the alternatives. However, I find your claim difficult to believe. That is why we should gather an evidence base. I find it hard to believe that snares are not used in the North Antrim constituency.

1555. Mr McKay: I did not make that statement.

1556. Mr Bell: I will check the transcript.

1557. Mr Dallat: Someone will be snared before this is over.

1558. The Deputy Chairperson: Just as long as no one gets trapped.

1559. Mr Ford: I wish to respond Jonathan's point about certain people in the farming community. At this point, I declare a shared interest in a family farm, which is adjacent to an Agriculture Department forest that has more than its fair share of foxes. In the past few years, there has been an odd lamb lost. However, in an area that also has hares and badgers, as well as people walking their dogs through the forest and sometimes coming down into the fields, I would not wish to consider that we, as a family, would ever put a snare on that ground, even though we do lose the odd lamb. That is not just on the basis of fluffiness but on the basis of balancing the realities of what snares do against the minimal threat.

1560. Unlike Danny, we remember to shut our hens in every night. There are ways of dealing with those problems, such as lambing indoors and making sure that hens and ducks are locked up at night, which do not threaten the welfare of any animal, whether domestic or wild.

1561. The Deputy Chairperson: I am on record as saying that my party has supported, and has gone through the proper process of supporting, a ban on snares. I support my colleague Mr McKay and the way in which he has articulated his position. I sympathise. When we set out to scrutinise the Bill, we gave everybody an opportunity to express their views. There are two sides to every story. I feel for Mr Kinahan and the ducks that he lost over the weekend, but the issue is simple for me. As a party, we support a ban on snares. That is my opinion on the matter. I will give anybody an opportunity to speak.

1562. Mr Dallat: I thought that I made it very clear that I am against snares.

1563. The Deputy Chairperson: I am going to put the question now, Mr Dallat. Has anybody any other comment to make?

1564. Mr Bell: I want to check something. The Ulster Farmers' Union did not —

1565. The Committee Clerk: That organisation was silent on snares in response to the consultation.

1566. Mr Bell: Has it not said anything?

1567. The Committee Clerk: Not in its written submission to the consultation. It has, previously, stated an opinion.

1568. The Deputy Chairperson: I am going to have to put it to a vote, because we have two options and there is a split in the Committee. Will those in favour of a total ban on snares please raise their hands? That is four members. Will those against a ban please raise their hands? That is three members.

1569. Question, That the Committee is content with the clause, subject to the Committee's proposed amendment, put and agreed to.

1570. Clause 10 agreed to.

#### Schedule 1 (Amendments to Schedules to the Wildlife Order)

1571. The Deputy Chairperson: I remind members that they deferred a decision on this schedule until they had seen the proposed departmental amendments to include the curlew, whinchat, lapwing and redshank as protected birds in schedule 1 to the 1985 Wildlife Order and to remove the curlew from the quarry list in schedule 2 to the 1985 Wildlife Order. I refer members to the Department's proposed amendments relating to schedule 1. I also inform members that they have been provided with departmental information on the populations of golden plover, reed bunting, raven, bull finch and whinchat. Are there any comments before I put the question?

1572. Is the Committee content with the proposed departmental amendments including the curlew, lapwing, redshank and whinchat in schedule 1 to the Wildlife Order and removing the curlew from schedule 2 to the Wildlife Order?

Members indicated assent.

1573. Mr Beggs: We must bear in mind the commitment to carry out a review of the status of the golden plover.

1574. The Deputy Chairperson: I remind members that they requested draft Committee amendments to include the golden plover in schedule 1 and to remove it from schedule 2 to the 1985 Wildlife Order. Updated versions of those amendments are contained in the tabled papers.

1575. I refer members to the tabled note of the meeting between the Chairperson and the Minister, which indicates that the Minister would not be averse to the inclusion of the golden plover if it was recommended by the Committee. An e-mail from the British Association for Shooting and Conservation in which it expresses its concerns relating to the golden plover is also tabled. I remind members that the Department has provided more information on golden plover numbers.

1576. Mr Kinahan: There is not enough detail in the information that we have been given to allow us to deal with the issue this time round. It is safe to leave it until we review the legislation in five years' time. Is that not how we should deal with the matter?

1577. The Deputy Chairperson: Five years is the stipulated time period. It is open to Committee members to air their views now, but I will be putting the question to the Committee.

1578. Mr Ford: One of the other species that was mentioned was the reed bunting. I looked at a display board alongside the Six Mile Water at the Sixmile Leisure Centre in Ballyclare yesterday, which made specific mention of the reed bunting as a species that was being treated with particular concern by the Environment Agency. Can we confirm that the Department of the Environment (DOE) is still opposed to the reed bunting being added to schedule 1?

1579. Mr Meharg: I would not say that we are opposed to that. We do not feel the need to put it in the schedule at this stage, because the data that we have show that the reed bunting has not declined to the point at which it would be necessary to include it in the schedule.

1580. Mr Ford: OK. Thank you.

1581. The Deputy Chairperson: I have noted Mr Kinahan's opinion.

1582. Is the Committee content with the draft Committee amendment to include the golden plover in schedule 1 to the Wildlife Order and to remove it from schedule 2?

Members indicated assent.

1583. The Deputy Chairperson: I refer members to the tabled departmental list of amendments. The Department has added an amendment that confines the protection of the common skate to coastal waters. That affords it the same protection as the angel shark and is because the species is subject to the common fisheries policy beyond coastal waters.

1584. Are members content to accept this proposed departmental amendment?

Members indicated assent.

1585. The Deputy Chairperson: I refer members to the tabled departmental list of amendments. As it indicated to the Committee last week, the Department has included an amendment to add another two deer species, the Chinese water deer and the roe deer, to the list of non-native species.

1586. Are members content to accept this proposed departmental amendment?

Members indicated assent.

1587. The Deputy Chairperson: Again, I refer members to the tabled departmental list of amendments. The Department has included an amendment that specifies the relevant species of knotweed that it is including in part 2 of schedule 9 to the 1985 Wildlife Order.

1588. Are members content to accept this proposed departmental amendment?

Members indicated assent.

1589. The Deputy Chairperson: Members have been provided with a paper from the Royal Society for the Protection of Birds on non-invasive species. Do members wish to make any amendments or recommendations in relation to that information?

1590. Mr Ford: The RSPB paper highlights the Scottish system, which basically bans the release of any new species unless it is done under strictly managed conditions. We have not seen any evidence of how the Scottish system operates. There may be issues that make it impossible to include such a provision in the Bill on time. It is the kind of issue that the Committee may well report on and ask the Department to keep an eye on as we look towards the maximum five-yearly revision if nothing else. I suspect that we may not be able to do much more than that at this stage. However, we should put down that marker and learn from what is happening in Scotland.

1591. The Deputy Chairperson: Is the Committee content to go with that recommendation?

Members indicated assent.

1592. Mr C Savage: I wish to make a comment on the RSPB paper's reference to the Scottish system. Scotland is undertaking consultation on a radical and fundamental review of what is contained in its equivalent of our Wildlife Order. That system is not in place yet, and only a basic consultation process is being conducted at the moment. It will be a number of years before any new system becomes operational in Scotland.

1593. Mr Ford: We will be able to learn from the Scots in five years' time anyway.

1594. The Deputy Chairperson: The Committee deferred a decision on the inclusion of the Irish hare in schedule 5 to the Wildlife Order pending further discussion. Members have been provided with the draft Committee amendment — a more recent version has been tabled — as requested, a copy of a petition to the Committee calling for the Irish hare not to be placed in schedule 5, and information from the Department on population density over the past few years and over decades.

1595. We have to decide whether to accept the Department's commitment as drafted or to amend schedule 5 in respect of the Irish hare.

1596. Mr Ford: Paragraph 11 of the note of the meeting that the Chairperson had with the Minister states that, although the Minister is opposed to a commitment to a special protection order every year due to the cost, he is open to including the Irish hare in schedule 5 with a review after five years. Given that the evidence is not entirely clear and that even the optimistic evidence shows that the population of the Irish hare is just about stable at a historically low number, if the Minister is prepared to include the Irish hare in schedule 5 and to review it after five years, I suggest that we accept the Minister's generous offer and bank it quickly.

1597. The Deputy Chairperson: Would the departmental officials like to comment on the figures?

1598. Mr Meharg: Our report shows long-term trends from figures that are available only from game bag records. Although those trends cannot be directly compared with the survey by Queen's University over the past seven or eight years, which the Department has funded, the long-term decline may reflect other issues. It may reflect the fact that, due to a lot of gamekeeping and other measures, the populations of hares were kept high for sporting purposes over a long period and that, as the controls on the predators declined and their populations increased, hare numbers declined to a more balanced level. Therefore, although the graphs appear to show a large and historic decline, those trends cannot be used as a direct comparator. However, the experts tell us that the Irish hare population is at a historically low level.

1599. The species action plan for the Irish hare was established 10 years ago, because it was recognised that numbers were low. A survey at that time discovered that there was one hare for every square kilometre. A target was set to double the population in as wide an area as possible

over 10 years. The targets in the action plan have been achieved, and the data shows that. That is the information that we can give.

1600. We will review the action plan, and some of the targets that we set will be attempts to maintain Irish hare numbers that we have achieved throughout Northern Ireland, with the help of Department of Agriculture and Rural Development schemes and other projects, and to improve those numbers over the next 10 years.

1601. The Deputy Chairperson: I have been discussing the issue with some of my constituents. Mr Bell mentioned an evidence-based approach. Country people will bring you exactly to where the hares are. It seems that the hare is under threat from snares as opposed to types of sport. If you want to see a hare, you should go to the airport at Aldergrove. Is there any evidence base to show the seriousness of the threat to hares? A natural decline has taken place for one reason or another. A special protection order has been in effect for the past six years. Has part of that been enforced or has it been voluntary for sporting groups? I know that foot harriers were allowed to hunt.

1602. Mr Meharg: Through the special protection orders, the hunting and taking of hares has been banned.

1603. Mr K Bradley: The special protection order, by its nature, stops the taking of hares. Indirectly, therefore, it has stopped such practices as hare coursing and beagling. The special protection order is for conservation purposes. If I understood the first part of your question correctly, it was on whether the decline of the Irish hare population is to do with snares or sport.

1604. The Deputy Chairperson: I am trying to clarify what the biggest threat is. There are conflicting views from different people, and it is up to us to establish the facts because we will make a decision that will last for five years. Mr Ford highlighted the fact that the Minister said that it is an either/or situation. I would have liked to see other proposals. A cost is associated with special protection orders. Surely to God, a higher cost will be associated with enforcement over five years.

1605. Mr K Bradley: That is correct. It is widely recognised that one of the main threats to the Irish hare is habitat loss. Mike's staff are addressing that issue as part of the species action plan to try to encourage a greater range of habitat to promote the Irish hare. The species action plan will finish this year, and there are plans to review the targets and actions in that plan. That is where the Department is coming from with its target to double the overall hare population from one to two for every square kilometre. The surveys to date demonstrate that that target has been reached. Now that the plan is coming to its conclusion, we are looking to review it and, as Mike said, to maintain that level, at least.

1606. The Deputy Chairperson: I will let other members speak in a moment. The problem that I have is that it is proposed that the Irish hare can either be put on the list to be protected for five years or not, and there is no other option of monitoring or anything else. The Minister is minded to remove the special protection order. Five years is a long time. The hare has been protected for six years, the target has been achieved, and it seems that the population is growing. I have sets of figures from the Department, but other groups produce different sets of figures. From conversations with people from the countryside, I know that the hare population is stable enough in some areas.

1607. Mr Meharg: No wildlife survey can survey every field in every area, so we survey a set area that is typical of habitat over a wider area. Mathematical geniuses at the universities multiply and take into account the landscape and other factors and come up with what they feel are populations over the whole of Northern Ireland. They then put those figures to peer review

through journals and publications, and the population surveys to date have been published and reviewed by other experts. Those experts feel that the way that hare populations are surveyed not only in Northern Ireland but throughout the world results in surveys that reflect the numbers as accurately as possible.

1608. Populations in some areas will be much denser than others; there will be hare hot spots. The airport at Aldergrove was mentioned as an example of that, and Rathlin Island is another such area. The interesting factor is that both those areas have few predators, because one is an island, and fencing and security limit the number of predators at the airport.

1609. The Deputy Chairperson: All the predators go away on their holidays.

1610. Mr Meharg: There can be reasons for and ways in which hare populations can be elevated.

1611. Mr Kinahan: I am slightly uncertain: what is the Department's recommendation?

1612. Mr K Bradley: It is to leave the protection level of the hare as it is: fully protected as a game species during the close season.

1613. Mr Kinahan: I am happy with that.

1614. The Deputy Chairperson: Sorry, what was that?

1615. Mr K Bradley: At present, as a game species, the hare is fully protected during the close season.

1616. The Deputy Chairperson: Yes, but will we continue to remove that?

1617. Mr K Bradley: The Department's line is to retain it.

1618. The Deputy Chairperson: I am happy enough about that.

1619. Mr Kinahan: I agree with that, too.

1620. Mr Ford: I accept what has just been said about protection during the close season. However, if the Department and/or the Minister are unhappy to continue with special protection orders, the level of protection afforded to the hare over the past six years that those orders have been in place will be reduced. The Irish hare is the first or the only mammal for which there is a species action plan, which has, according to the Department's estimates, achieved a very modest recovery. According to other people, the plan has achieved nothing more than a slowing down in the loss of hare numbers, compared to the historical trend. If we cannot give the highest possible protection to a species that is unique to this island and implement a meaningful species action plan, there seems little point in talking about conservation at all.

1621. Mr McKay: David referred to point 11 of the minutes of the meeting with the Minister. How much will it cost the Department to continue to renew that protection order yearly for the next five years?

1622. Mr K Bradley: The expense relates not so much to the special protection order as to the survey that informs it, which costs between £35,000 and £40,000 a year.

1623. Mr McKay: So that would be £200,000 or so.

1624. Mr Ford: How much will it cost the Department to add it to the schedule at this point? Absolutely nothing.

1625. The Deputy Chairperson: Ken, will the special protection order remain in the close season? Is that what you are saying?

1626. Mr K Bradley: As a game species, the Irish hare is fully protected during the close season. The special protection order is coming to an end, and it will finish at the start of the close season.

1627. Mr Beggs: Is five years not a considerable period to wait to discover whether there has been a change in the population? Are you really saying that the Department will definitely remove the special protection order for five years?

1628. Mr K Bradley: That five-year period relates to the quinquennial review of the schedules.

1629. Mr Beggs: You indicated that the Minister was not minded to have any special protection order or any surveying done during those five years.

1630. Mr K Bradley: That is correct.

1631. Mr Beggs: That is a long period.

1632. Mr McKay: People in the non-government sector also carry out surveys that we could rely on. What we are talking about here — to continue to renew the special protection order and to carry out the research over the next five years — will cost the Department £250,000 or very close to it.

1633. Mr Meharg: The idea behind the species action plan and the continued annual surveys was to have data at the end of the period of the action plan that enabled a decision to be made as to whether the species required further protection or could remain as it was on the original game list with close season protection. That is the current position.

1634. The special protection orders are brought in as a means of helping game species to recover if their numbers are low, so that hunting can be resumed and numbers can be uplifted again. The purpose of special protection orders is the conservation of the species to enable the population to rise. A special protection order applies for one year. To continue that year on year is to say that, at some stage, a decision has to be made as to whether the population has gained sufficiently for the resumption of sporting action under the game legislation.

1635. Mr Kinahan: You are saying that it has achieved a level.

1636. Mr Meharg: Having achieved the targets that were set out in the action plan, the Department's view is that it should go back to its original protection. That is what went forward for public consultation.

1637. Mr K Bradley: During the consultation in 2008, the League Against Cruel Sports was the only organisation to request a full ban; no other organisation pushed for one. We specifically asked whether a full ban was wanted, and apart from LACS, no other organisation requested a full ban.

1638. Mr Ford: I want to take up a point that Mike made. He has given the administrative description of the operation of special protection orders under the Game Preservation



(Amendment) Act 2002. The reality is that the Assembly, in its first guise in 2002, enhanced the possibility of granting those special protection orders on the basis of whether the hare was under threat in Northern Ireland or any part thereof. That was the basis on which John Dallat, Edwin Poots and I, amongst others, voted for that amendment. It was passed by a substantial majority, because at that time it was the only way of enhancing the protection. That is not to say that the wish of the Assembly was that it should be done that way, but that was the only way of doing it under the game preservation legislation.

1639. Now we are reviewing the Wildlife (Northern Ireland) Order 1985. On that basis, we can say what I believe was the will of the Assembly in 2002, which is that we should be giving protection to the Irish hare because it should be protected, rather than merely fiddling around with the game legislation, which allowed temporary protection, but which was the only method available in 2002. Mr Dallat is nodding, even if the Hansard reporter did not hear him say yes.

1640. Mr Dallat: Yes, I was. Deputy Chairperson, what are we agreeing to do?

1641. The Chairperson: I will put it to the Committee in a minute. Five years is a long time. I would consider an alternative option and a proposal to keep monitoring, but I will not be lending my support to the inclusion of the Irish hare in schedule 5 to the Order.

1642. Mr K Bradley: From a practical point of view, the schedules are amended by subordinate legislation. We propose a five-year review, but that does not mean that a schedule cannot be amended at any time. There is no reason why it needs to take five years; it is feasible that we could look at in three years' time. We could make a decision then, based on the scientific evidence on the number of hares that there are. Is three or five years from now the right time to make a decision on permanent protection? Is any time the right time to make that decision? That is a matter of judgement.

1643. Mr Meharg: There are five-year reviews of the schedules for species, because there can be particularly bad or good years for the population of different species. The past winter will have been a bad year. Therefore, the tendency is to look at five-year averages of populations to try to see any trends and whether they even out. That is why we are looking at a five-year review period for schedules and populations at UK level and in Northern Ireland.

1644. Mr Dallat: We are starting to split hares.

1645. The Deputy Chairperson: Very good, Mr Dallat.

1646. We will have a vote on whether to accept schedule 1 as drafted, or to amend schedule 1 to include the Irish hare in schedule 5 to the Wildlife Order 1985.

1647. Members in favour of schedule 1 being amended to include the Irish hare in schedule 5 to the Wildlife Order 1985 are Mr Ford, Mr Dallat, Mr McKay, and members against that proposal are Mr Beggs, Mr Kinahan, Mr Bell, and me, the Deputy Chairperson.

1648. Is the Committee content with schedule 1 as drafted, in relation to the Irish hare?

Members indicated assent.

1649. The Deputy Chairperson: The Committee has agreed its position relating to all the parts of schedule 1 to the Bill and must now formally agree the schedule.

1650. Mr Ford: We received written evidence from the RSPB on the issue of schedule 4, which relates to birds that can be kept in captivity and shown for competition. It is my understanding that there is significant concern about birds being imported from the continent to England for showing, because some have been captured in the wild. If there are concerns about birds that are already on that list, that seems to raise a number of questions about the expansion of that list.

1651. Mr C Savage: As we have explained before, the Department's system of inspecting and monitoring the activity of aviculture is a lot more robust in Northern Ireland. The inspections involve testing birds and looking at the close rings fitted to them, and the new powers to take DNA samples would strengthen our situation even further. If there are any concerns about birds being held and possibly taken from the wild, we are happy that we will have sufficient safeguards in place to mitigate any possible risk from the expansion of the list.

1652. Mr Ford: How would DNA sampling deal with the suggestion that a bird had been imported from England? Presumably, you would have no DNA records on that bird. I accept that if a bird is supposed to have been bred in Northern Ireland, you will have access to its parents, but if it has been imported from England, how can you deal with that?

1653. Mr Meharg: That bird will not be a member of the family that is in the collection. Therefore, if someone has a collection of birds, they will have the parentage for that collection.

1654. Mr Ford: I accept that, but if you carry out a DNA test on a bird that does not turn up family similarities to any other bird being kept by the same owner, and the owner claims to have bought it from somebody in England, do you have any means of knowing that it was bought from a legitimate connection in England, as opposed to it being taken from the wild in Belgium?

1655. Mr Meharg: Similar DNA records would be maintained in England. There would have to be records of where the bird came from, and we could look at the familial line on that side if we thought that an offence had been committed.

1656. Mr Ford: I thought that we were saying that our system was more robust than in England, but you are now saying that we can depend on English records being adequate.

1657. Mr Meharg: No; what I am saying is that the DNA can follow through on that. It can tell you where the species or the individual bird came from. If there is a query over whether a particular bird in Northern Ireland has not been bred in the community and with the parentage that the keeper is claiming, or if it has been bought in from somewhere else, we can track that purchase and go back through records to see where the bird actually came from and whether it came from the line on the English supplier's side. We can use DNA to establish the parentage of the particular bird that came across.

1658. Mr Ford: The bird could have come from England and both its parents could have died.

1659. Mr Meharg: In that case, we would have to be reasonable in respect of what we could follow through.

1660. Mr Ford: That sounds to me like you could not follow that through.

1661. Mr Meharg: That suggestion is a little tangential in respect of how we have seen breeding being carried out in Northern Ireland.

1662. Mr Ford: I am afraid that I remain thoroughly unconvinced.

1663. The Deputy Chairperson: If there is a specific amendment that you would like to propose, I am sure that the Committee will be open to hearing it.

1664. Mr Ford: I am tempted to propose the deletion of all of paragraph 4 of schedule 1. Indeed, the RSPB's evidence suggests that certain birds that are included in schedule 4 to the Wildlife (Northern Ireland) Order 1985 should be removed from it as well.

1665. The Deputy Chairperson: The RSPB has suggested the removal of the yellowhammer, twite and reed bunting from schedule 4 to the Order.

1666. Mr Ford: Yes. Those birds are listed in schedule 4 to the Order. The question is whether any species should be added to that list.

1667. Mr Beggs: What are those species again?

1668. Mr Ford: The RSPB's suggestion is that the yellowhammer, twite and reed bunting should be removed from schedule 4 to the Order, rather than more species being added to that list.

1669. The Deputy Chairperson: Obviously, we will have to bring forward an amendment that is supported by the Committee. I will, therefore, ask the Clerk of Bills to provide some clarification.

1670. The Clerk of Bills: Due to the nature of the amendments, and because the Wildlife and Natural Environment Bill is an amending Bill, achieving what Mr Ford has suggested will be two-step operation. The first question to the Committee would be whether to amend paragraph 4 of schedule 1 to the Bill to remove from schedule 4 to the 1985 Order the species that the Deputy Chairperson has mentioned; namely, the reed bunting, twite and yellowhammer. That is step one.

1671. The second question that the Committee would be asked is whether it is content to amend paragraph 4 of schedule 1 to the Bill to remove sub-paragraph 2; in other words, to remove the table inserting those other species. I understand that Mr Ford also seeks to do that. Therefore, two amendments to paragraph 4 of schedule 1 are contemplated.

1672. Mr Beggs: Can we have a departmental view on that?

1673. Mr Meharg: The way in which aviculture works in Northern Ireland is that all the species that are listed in schedule 4 to the Order are held in collections. There is no conservation issue as regards taking species from the wild because young birds born in captivity are close-ringed immediately. The entire system operates in a closed circle. The activity of showing birds has been carried out traditionally in Northern Ireland for many years, as it has in the United Kingdom. As such, it has been licensed through the Wildlife (Northern Ireland) Order 1985 for that purpose.

1674. Our point is that there is no conservation or protection issue with regard to those species and that activity. That is why, when the list came forward, as recommended by stakeholders who are part of the aviculture family in Northern Ireland, we were happy to include those birds in the lists. There is no nature-conservation issue associated with that particular activity. It is a matter of licensing it to allow it to happen. Otherwise, the showing of those species would be illegal under the terms of the Order, because all birds are protected.

1675. Mr Ford: According to the RSPB's evidence, it is accepted that there is widespread illegal trapping in Britain and illegal importation from the continent.

1676. Mr Meharg: As we pointed out in earlier discussions, each year, we monitor one third of licence holders through cold calls, and we have found no evidence of illegality or tampering.

1677. The Deputy Chairperson: Obviously, Mr Ford, you want the Committee's support to make an amendment. Personally, I do not have an issue with your proposal.

1678. Is the Committee agreed with Schedule 1 as amended by the Department, as outlined in its list of amendments, and as amended by the Committee to include the golden plover in Schedule 1, to amend paragraph 4 of Schedule 4 to the Wildlife Order to remove yellowhammer, twite, reed bunting and remove paragraph 4 from sub-paragraph 2 of the Bill?

Members indicated assent.

1679. Question, That the Committee is content with the schedule, subject to the Department's and the Committee's proposed amendments, put and agreed to.

1680. Schedule 1 agreed to.

Clause 25 (Amendments to Schedules 1 to 9 to the Wildlife Order)

1681. The Deputy Chairperson: I advise members that clause 25 cannot be agreed until members are content with schedule 1 to the Bill.

1682. Question, That the Committee is content with the clause, put and agreed to.

1683. Clause 25 agreed to.

Clause 14 (Licences under Article 18)

1684. The Deputy Chairperson: I advise members that they agreed clause 14 last week. However, the Committee has been provided with a copy of an e-mail and a letter from Talnotry Avian Care Trust (TACT) that calls for clarification on clause 14 in relation to licences under the Wildlife and Natural Environment Bill and the crossover with zoo licensing. Members have also been provided with an extract of the Hansard transcript of TACT's evidence session on 4 March 2010 and a further tabled copy of an e-mail from TACT. I also refer members to the tabled note of the meeting between the Chairperson and the Minister indicating that the Minister is sensitive to the TACT issue but would be reluctant to base legislation on a single situation.

1685. I also advise members that the TACT issue is referred to in the Committee's draft report on the Bill, which notes that members sought and received confirmation from the Department that it would continue to liaise with stakeholders with particular needs, such as those requiring group licences or licensing under other legislation, such as zoo licences. Furthermore, members have received a tabled e-mail from NIEA confirming that it will handle licensing under both the Wildlife Order and zoos legislation. As a result of that information, do members wish to propose any amendments or further recommendations?

1686. Mr Kinahan: Will the officials tell us more about how the Minister feels that the matter should be dealt with?

1687. Mr Meharg: This is a very sensitive issue. To clarify again, when an injured animal or bird is found and someone wishes to help it, see it through its injury and release it back to the wild, those actions fall under article 5(5)(a) of the Wildlife (Northern Ireland) Order 1985, whereby a person shall not be guilty of an offence by reason of:

"the taking of any wild bird if he shows that the bird had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled".

1688. That is in the legislation. Mrs Nevinnes stated that around 1,000 animals are brought to TACT each year and 500 or so are released back into the wild. That falls completely under the terms of the Wildlife (Northern Ireland) Order 1985, and no licence is required.

1689. However, Mrs Nevinnes said that around 250 animals a year are disabled and cannot be released back into the wild. TACT provides what it terms a sanctuary for those animals. There are various concerns around the keeping of wild animals in captivity. It is an international issue. The Department has received communication from the Born Free Foundation, which is a wildlife charity of international renown. It was established in 1984 by Bill Travers and Virginia McKenna, who were part of the 'Born Free' film. It is active in 19 countries across five continents, and it has a United Kingdom office. It lobbies Governments and devolved Administrations to ensure that wild animals in captivity are treated to the highest standards, and to ensure that all zoos and animal collections are licensed under the European zoos directive, where appropriate.

1690. In April 2009, the Born Free Foundation wrote to the NIEA, listing 17 animal collections in Northern Ireland and asking the agency to assess those for the requirement to be licensed under the appropriate regulations. All of those 17 collections were researched and lists of the animals held were passed to Mr Nick Jackson MBE, who is a zoos inspector with 27 years' experience of inspecting European zoos. He was appointed from the Secretary of State's zoos inspectors list to carry out the assessment of the 17 Northern Ireland collections. From the lists of animals that were held by each collection, Mr Jackson recommended that two additional establishments, one of which was TACT, should be regulated under the zoos regulations.

1691. Following that recommendation, the Northern Ireland Environment Agency sought legal advice on a number of issues relating to the definition of a zoo. The Departmental Solicitor's Office advised that TACT falls under the definition of a zoo, given the animals that are retained. We recognise that TACT carries out a lot of positive work. In fact, the Department has allocated a total of £175,000 to TACT since 2005. We support the work that it does.

1692. We are having discussions with TACT about how we can recognise and encourage the work that it does while dealing with the sanctuary element in which certain wild animals that fall under the zoos directive are kept in captivity for the rest of their lives. The zoos directive contains very strict guidelines about the conditions under which animals must be kept. As the letter from TACT shows, meeting some of those conditions may prove difficult for that organisation to be able to afford or fund. However, those regulations are set in place as a European standard to ensure that where animals are not released back into the wild, their welfare is of the highest standards.

1693. We work with the local vets, who do a lot of work with TACT, and the Larne divisional veterinary office (DVO). It is unaware of TACT and has not yet inspected it under the Animal Welfare Act 2006. That has to be brought into the picture so that the DVO can carry out its inspections. We can work out a protocol to ensure that the welfare of the animals in the collection is a priority; it must come absolutely first and foremost.

1694. Under the zoos directive, there is the ability to derogate from the requirements of the licence. The Department hopes that, working under its statutory requirements and working with the local vets in Crumlin and the divisional veterinary office, it will be able to work out a protocol with TACT to ensure the best possible welfare standards for the animals retained in the collection.

1695. Mr Kinahan: I still have concerns. If TACT brings in a bird that is badly damaged, it will fall into the zoo category. For example, TACT has a barn owl that is perfectly well but is missing a wing, and it is taken around schools to allow pupils to see what a barn owl looks like. When it is being taken around the schools it is on a string or in a cage, but when it is not being carried around it is kept in a slightly larger area. Following through on the legislation as drafted, that bird, although perfectly well, would have to be put down because it could not be released back into the wild. Is there a way that that bird could still be retained for educational purposes? It is perfectly happy, from a human point of view.

1696. Mr Meharg: There are many views on what constitutes "happy" from the point of view of the wildlife in question. Indeed, a great deal of information has been provided on that issue by the Zoos Forum, which considers the various ethical issues surrounding animals kept in permanent captivity.

1697. The particular bird that you have mentioned is called Barney the barn owl, and it has been part of the NIEA-funded programme for the past six or seven years. Barney has been used for educational purposes, and the Department can issue a licence under the Wildlife (Northern Ireland) Order 1985 for wild birds or animals to be used in that way. However, groups that lobby the Department say that children should not see injured wildlife and should only see fully intact animals. There are two views on the issue; Mrs Nevinnes and other folk in sanctuaries have one view, and other international organisations may have another. The Department must sit in the middle and make a decision, but it does have the facility to licence that bird.

1698. Mr Kinahan: I was hoping that the Department would introduce group licences in the Bill, as that would allow a little more freedom. The zoo designation could be very damaging to TACT, and it is the only body in Northern Ireland that deals with wild animals in that manner. If the Bill is allowed to go through in its current format, I am concerned that the zoos legislation — if we were to use it — will damage TACT. There will be a need for more modern and less agricultural premises in which to keep the birds, and once wheelchair access and everything else that is required is introduced, I am concerned that we will be getting rid of TACT, rather than helping it.

1699. Mr Meharg: I hope that the requirement to keep animals in captivity is not the sole purpose of TACT. These issues must be looked at from the perspective of the welfare of the animals and the long-term welfare of the species held in that sanctuary.

1700. If group licences were introduced, it could mean that TACT, and other organisations, would be licensed but not regulated under the international guidance for the welfare of animals held in collections and zoos. The Department is concerned about that.

1701. Mr Beggs: You have indicated that the main driver for single licences is the European zoos directive. However, you also indicated that there is room for derogation from that. Can you explain what you meant by that? Although it was a number of years since I visited the sanctuary, the animals there at that time did not seem to be kept in particularly stressful conditions. I would not want a situation in which many animals are put down because there is no room for derogation.

1702. Mr Meharg: There is the facility in the legislation to provide a derogation, to take account of special and unique circumstances. If a case for derogation were put forward, it would be for the Minister to decide upon it. I repeat that the issue here is international standards on the welfare of animals kept in captivity. That is the driver.

1703. Mr Beggs: I fully understand that. I would not want other private collectors to go around collecting wild animals for their own amusement.

1704. The Deputy Chairperson: Thank you, Mr Beggs. I suggest that we put that in our report and liaise with the Department on it. We will keep that to the fore. Are you content with that?

1705. Mr Beggs: Yes.

#### Schedule 2 (Amendments)

1706. The Deputy Chairperson: I remind members that they deferred their decision on this schedule until they had seen the proposed departmental amendment to include "possession" in special protection orders.

1707. I also refer members to the tabled departmental list of amendments and advise them that the Department has included a new clause, clause 32A, to address the issue.

1708. Mr Ford: Unfortunately, I do not have a copy of the Game Preservation Act (Northern Ireland) 1928 in front of me. I thought that we were talking about all game, not merely game birds. The issue is specifically about the position of hares, which might have been claimed to have come from another jurisdiction.

1709. Mr C Savage: The amendment is to section 7C(1) of the Game Preservation Act (Northern Ireland) 1928, which deals with special protection orders for game, so that is any game. The amendment inserts the words "or possession" after "purchase".

1710. Mr Ford: Am I reading the wrong part of it? I thought that this was the Department's proposed new clause 32A.

1711. Mr C Savage: No. It is basically [Inaudible.] to address concerns about special protection orders.

1712. Mr Ford: Is that is the proposed subsection (3)?

1713. Mr C Savage: Yes. I mentioned to the Committee previously that, in our experience of issuing a severe weather order this year, we identified that we could not apply it to game birds, specifically woodcock and snipe. The clause provided is meant to address that gap in the legislation to allow us to issue severe weather orders to protect game birds.

1714. Mr Ford: Could you please read us the whole of —

1715. The Deputy Chairperson: Excuse me, Mr Ford. Perhaps the Clerk of Bills can read that out, in order to clarify some points.

1716. The Clerk of Bills: Do you want to hear the text? You mentioned that you did not have the Game Preservation Act (Northern Ireland) 1928 before you.

1717. Mr Ford: Sorry; I was reading the wrong bit. I want to know how the whole of section 7C(1) will read.

1718. The Bill Clerk: With the insertion, it reads as follows:

"Where the Minister is satisfied that it is necessary or expedient to provide special protection for any kind of game, he may by order prohibit the killing or taking, or the sale or purchase or possession, of game of any kind prescribed by the order, during such period not exceeding one year as shall be so prescribed."

1719. Mr Ford: So it extends to the killing, taking, sale, purchase or possession. Thank you.

1720. The Deputy Chairperson: Is the Committee content with the departmental amendment to insert clause 32A, which incorporates the words "or possession", into special protection orders for game?

Members indicated assent.

1721. The Deputy Chairperson: I advise members that the Department has also proposed a technical amendment to schedule 2 and schedule 3 arising from its recent experience of introducing protection for game birds during the cold snap.

1722. Question, That the Committee is content with the schedule, subject to the Department's proposed amendment, put and agreed to.

1723. Schedule 2 agreed to.

Schedule 3 (Repeals)

1724. The Deputy Chairperson: I advise members that they have already agreed to schedule 3. However, are they happy to record in the Committee's report that although schedule 3 was agreed as drafted, the Committee supports the Department's subsequent amendment?

Members indicated assent.

1725. Question, That the Committee is content with the schedule, subject to the Department's proposed amendment, put and agreed to.

1726. Schedule 3 agreed to.

1727. Long title

1728. The Deputy Chairperson: I advise members that the Department has proposed an amendment to the long title of the Bill to accommodate the changes being made to the Game Preservation Act 1928 as a result of the inclusion of the new clause 32A. I also advise members that they have already agreed to the long title. However, are they happy to record in the Committee's report that, although the long title was agreed as drafted, the Committee supports the Department's subsequent amendment?

Members indicated assent.

1729. Question, That the Committee is content with the long title, subject to the Department's proposed amendment, put and agreed to.

1730. Long title agreed to.

1731. The Deputy Chairperson: I advise members that they have been provided with a draft Committee report on the Bill and a list of appendices. I also advise members that the draft report is for information only at this stage and that a final draft will be provided on 15 April 2010 for the Committee's agreement that it be printed. Are members content to agree the list of appendices and key issues in the draft report and to accept that some of those may be amended following today's discussion?



Members indicated assent.

1732. The Deputy Chairperson: I inform members that they have been provided with an RSPB paper on the additional clauses or recommendations that that organisation wishes to see. Do members wish to discuss any further recommendations? If not, are members content that all the recommendations have been covered, allowing for additions following today's meeting?

1733. Mr Ford: Are we sure that everything in that fairly substantial paper has been addressed? I presume that we will have opportunity to go through it again when we consider the draft report.

1734. Mr Deputy Chairperson: We will have an opportunity to go through the draft report.

1735. It was good to see the departmental officials in such good form. Thank you very much for your time. We will be liaising with you over the coming weeks. Enjoy your break.

1736. Mr K Bradley: I wish to place on record my thanks to the Deputy Chairperson, the Chairperson and the rest of the Committee for the time and effort that they have invested in the Bill and for their decisions and views on it. We look forward to seeing the Committee's draft report in due course.

## **15 April 2010**

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Roy Beggs  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

1737. The Chairperson (Mr Boylan): Members have been provided with a copy of the Committee's draft report on the Bill, and we will shortly go through each section asking members to agree. Before finalising that, members are asked to consider a response from the Department of Agriculture and Rural Development in relation to our queries about deer farming exemptions; a letter from the Ulster Wildlife Trust in response to issues raised during its briefing of the Committee; a letter from Dr Donald regarding the Committee's decision on the Irish hare; and a submission from the Department of Health, Social Services and Public Safety in response to our request for information on the impact of the new biodiversity duty on the public sector. Are members content to note that information and include it in the report?

Members indicated assent.

1738. The Chairperson: I will now take members through each section of the report, asking you to agree them individually and to note the approach and contents of the appendices which were agreed at the last meeting and are now being formally accepted. I need your attention for a couple of minutes, members, to get through this. Bear in mind that we have been through this at Committee Stage and we need to agree the report today. Anybody who has any other suggestions will have an opportunity to debate them in the Chamber.

1739. Are members content with the executive summary at pages 4-10?

Members indicated assent.

1740. The Chairperson: Are members content with the recommendations at pages 11-14?

Members indicated assent.

1741. The Chairperson: Are members content with the introduction at pages 15 and 16?

Members indicated assent.

1742. The Chairperson: Are members content with the consideration of the Bill by the Committee at pages 17-21? I will give you one minute to look at that.

1743. Mr Weir: It is basically a synopsis of the briefing.

1744. The Chairperson: Are members agreed?

Members indicated assent.

1745. The Chairperson: Are members content with the key issues at pages 22-30?

Members indicated assent.

1746. The Chairperson: Are members content with the clause-by-clause consideration of the Bill at pages 31-36?

Members indicated assent.

1747. The Chairperson: Are members content with appendix 1, the minutes of proceedings, which is part of the tabled papers today?

Members indicated assent.

1748. The Chairperson: Are members content with appendix 2, the minutes of evidence?

Members indicated assent.

1749. The Chairperson: Are members content with appendix 3, the written submissions? That is all part of the tabled papers.

1750. Members indicated assent.

1751. The Chairperson: Are members content with appendix 4, the list of witnesses?

Members indicated assent.

1752. The Chairperson: Are members content with appendix 5, the Assembly research papers?

Members indicated assent.

1753. The Chairperson: Are members content with appendix 6, which is other papers submitted to the Committee?

Members indicated assent.

1754. The Chairperson: I also ask members if they are content for the report to contain the relevant extracts from the minutes of today's meeting, as well as the minutes of evidence. Members will be agreeing to their inclusion in the report without prior sight of them. Are members agreed?

Members indicated assent.

1755. The Chairperson: Now that we have agreed, the report will be ordered to be printed and submitted to the Business Office as the Committee's official report on the Wildlife and Natural Environment Bill — the end of the Committee Stage. Are members agreed?

Members indicated assent.

1756. The Chairperson: Thank you very much.

## **Appendix 3**

### **Written Submissions**

#### Written Submissions

Northern Ireland Marine Task Force response

Northern Ireland Biodiversity Group response

Countryside Alliance response

Ulster Farmers' Union response

Northern Ireland Environment Link response

RSPB response

Ulster Wildlife Trust response

Badgerwatch (Ireland) response

League Against Cruel Sports response

Northern Ireland Badger Group response

Irish Hare Initiative response

Badger Trust response

Irish Hawking Club response

Animal Welfare Federation Northern Ireland response

NILGA response

T.A.C.T response

Response from Elizabeth Close

Response from Barbara Haig

Response from Trisha Lynn

Response from Katie Rutledge

DARD, DSD, DFP, DCAL, DETI and DRD responses

Premier Woodlands response

Response from Paul Lamb

Lecale response

Hare Preservation Trust response

British Deer Society Northern Ireland response

British Association of Shooting and Conservation response

Countryside Alliance Submission



**Wildlife and Natural Environment Bill**

**Brief prepared for the Environment Committee**

**By**

**Lyall Plant  
Chief Executive**

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#### **Introduction**

Following the second reading of the Wildlife and Natural Environment Bill on Tuesday 12 January 2010, Countryside Alliance Ireland would like to address the concerns voiced by some of the members of the Environment Committee in relation to the following:

- The Irish Hare
- Curlew
- Snares

The aim of Countryside Alliance Ireland is to promote and support the livelihood of rural people and their communities. We campaign for the countryside, country sports and the rural way of life. We are an all-Ireland membership organisation with 10,000 individual members and over 25,000 affiliated members and we reflect the views and concerns of a broad range of rural people. Our interests and expertise are therefore directly relevant to the Bill.

## **The Irish Hare and the Wildlife and Natural Environment Bill**

### **Current status**

The Irish hare has been subject to a Special Protection Order (SPO), renewed annually since January 2004. The reason given for the introduction of the SPO initially was to increase the hare numbers in line with the All-Ireland Species Action Plan.

Countryside Alliance Ireland have, in the past, called for practical methods for conservation of the Irish hare and indeed we have offered all Ministers' of the Environment on numerous occasions the help and support of our members to assist in the conservation and thereby increase the numbers of Irish hares in Northern Ireland. Our last such offer was tendered on the 12<sup>th</sup> August 2009.

Concern has been expressed within the Environment Committee that the Irish hare numbers are under threat from coursing. However, scientific evidence categorically suggests otherwise and we would like to dispel these concerns with the following substantiated data.

### **Threats/Causes of decline**

The main threats to Irish hare numbers in Northern Ireland are:

- Farming practices - farm machinery and agricultural harvesting techniques. These may cause death or injury, especially to leverets.
- Loss of refuge areas - safe places for hares to lie up during the day and the homogenisation of the landscape.
- Predation - Predation affects the survival rates of leverets (*Dingerkus & Montgomery 2002*).
- Habitat fragmentation.
- Competition and potential hybridisation with the introduced European or 'Brown' hare.

### **Coursing and the Irish Hare**

Various research projects suggest that coursing positively benefits the Irish hare and hare numbers.

Coursing clubs are scientifically recognised as an important local conservation force. They participate in important research, manage habitats sympathetically and control predation, helping to conserve Irish hares – which are unique to Ireland. Professor Ian Montgomery (who is Head of the School of Biology and Biochemistry in Queen's University Belfast and is regarded as the leading expert on Irish hare ecology throughout Ireland), is on record as saying that he believes that coursing and the various forms of hare hunting make a positive contribution to Irish hare conservation, through participation in important research, predator control and sympathetic habitat management.

Like Professor Montgomery, we also believe that sporting activities as practised by Ireland's field sports community are not only sustainable but actually make a positive contribution to the numbers of Irish hares.

Both Countryside Alliance Ireland and the Irish Coursing Club are fully operational throughout the entire island of Ireland, with members in literally every parish and townland. Our members are uniquely placed in delivering the type of conservation action required in ensuring that the numbers of Irish hares increase.

Formed in 1916, the Irish Coursing Club (ICC) organises and regulates the sport of coursing throughout Ireland. Under the guidance of the ICC, its clubs participate in research, manage habitats and promote conservation initiatives aimed at Irish hares.

The most accurate population data are available for the Republic of Ireland and suggest that in light of recent estimates (535,000 hares during 2007) (*Status of hares in Ireland - Hare Survey of Ireland*



2006/07) that mortality during coursing removes  $\leq 0.1\%$  of the total adult population annually. Such calculations included the records of 81 clubs. (*Factors associated with hare mortality during coursing* N Reid, RA McDonald and WJ Montgomery).

It must be recognised that prior to the Special Protection Order being implemented in Northern Ireland that only 2 clubs operated within this jurisdiction; consequently, it seems highly likely that their overall impact on the Northern Irish hare population would have been negligible.

A report commissioned by the Environment and Heritage Service and published in 2003 (*Jane Preston, Paulo Prodöhl, Alex Portig, Kate O'Neill & Ian Montgomery 2006. Survival and Dispersal of coursed Irish Hares in Northern Ireland. Environment and Heritage Service Research and Development Series. No. 06/20*) – was conducted with the assistance of the two coursing Clubs in Northern Ireland; Ballymena and Dungannon and states 'It is clear that hares can survive the experience of being netted and coursed before release and can resume activity to survive in the wild'. It further states "there is no evidence that coursing at the current level affects population size or distribution of the Irish Hare in Northern Ireland".

Variability is a key characteristic of hare populations throughout the world and it must be stressed that short-term changes in hare numbers from year to year should not be over-interpreted. Recent studies in Northern Ireland suggest short-term population fluctuations are the norm (*O'Mahony & Montgomery, 2001; Dingerkus & Montgomery, 2002; Preston et al. 2003; Tosh et al. 2004; Tosh et al. 2005; Hall-Aspland et al. 2006*).

#### **Proposals to give full statutory protection to the Irish Hare**

Despite the re-introduction of the SPO in 2009 our members continue to play a central role in delivering co-ordinated conservation action, which is supported and delivered by local communities in ensuring the increase in Irish hare numbers. However, to place the Irish hare on to Schedule 5 would diminish this enthusiasm to continue to protect the Irish hare from both predator control and from the invasive species; the 'European' or Brown hare.

We believe that the Irish hare enjoys substantial protection under present domestic legislation. It provides for a lengthy closed season during which it is unlawful to kill or take Irish hares by any means and protection is also afforded at night time and on Sundays and we wish to see this continue within the new legislation.

We believe that it would be a mistake to concentrate unduly on the status of the Irish hare on the Wildlife (Northern Ireland) Order 1985 and the Wildlife Act 1976, as all available evidence points to the fact that current hunting practices make a positive contribution to the conservation of hares and any steps to remove it from the quarry list will remove the vested interest that many people have in the well-being of Irish hares.

Unsustainable taking of Irish hares for sporting purposes has been talked about. There is no reference to such a concern in any of the Irish hare reports nor is there any creditable, independent, scientific document that identifies any concerns regarding the sustainability of sporting activities.

Given the information we have provided in relation to current Irish hare populations and the overwhelming evidence that exists in relation to the positive contribution responsible field sports make to the management of the Irish hare population, we see no need for a change in status for the Irish hare.

The initial introduction of the SPO for Irish hares was, we believe, politically driven and had little to do with conservation. It was opposed by the leading authorities in Irish hare conservation in Northern Ireland, by the main political parties and was subject to unprecedented public opposition.

Countryside Alliance Ireland opposes any attempt to move the Irish hare on to schedule 5.

**Supplementary information**

DOE Press Release - 5 October 2007 - The Minister for the Environment acknowledged the benefits that coursing clubs make towards the conservation of the Irish Hare and stated "The protection measure for the Irish Hare is simply that it is not deliberately intended to ban hare coursing. The department and field sporting organisations wish to achieve the same goal of increased hare numbers. Indeed, Professor Montgomery, Head of the School of Biology and Biochemistry at Queen's University Belfast has previously stated that coursing clubs have made a positive contribution to conservation of Irish Hare, through active participation in research and other activities such as sympathetic habitat management."

## **The Curlew and the Wildlife and Natural Environment Bill**

### **Current status**

Countryside Alliance Ireland is aware of the decline in Curlew numbers in NI. However, the loss of and damage to their habitat is the largest single factor in the population decline of our resident Curlew.

The total UK breeding population is estimated to be at least 99,500 breeding pairs, around 40 per cent of the European population. The Irish population has been estimated at 2,500 to 10,000 pairs with 1,750 pairs in Northern Ireland in 2000. This figure represents a decline of around 60 per cent from the previous estimate in 1987. Outside the breeding season, numbers of curlew in Ireland are swollen by the immigration of birds from Britain and Northern Europe. Wintering numbers vary, but in general a maximum of between 6,500 and 7,000 birds are present during the winter.

In winter, Curlews can be found in a variety of habitats, both coastal and inland, including mudflats, rocky shores, lake shores, and agricultural fields. The most important wintering sites in Northern Ireland are Lough Foyle and Strangford Lough.

### **Threats/Causes of decline**

The decline of the curlew is linked to the loss of their wetland habitat mainly through agricultural intensification, including drainage of wetland areas and overgrazing by livestock. Within diminishing areas of suitable habitat, it is thought that curlews are now more vulnerable to predation and this is having a further impact on their population.

As a ground-nesting bird the nests and eggs of curlew are especially vulnerable to predators such as foxes and crows. The poor survival rate of young birds is known to be a key factor in the decline of curlew at Northern Ireland sites and a detailed research programme is being undertaken to establish the exact extent of the problem and provide solutions to it.

Agricultural change, including wide scale drainage and heavy grazing has had a negative impact on the curlew's breeding habitat. In Northern Ireland, the curlew is a legitimate quarry species during the open season, although it is thought that the numbers shot are very small 40 to 50 (BASC). It is fully protected elsewhere in the UK.

### **Proposals to give full statutory protection to the Curlew**

We need to establish whether the decline is to the resident population or the over-wintering migratory population or both.

Therefore, in order to preserve the population, we believe that further scientific studies should be conducted to ascertain whether the decline in the resident Curlew population is due to shooting or the loss of habitat and or climate change.

If proven scientific evidence indicates that shooting is indeed the reason for the decline in our resident population then we would agree that Curlew should be removed from the quarry list, but only on the condition that their status is reviewed every five years and that additional habitat improvement initiatives are created for wading birds.

## **Snares and the Wildlife and Natural Environment Bill**

### **Current status**

Snaring is subject to legal restrictions and when properly practised is an effective and humane form of pest and in particular, fox control. Fox control is necessary in order to ensure that damage to game, wildlife and livestock by fox predation is reduced to acceptable levels, particularly at vulnerable times of the year e.g. nesting and lambing time.

It is the responsibility of all those involved in fox control to ensure their methods are legal, humane and carried out with sensitivity and respect for other countryside users and wildlife.

Without snaring, fox and rabbit numbers will increase because other methods cannot make up the gap in control. Opponents of snaring claim it is an indiscriminate method of pest control that regularly catches non-target species. This is false. A well-designed snare, set correctly, is a highly effective and targeted method of restraining foxes and rabbits until they can be humanely dispatched.

The Environment Committee may wish to refer to legislation as it relates to snaring in Scotland; snares have to be free-running and must have a stop, so they cannot tighten beyond a prescribed width for restraint only. New snare designs are also being developed that will allow any non-target animals to break away.

It is estimated that snaring accounts for 30% of all foxes controlled by gamekeepers and shoot managers each year and on some land where it would be difficult to use other methods, this figure is as high as 75%.

If snaring is banned, we will face a huge battle to prevent increased fox predation of ground-nesting birds, leverets and restrict rabbit damage.

Countryside Alliance Ireland opposes any attempt to ban the use of legal snares in Northern Ireland.

### **Recommendation**

Countryside Alliance Ireland would support the introduction of a licensing system for Northern Ireland.

NI Marine Task Force Submission

c/o The RSPB  
Belvoir Park Forest  
Belfast  
BT8 4QT



Sean McCann  
Committee for the Environment  
Room 247,  
Parliament Buildings, Stormont,  
Belfast,  
BT4 3XX

22 January 2010

Dear Mr McCann,

Wildlife and Natural Environment Bill

Thank you for your invitation on behalf of the Committee to provide evidence and our views on the Wildlife and Natural Environment Bill. While we are very supportive of this proposed legislative development, we will not be submitting a detailed response, as it mainly falls outside of our remit. In fact, adequate protection and conservation of marine habitats, species and ecosystems in Northern Ireland's waters, will not be deliverable until there is a Northern Ireland Marine Bill in place.

Our member organisations (listed below) are working on detailed submissions with regard to the proposed Wildlife and Natural Environment Bill, and I presume you are working with them to ascertain their views. If you need more information from the NIMTF, please contact Melanie Gomes, on 028 44830282.

Yours sincerely,



Eddy Mayhew  
Marine Policy Officer  
Northern Ireland Marine Task Force

Tel: 028 9049 1547

[edward.mayhew@rspb.org.uk](mailto:edward.mayhew@rspb.org.uk)

The Northern Ireland Marine Task Force is a coalition of eight environmental non-governmental organisations campaigning for new, integrated and comprehensive marine legislation for Northern Ireland through a Northern Ireland Marine Bill. The coalition includes Northern Ireland Environmental Link, Ulster Wildlife Trust, WWF Northern Ireland, The National Trust, the RSPB, the Wildfowl & Wetlands Trust, the Irish Whale & Dolphin Group, and Friends of the Earth, and has a combined membership of over 100,000 people.

## **Royal Society for the Protection of Birds (RSPB) Submission**



for birds  
for people  
for ever

## A briefing from RSPB Northern Ireland

### Introduction

Overall, the RSPB welcomes the proposed Bill. We responded in detail to the government consultation on the review of the Wildlife (NI) Order 1985 (the Wildlife Order) in summer 2008. That consultation proposed a number of changes to both the Wildlife Order and the Environment (NI) Order 2002 (the Environment Order). We identified additional amendments to both Orders, to bring the legislation in Northern Ireland up-to-date. Furthermore, we suggested changes that would help Northern Ireland meet its obligations under the European Habitats Directive through amendments to the Conservation (Natural habitats etc) Regulations (NI) 1995 (the Conservation Regulations).

### Key points – Biodiversity Duty and Wildlife Order

- We offer support for the new biodiversity duty and related clauses.
- We strongly support the introduction of custodial sentence and increased fines.
- We have strong concerns that the curlew has not been removed from Schedule II, given its perilous local and global conservation status.
- We seek the inclusion of additional species on the proposed Schedule A1, to ensure protection of nest sites outside the breeding season.
- We ask for a statutory duty to report on licences, alongside a review and tightening of licence procedures, particularly the general licences, to ensure compliance with the Birds Directive.
- We seek a comprehensive review of the legislation on non-natives. There is unlikely to be an opportunity to make these changes in Northern Ireland soon, and we believe it would be a lost opportunity not to make these amendments now.

### Key points – Environment Order and Conservation Regulations

- We support clauses 27-30 but recommend some minor changes.
- We are disappointed that temporary stop and reinstatement notices have not been included. We believe that these notices are necessary (alongside additional changes) to complete a comprehensive suite of methods to ensure protection and management of sites, from voluntary to compulsory measures.
- We recommend additional changes to the Environment Order. There are no proposed opportunities for further amendments to the Environment Order other than via this Bill, and we feel it would be a missed opportunity not to take this chance to make small amendments to bring our legislation up-to-date. In particular, we seek provision for management agreements on land outside ASSIs.
- We seek a new statutory purpose for the Department that refers to the need for a series of ASSIs 'representative of the diversity and geographic range' of natural features.
- We seek an extension of the protection afforded by the Environment Order to cover all Natura 2000 sites, which we believe is needed to comply with the provisions of the Habitats and Birds Directives.

For further information and the RSPB's full responses, please contact: Anne-Marie McDevitt, Conservation Manager, RSPB Northern Ireland, Belvoir Park Forest, Belfast BT8 7QT,

## **Annex 2 - Wildlife & Natural Environment Bill**



a million voices for nature

### **Wildlife Order amendment clauses or additions**

#### **Introduction**

RSPB Northern Ireland responded in detail to the government consultation on the review of the Wildlife (Northern Ireland) Order 1985 (the Wildlife Order) in summer 2008. That consultation proposed a number of changes to both the Wildlife Order and the Environment (NI) Order 2002 (the Environment Order). At the time, we also identified additional amendments to the Environment Order, to bring the legislation in Northern Ireland (NI) in line with that in England and Scotland. Furthermore, we suggested amendments that would help Northern Ireland meet its obligations under the European Habitats Directive<sup>[1]</sup>.

In this response to the draft Bill, we consider each draft clause in section A, consider issues raised in the consultation but not included in the Bill in section B, and re-state simple amendments that we believe should be included in this Bill (section C).

#### **Key points**

- We offer support for the new biodiversity duty and related clauses but recommend some minor additions or edits.
- We strongly support the introduction of custodial sentence and increased fines.
- We have strong concerns that the curlew has not been removed from Schedule II and added to Schedule I, given its perilous local and global conservation status and that data suggest that Northern Ireland's breeding birds probably winter exclusively in the country.
- We seek the inclusion of additional species on the proposed Schedule A1, to ensure protection of nest sites outside the breeding season.
- We ask for a statutory duty to report on licences, alongside a review and tightening of licence procedures, particularly the general licences. We believe this is necessary to ensure compliance with the Birds Directive.
- We seek a comprehensive review of the legislation on non-natives, to provide clarity and adequate protection from invasive alien species. There is unlikely to be an opportunity to make these changes in Northern Ireland over the short to medium term, and we believe it would be a lost opportunity not to make these amendments now.

### **A. Support for clauses included in the Bill**

#### **New Clauses**

##### **Clause 1. Duty to conserve biodiversity**

This clause (1) includes a biodiversity duty for public bodies. The RSPB supports this.

(3) This clause includes the definition of the term 'conservation of biodiversity' to include 'restoring or enhancing species populations or habitats' included in the legislation. The RSPB supports this.

(4) The RSPB would like to see the wording changed here to 'The Department will/must issue guidance .....'. We think it is vital for guidance to be produced on what the biodiversity duty actually means for public bodies.

## **Clause 2. The biodiversity strategy**

The RSPB supports (1) and (2) where there is a duty on the government to designate a biodiversity strategy and publish the strategy. However, we propose that the Northern Ireland Biodiversity Strategy (NIBS) is the designated strategy under these proposals and that UK and Northern Ireland Species and Habitat Action Plans are identified as the key mechanism to support and promote the conservation of species and habitats of principal conservation importance.

(4) The RSPB recommends that a report be published every three years as proposed in the original consultation and that the report should review work carried out by government and public bodies under the biodiversity duty.

## **Clause 3. Biodiversity lists**

The RSPB supports this placing of a statutory duty on the Department to maintain lists of species and habitats of principal conservation importance and to support and to promote and support their conservation.

## **Amendments to the Wildlife Order**

### **Clause 4. Protection of nests of certain birds**

The RSPB strongly supports this addition of a new schedule to protect the nests of birds which re-use their nests. However, we would like to see Schedule A1 amended to include peregrine, hen harrier, merlin, barn owl, chough, white-tailed eagle, osprey and red kite, all species which re-use their nests, for the reasons listed below.

- Peregrine, hen harrier, merlin, barn owl and chough. We would like to see the inclusion of these species on schedule A1 as they are regular breeders in Northern Ireland and either priority species or species of conservation concern under the NI Biodiversity Strategy. There is also increasing evidence that the nests and nest sites of some of these species are deliberately targeted by individuals who want to prevent successful breeding. Examples include:
  - Nest sites regularly used by ground-nesting birds of prey, such as hen harrier, being burned in early spring, just before the birds return; and
  - Peregrine eyries being blocked with a strategically placed stone or covered in netting to prevent the scrape or ledge being used.

This may be done in the knowledge that while the bird is not present, no offence is committed, but it will have the desired effect of preventing birds from breeding in that area.

- White-tailed eagle and osprey. The Department cited their reason for including Golden Eagle on this schedule as 'Golden Eagles have been re-introduced to County Donegal and



whilst there are no plans as yet to extend such a scheme to Northern Ireland, it is always a possibility that as birds become well established in Donegal, they could spread to Northern Ireland for breeding purposes'. The RSPB would like to see the inclusion of white-tailed eagle and osprey for the same reason, namely that there is a good possibility that they will also re-colonise NI in the next few years. White-tailed eagles were re-introduced to Kerry in 2007, are regular breeders in Scotland and individuals have been recorded in Northern Ireland. Osprey is an established breeding bird species in Scotland and speculating pairs have been recorded in Northern Ireland in recent years. Golden eagle, osprey and white-tailed eagle, once established, have been known to use the same nest for decades and would benefit from the protection offered by their inclusion on Schedule A1.

- Red kite. Red kites were released in NI for the first time in 2008, again in 2009, and a third and final release is due this year. The birds released in 2008 will reach breeding condition in 2010, establishing this species as a breeding bird, therefore we would like to see it included on schedule A1.

#### **Clause 5. Offences: recklessness**

The RSPB supports the principle that 'intentional' should have 'reckless' added alongside throughout the Wildlife Order where there is currently a demand for intent to be proven. However, we believe that this should apply to all species, not just those identified on Schedules 1, 5 and 8. This will overcome the difficulty of proving intent, where misidentification could be claimed as a defence.

#### **Clause 6. Offences: causing or permitting unlawful acts**

The RSPB supports this proposal, but also suggests the inclusion of legislation to make the employer liable for any offence committed by his employee. We propose that an employer should be guilty of an offence if a person in his/her employ commits an offence contrary to Articles 4, 6, 10 and 12 of the Wildlife Order, where the offence is in furtherance of the employer's commercial interest, e.g. the illegal killing of predators to protect game birds for shoots run by an employer. This measure is designed to discourage employers from providing tacit support for the illegal activities of their employees. This would have the potential to reduce the incidence of raptor persecution significantly.

#### **Clause 7. Defences in relation to offences under Article 4**

The RSPB supports this, but would like to see a review of the licensing procedure, particularly with regards to general licences. See section C for our recommendations on general licences.

#### **Clause 8. Disqualification for registration**

The RSPB supports this.

#### **Clause 9. Protection of basking sharks from disturbance**

The RSPB supports this.

#### **Clause 10. Snares**

The RSPB supports this proposal. We believe that, as Article 6 is to birds, this is an important supplementary to Article 10, for conservation reasons. We recognise the strong public concern to

prohibit the use of such devices for animal welfare reasons, most of which are prohibited under Annex VI of the Habitats Directive.

#### **Clause 11. Protection of wild plants**

The RSPB supports this.

#### **Clause 12. Introduction of new species**

The RSPB supports this clause but would like to see the Department produce Codes of Practice about invasive non-native species, in line with our other non-native species recommendations in Section C.

#### **Clause 13. Prohibition of sale, etc. of invasive, non-native species**

The RSPB supports this but would like to see a duty of care is placed on anyone possessing/selling/advertising a non-native species, underpinned by the Codes of Practice. See section C for our further recommendations on legislation relating to non-natives.

#### **Clause 14. Licences under Article 18**

The RSPB supports this clause apart from 14.7: we reserve support for this until the licensing procedure has been designed. The RSPB would like to see further amendments made to the licensing procedure, particularly in regard to general licences. These are given in section C.

#### **Clause 16. Licences relating to deer**

The RSPB reserves judgement on these proposals until we are assured that the management of deer in this way is:

- a) justified by the individual applying to control these animals;
- b) that non-lethal methods of control have been tried and are shown to be impractical; and
- c) that the impact on native deer populations is monitored to secure the favourable conservation status of these species.

#### **Clause 17. Offences: possession of articles for purposes of committing offences**

The RSPB supports the inclusion 24A, as this helps to ensure that damage is not done before an illegal act is undertaken. However, we also recommend that the Wildlife Order be amended to include the text:

Any person who attempts to commit an offence under the foregoing provisions of this Part shall be guilty of an offence and shall be punishable in like manner as for the said offence.

#### **Incidental result of an otherwise lawful operation**

We are aware that, every spring, there is considerable public anxiety over the timing of development and land management operations undertaken using a defence of Article 5(2)(c) of the Wildlife Order, which results in the destruction of active nests. We fully recognise that some of this may be justified on the grounds of public health and safety, but we believe that some of this destruction goes beyond that permitted under Article 9 of the Birds Directive (and in this

respect does not fully transpose the Directive into domestic legislation). We believe that there is a need for greater clarity in respect of this part of wildlife legislation, and suggest that this should be clarified in the review of the Wildlife Order.

### **Clauses 18, 19 & 20. Enforcement: constables, powers of constable in connection with samples, wildlife inspectors**

The RSPB supports all these clauses, but would like to query if the wording in clauses 18 and 25 (1) (a) which states that where a constable 'suspects with reasonable cause' that an offence is/has been committed covers the detection of offences, as recommended below.

### **Powers of entry to detect offences**

We propose that additional powers of entry onto land be granted to police officers to detect offences. This would require the extension of powers for an officer to go onto and remain on land without a warrant where the officer has reasonable grounds to believe that Schedule 1 or 5 species are present for the purpose of ascertaining whether or not offences are being committed with regard to those species. This would overcome the problem of police being unable to identify offences through lack of access.

### **Clause 21. Time limit for prosecution of summary offences**

The RSPB supports this proposal.

### **Clause 22. Penalties**

The RSPB welcomes the inclusion of fines and custodial sentences as penalties for wildlife crimes. This brings us in line with the penalties offered elsewhere in the UK and gives the public confidence that wildlife crime is viewed as seriously in Northern Ireland as it is elsewhere. The RSPB believes that the deterrent value of custodial sentences when combined with an effective policing strategy can be very effective. For example, across the UK, the number of egg collecting incidents dropped significantly between 1990 and 2005. This decrease is believed to be due to improved policing strategies such as Operation Easter and the introduction in 2001 of custodial sentences under the Wildlife and Countryside Act 1981 (WCA).

### **Clause 23. Application to the Crown**

The RSPB supports this.

### **Clause 24. Review of Schedules to the Wildlife Order**

The RSPB supports the need to regularly review the schedules in order to ensure that the contents remain concurrent with scientific knowledge and the scale of threats, either posed by or to the species listed.

We support the idea of a rolling review process for these schedules, and would not be opposed to each schedule being reviewed every five years, providing that a means exists of permitting the rapid addition of a species by the Secretary of State if a need is demonstrated between periodic reviews.

### **Clause 25. Amendments to Schedules 1 to 9 of the Wildlife Order**

### **Schedule 1**

The RSPB supports the addition of further species to Schedule 1. However, given that Schedule 1 is designed to 'give extra protection to birds that are rare or vulnerable' as quoted in the original consultation paper, the RSPB strongly recommends Schedule 1 be amended to include lapwing and redshank. These species are rapidly declining, and as such are extremely vulnerable. Their inclusion on Schedule 1 would maximise their chances of population recovery.

## **Schedule 2**

The RSPB believes that any revision of the quarry list must be based on sound science and the precautionary principle, as required under the Biodiversity Convention. We believe that the impact of shooting on the population status of all quarry species in Northern Ireland should be reviewed in time for the next review of schedules.

Given its perilous local and global conservation status (classified Near Threatened on the IUCN Red List<sup>[2]</sup>), and that data suggest that Northern Ireland's breeding birds probably winter exclusively in the country<sup>[3]</sup>, RSPB recommends very strongly that the Bill is amended such that curlew is removed from Schedule II and added to Schedule I, Part 1, as a matter of priority. This was raised in the original consultation, but has not been changed. Curlew and lapwing have been added to the UK Biodiversity Action Plan list of priority species<sup>[4]</sup> due to severe decline over the last 25 years.

The RSPB supports the inclusion of ruddy duck on Schedule 2, given the ongoing UK programme to eradicate the species.

## **Schedule 4**

Since the drafting of Schedule 4 of the Wildlife Order, we have become increasingly concerned over the paucity of evidence to show that Priority Species identified under the Northern Ireland Biodiversity Strategy, such as reed bunting and yellowhammer, have self-sustaining captive-bred populations. We would like to see a review of the species listed prior to any changes to the Schedule and evidence of captive-bred sources for any additional species prior to inclusion of any new species.

## **Schedule 9**

The RSPB welcomes proposals aiming to reduce the number and severity of non-native species introductions to Northern Ireland. However, though the current proposal to update Schedule 9 is a step in the right direction, we believe that a more comprehensive review of the legislative framework relating to non-native species, in particular, Article 15 of the Wildlife Order, is necessary. Please see section C for further recommendation on legislation relating to non-natives.

We are concerned by the use of the term 'general pest species' in the reasoning for listing on Schedule 9. We recommend that the Department use a more specific criterion, such as animals and plants that have a significant economic impact or create a health and safety problem.

## **Clause 31 Abolition of game licences and game dealer's licences**

The RSPB supports the abolition of games licences and game dealers' licences subject to the introduction of a licensing system for game shoots.

While we understand the Department's desire to scrap outdated and ineffectual licensing requirements under the game licensing legislation, we believe that the Department should

consider the merits of introducing a compulsory licensing scheme for all game shoots in Northern Ireland, and to conduct a full review of the impact of shooting on game and quarry species. We believe that changes to the Wildlife Order are required to complement the Department's proposed changes to the game licensing process, to ensure that protection for wild game birds is enhanced. We are therefore concerned that there is currently no legislative opportunity proposed in the consultation document to achieve this.

The EC Birds Directive makes clear the circumstances under which hunting is permissible. It brings a duty of care towards quarry species, and places a responsibility on both Member States and those who hunt to ensure that the populations of quarry species are conserved. Should an individual be convicted of an offence when in pursuit of quarry, the courts should be able to punish that individual by removing their opportunity to hunt birds. In our opinion, in the absence of an effective game licensing system, an alternative means of achieving this is needed.

Therefore, we believe an improvement on licensing individuals would be to license game shoots. We believe that game shoots should adhere to a set of commonly agreed standards, including compliance with the Wildlife Order. We would like the Department to assess the merits of introducing a compulsory licensing scheme for all game shoots – both upland and lowland – in Northern Ireland. Failure to adhere to agreed standards, including legislation governing the protection of quarry species and birds of prey would then result in courts having the option to withdraw a shoot's licence to operate.

## **B. Proposals put forward in the Department's Consultation Paper but omitted from the Bill**

**Proposal H: Amend the wording of the offence for a person to use or set in position certain articles and devices where these are 'calculated or likely' to cause injury to wild birds and wild animals**

The RSPB supported this proposal, and would like to see the Bill amended to reflect this. However, we would prefer to have the word 'likely' only as this makes the language clearer, easier to interpret and therefore the offence easier to enforce.

**Proposal R: To make a number of changes relating to the protection of deer including:**

- Provide a definition of 'trade or business' to distinguish between wild deer and farmed deer;

The RSPB recommends that a definition of 'trade or business' is included in the legislation to clarify differences between farmed/wild deer.

### **Other considerations**

- Whether or not mallard should be added to Schedule 3

The mallard has remained on Schedule 2 and we support this. However, we are concerned that the legality of selling mallard throughout the year may lead to illegal hunting of this species within the close season. We therefore urge the Department to introduce a bespoke monitoring programme to investigate whether the proposal results in an increase in illegal shooting in the close season and to review the listing of the species on Schedule 3 at the next opportunity to ensure that the conservation status of the species has not been compromised.

- **Whether or not additional bird species should be added to Schedule 4, i.e. Crossbill, Hawfinch, Thrush (all), Blackbird, Dunnock, Redstart, Wagtail, Blue Tit, Waxwing and Stonechat**

See comments above in section A.

### **Ringling conditions**

We propose the creation of a new offence of tampering with approved rings or possessing birds wearing tampered rings.

### **Minimum size of cage**

In Article 9(1) of the Wildlife Order, we believe the phrase 'height, length or breadth' should be amended to 'height, length and breadth', as this has proved the source of some confusion in the interpretation of the purpose of this Article.

- **Whether or not Irish Hare should be added to Schedule 5**

The RSPB gave qualified support for the Department's proposal to pursue Option 1, namely relying on the existing statutory protection for the Irish hare, in our original consultation response. Despite the amount of scientific information available on this species, its detailed ecological requirements and its true status remain a matter of debate, the latter particularly so following recent studies showing the impacts of survey methods on population estimates. We are also very mindful of recent work suggesting the species may in fact be unique to the island of Ireland. Whilst we show continued support for Option 1, we urge further work to be undertaken to look at ongoing changes in population status, the species' relation to the introduced brown hare (with which it may interbreed) and re-evaluate the situation during the next five yearly review. In the intervening period, we would like to seek assurance that the Special Protection Orders, giving Irish hare temporary statutory protection, will continue.

- **Whether or not the new offence to disturb or harass a basking shark should also apply to seals**

The RSPB supported this proposal in the original consultation, but there has been no change to the legislation. We would like to see the Wildlife Order reflected to amend this.

- **Whether or not the prohibitions provided by Article 15 of the Wildlife Order and its supporting Schedule continues to be appropriate means of seeking to prevent potential damage to the environment from non-native species that are considered to present the highest possible risks to the environment**

See section C for RSPB's recommended amendments to the legislation surrounding non-native species.

- **Whether or not to change the shooting seasons**

The RSPB strongly supported the Department's intent to retain close seasons for game birds in the legislation, and welcomes the fact that no changes have been made to the shooting seasons.

We note however, that the Guidance from the European Commission highlights the Court of Justice's ruling that Article 7(4) requires Member States to set the hunting period to ensure that the period "guarantees complete protection of the species concerned". We do not believe that

any new evidence has been presented by the Department to guarantee that any changes to the existing shooting seasons would be in line with the Commission's guidance. We believe, therefore, that the hunting dates should remain unchanged until new evidence is presented.

- **Whether or not there should be a new offence of possessing certain pesticides**

The RSPB's experience of supporting the Police Service Northern Ireland (PSNI) and the NIEA in the investigation of crimes against wild birds, particularly the poisoning of birds of prey, has highlighted a legal loophole which allows an individual to possess highly toxic chemicals for which they could have no legitimate use other than to commit an offence of poisoning animals or birds. In our original consultation response, we proposed the introduction of an offence to possess pesticides without lawful excuse. This has not been included and the RSPB would like to know the reason for this.

The experience in Scotland, even in the relatively short time since the implementation of the Possession of Pesticides (Scotland) Order in 2005, demonstrates the effectiveness of possession controls as an enforcement tool.

The underlying principle behind possession controls is that any person with a legitimate reason to possess a pesticide can do so without having to comply with additional regulations. Anyone who needs to use a chemical on land under their management for an approved purpose (in accordance with relevant pesticide, biocide or poisons legislation) has nothing to fear from the introduction of possession controls. The controls will be directed to a relatively few pesticides implicated in poisoning incidents. We are happy to advise on those substances we believe should be subject to possession controls in due course.

## **C. RSPB recommendations for further amendments to the Wildlife Order**

### **1. Statutory duty to report on licences**

The EU Birds and Habitats Directives require Member States to report regularly on the implementation of Article 9. This requirement is not incorporated into domestic legislation, and we believe that, as a matter of transparency, government should have a statutory duty to report annually on the number of licences issued and the number of organisms killed/taken/removed under these licences.

### **2. General licence procedure**

To coincide with this revision of the legislation, we urge the Department to review licensing procedure, particularly with regard to the general licences. We believe that a review of the general licences should:

- Require individuals operating under a licence to be able to demonstrate that their circumstances require such action, that lethal control will be effective and that no other solution is available.
- Assess the evidence of impact that each species included on a general licence has on each activity listed in Article 9(1) of the EC Birds Directive. This should include assessment of scale and frequency of damage, effectiveness of non-lethal deterrents and effectiveness of lethal control. Species should only be included on general licences where there is demonstrable evidence of the impact of each species and where the impact is generally so serious or widespread that granting individual licences would be impractical.

- Consider the conservation status of the species concerned in determining the appropriateness of its listing on the general licence. We are particularly concerned that several priority species for conservation action in Northern Ireland remain on the general licence. We advocate the removal of house sparrow, starling, great black-backed gull and herring gull as a matter of priority given the large declines in the populations of these species in the UK and Ireland in recent decades. The breeding population of herring gulls and great black-backed gulls declined by 90% and 32% respectively across the island of Ireland between 1969/70 and 1998/02<sup>[5]</sup> whilst the house sparrow and starling populations in the UK have declined by 62% (1977-1999) and 66% (1974-1999), respectively<sup>[6]</sup>. The house sparrow has also declined by around 19% in Northern Ireland between 1994 and 2006<sup>[7]</sup>.
- Include terms and conditions that accurately reflect the requirements of Article 9 of the Birds Directive, to help prevent illegal or misinformed activity. This would be aided by guidance that clearly defines the purpose of each licence. Each licence should state explicitly that failure to comply with all the terms and conditions while using the licence constitutes a criminal offence under the Wildlife Order.
- Prohibit the use of the general licences by individuals who have been convicted of wildlife or animal welfare offences (as introduced in Scotland and England following a recent review of the general licences).
- Introduce a monitoring system to collect data on the number and species of birds killed/taken under the general licences. It should be a requirement of licensees to submit an annual return that provides this information.
- Improve the conditions which apply to the use of cage traps:

1. The tightening of the condition guiding the state of cage traps when they are not in use, to ensure that they cannot easily be reset, e.g. by removing the access door to fixed cage traps, or by storing portable cage traps. All containers for food and water should be removed so that birds are not attracted into the trap. This is to prevent the incidence of birds entering unused traps and starving to death, which has been reported in a variety of species.

2. That the use of cage traps is confined to the taking of corvid species only and that the use of Larsen traps is confined to the taking of magpie, carrion crow and hooded crow.

3. The addition of a condition to ensure that cage traps are inspected from a sufficiently near distance so that smaller birds caught in a trap may be detected.

4. The addition of a condition, on all licences where the use of cage traps is permitted, requiring users of the licences to maintain records of birds caught in the traps. In view of the widespread concerns regarding non-target capture, misuse and abuse of cage traps, these records would inform future regulation decisions.

5. The addition of a condition to ensure that the trap user's contact details are fixed to the trap, to allow the authorities to locate users during enquiries.

### **3. Review the legislation on non-natives**

The RSPB welcomes changes in the legislation that aim to reduce the number and severity of non-native species introductions to Northern Ireland. However, though the update of Schedule 9 in the draft Bill is a step in the right direction, we believe that a more comprehensive review of the legislative framework relating to non-native species, in particular Article 15 of the Wildlife Order is necessary. Despite moves in Europe to introduce new Directives on non-natives, there is unlikely to be an opportunity to make these changes in Northern Ireland over the short to



medium term, and we believe it would be a lost opportunity not to make these amendments now.

### **Change the construction of the Wildlife Order Section 15(1) and Schedule 9.**

The title of Schedule 9, Part I, 'Animals established in the wild', remains the same in the draft Bill, despite the addition of a number of species that are not, in fact, currently established in the wild in Northern Ireland (we assume these are not already covered under Article 15(1)(a) offences). This inconsistency derives from an attempt to use Schedule 9 as a way of preventing the release of non-natives, which is not what it was originally designed to do. We recommend that the following changes be made to the legislation to clarify this:

- Schedule 15 is amended to prohibit the release into the wild of any non-native or native organism. This can then be accompanied by specific exceptions, such as livestock etc.
- The legislation should reflect the ecology of native species invasions. For example, some environments are particularly vulnerable and certain groups of non-natives are particularly dangerous to native wildlife.
- The terms 'native', 'non-native', 'release', 'wild' and 'wild state', are introduced and defined. This is important given that a species native to one part of the island of Ireland but not to another is as, or more, likely to be damaging as species from overseas, when introduced outside its natural range. The RSPB acknowledges the difficulties involved in defining these terms but suggest the following definitions and trust that the Department will recognise that the need for such definitions is crucial.

**Native:** means in relation to any plant or animal, a plant or animal the presence of which in any part of Northern Ireland or the Republic of Ireland is or would be within the past or present natural distribution of the species or subspecies in which it is taxonomically classified;

**Non-native:** means in relation to any plant or animal, a plant or animal the presence of which in any part of Northern Ireland or the Republic of Ireland (i) is or would be outside the past or present natural distribution of the species or subspecies in which it is taxonomically classified, where such natural distribution includes any part of Northern Ireland or the Republic of Ireland or otherwise; and (ii) directly results from or would directly result from any action of man; and includes any hybrid of any such plant or animal;

**Release:** means any human action the direct or indirect consequence of which is to facilitate the movement or dispersal of any animal or plant into the wild;

**Wild:** means any location or area from which the unaided movement or dispersal of any animal or plant to another location or area is possible under normal conditions;

**Wild state:** means the state of any animal or plant where the animal or plant may move or disperse unaided from any location or area to another location or area under normal conditions.

- The legislation reflects the need to tackle the invasion of non-native species at the earliest invasion stage. In contrast, the Schedule 9, Part 1 currently focuses on preventing release of species that are already established in the wild.
- A duty is placed on the Department to require action to control, contain or eradicate those animals or plants deemed to pose a serious threat to flora, fauna or social or economic interests.
- The duty is accompanied by a power to recoup the costs of control, containment or eradication, base on the 'polluter pays principle'. This will be in line with the

requirements of the EU Liability Directive and should be an important element of any 'restoration order' required.

- The Department has power to produce Codes of Practice about invasive non-native species. The draft Bill merely states that 'Department may issue guidance'.
- A duty of care is placed on anyone possessing/selling/advertising a non-native species, underpinned by the Codes of Practice.

#### **4. Offences committed elsewhere in the EU**

The RSPB is increasingly concerned about UK residents undertaking wildlife crime overseas, especially egg-collecting in the European Union. As laws have become more rigorous, we are obtaining evidence that the most hardened individuals are transferring their activities abroad. Unless they are caught in the act, it is highly unlikely that they will subsequently be deported and prosecuted in the country where the offence took place, should their crime come to light in the UK at a later date. We note that domestic legislation in other parts of Europe (e.g. Germany), permits prosecution for certain offences committed elsewhere in the European Union, and we suggest that the legislation should seek to block this loophole by enabling prosecutions of residents of Northern Ireland for offences committed abroad. We seek clarification as to whether this will be covered by the insertion of 7(5)(aa) by clause 8.

#### **5. Best-practice standards of hunting**

We believe that consideration should be given to the extent to which hunting of birds in Northern Ireland meets some of the best-practice standards of sustainable hunting elsewhere in Europe, as per the spirit of Article 7 of the Birds Directive. We note, for example, that the UK is now unusual in not requiring all hunters to undergo some form of proficiency test in order obtain a permit to shoot. In Clause 31, it has been proposed that licenses for game should be abolished and we accept this proposal subject to the introduction of licenses for shoots. However, we do wish to see a system of bag returns introduced so that the Department can monitor the sustainability of hunting on wild birds and thus meet the requirements of Article 7(1).

#### **6. Education**

Given the need to ensure that both Orders are understood by everyone in Northern Ireland, we propose the inclusion of the following text relating to Part 1:

Every local authority shall take such steps as they consider expedient for bringing to the attention of the public and of schoolchildren in particular the effect of—

- (a) the provisions of this Part; and
- (b) any order made under this Part affecting the whole or any part of their area.

**Anne-Marie McDevitt**

Conservation Manager  
RSPB Northern Ireland

[1] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

[2] BirdLife International (in press) Threatened Birds of the World 2008.

[3] Bainbridge, I. 2002. Curlew *Numenius arquata*. In: Wernham, C.V., Toms, M.P., Marchant,

J.H., Clark, J.A., Siriwardena, G.M. & Baillie, S.R. (eds.) The Migration Atlas: movements of the birds of Britain and Ireland. T. & A.C. Poyser, London, pp 332-225.

[4]

<http://www.ukbap.org.uk/library/BRIG/SHRW/SpeciesandHabitatReviewReport2007andAnnexes1-3.pdf>

[5] Mitchell, P.I., Newton, S.F., Ratcliffe, N. & Dunn, T.E. 2004. Seabird populations of Britain and Ireland. T & AD Poyser.

[6] Gregory, R.C., Wilkinson, N.I., Noble, C.G., Robinson, J.A., Brown, A.F., Hughes, J., Procter, C., Gibbons, C.W. & Galbraith, C. A. 2002. The population status of birds in the United Kingdom, Channel Islands and Isle of Man. British Birds 95: 410-448.

[7] Raven, M.J., Noble, C.G. & Baillie, S.R. 2007. The Breeding Bird Survey 2006. BTO Research Report No. 471. BTO/RSPB.

## **Annex 2 - Wildlife & Natural Environment Bill**



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### **Environment Order & Conservation Regulations amendment clauses or additions**

#### **Introduction**

RSPB Northern Ireland responded in detail to the government consultation on the review of the Wildlife (Northern Ireland) Order 1985 (the Wildlife Order) in summer 2008. That consultation proposed a number of changes to both the Wildlife Order and the Environment (NI) Order 2002 (the Environment Order). At the time, we also identified additional amendments to the Environment Order, to bring the legislation in Northern Ireland (NI) in line with that in England and Scotland. Furthermore, we suggested amendments that would help Northern Ireland meet its obligations under the European Habitats Directive<sup>[1]</sup>.

In this response to the draft Bill, we consider each draft clause in section A, consider issues raised in the consultation but not included in the Bill in section B, and re-state simple amendments that we believe should be included in this Bill (section C). Finally, we discuss the amendments we believe are necessary to ensure management of designated sites (and surrounding lands as necessary) to maintain favourable condition and conservation status of sites, and to prevent damage (section D).

#### **Key points**

- We support clauses 27-30 amending the Environment Order, but recommend some minor changes.
- We are disappointed that temporary stop and reinstatement notices have not been included. We believe that these notices are necessary (alongside additional changes) to complete a comprehensive suite of methods to ensure protection and management of sites, from voluntary to compulsory measures.
- We recommend additional changes to the Environment Order. There are no proposed opportunities for further amendments to the Environment Order other than via this Bill, and we feel it would be a missed opportunity not to take this chance to make small

amendments to bring our legislation up-to-date. In particular, we seek provision for management agreements on land outside ASSIs.

- We seek a new statutory purpose for the Department that refers to the need for a series of ASSIs 'representative of the diversity and geographic range' of natural features.
- We seek an extension of the protection afforded by the Environment Order to cover all Natura 2000 sites<sup>[2]</sup>, which we believe is needed to comply with the provisions of the Habitats and Birds Directives.

## **Abbreviations for legislation**

Our response cross-references legislation that applies in England, Wales and Scotland. The following abbreviations are used, and we reference the latest versions as amended:

- Wildlife and Countryside Act 1981 ( WCA)
- Nature Conservation (Scotland) Act 2004 ( NC(S)A)
- Natural Environment and Rural Communities Act 2006 ( NERC)
- Countryside and Rights of Way Act 2000 ( CROW)
- Conservation (Natural Habitats etc.) Regulations 1994 ( Habitats Regulations)
- The Habitats Regulations as amended by the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004, the Conservation (Natural Habitats, &c.) Amendment (No.1) (Scotland) Regulations 2007 and the Conservation (Natural Habitats, &c.) Amendment (No.2) (Scotland) Regulations 2007 are referred to as the Scottish Habitats Regulations.
- Wildlife and Natural Environment (Scotland) Bill (WNE(S)B)

## **A. Support for clauses included in the Bill**

### **Clause 27 – offences in connection with ASSIs**

Clause 27.2 inserts 46 (5A) and (5B): an offence for competent authorities to fail to notify the Department. The wording is the same as that applied in the WCA s28P(5A). There is a similar approach in Scotland, but with the obligations of public bodies set out in various sections (e.g. s13-14), the breach of which is an offence under s19(3) of the NC(S)A. We support this clause.

Clause 27.3 inserts 46 (6A): a lesser offence for third parties. Again, the wording is the same as WCA s28P(6A) and similar to the approach in Scotland (s19 NC(S)A). We support this clause.

The remainder of clause 27 inserts consequential amendments, which we therefore support.

### **Clause 28 – notification of change of owner or occupier**

This inserts 46A, the same as 28Q in WCA and similar provisions under s42 NC(S)A. We support this clause.

### **Clause 29 – notices and signs relating to ASSIs**

This inserts 46B, the same as 28S in WCA. We support this clause, but would seek the additional wording present in s41(1)(b) NC(S)A, where SNH may "take such other action as it considers appropriate".

### **Clause 30 - effect of failure to serve certain notices in connection with ASSI**

This inserts 48A: where the Department has taken all reasonable steps to issues notices (declaration, notification, confirmation, rescission etc) but has failed to do so, the validity of the notice is not affected. The Department must issue a copy as soon as they become aware of failure. The owner/occupier is not liable before receiving a copy of the notice. This is similar to s70B of WCA as inserted by s57 of NERC. The provisions in Scotland (s48 NC(S)A) are more explicit in the definition of a notice 'being given' to someone, for example including when a notice has been sent by recorded delivery (s48(6)). We believe this approach is tighter, and avoids the potential loophole that an owner/occupier may deny receipt and it is hard to prove otherwise. We support clause 30 but seek the inclusion of wording similar to that in s48(6) in NC(S)A e.g. add 48A(7):

(7) Any reference in this Article to a notice being given to a person is to be construed as a reference to its being—

(a) delivered to the person to whom it is to be given, or

(b) sent in a prepaid registered letter, or by the recorded delivery service, addressed—

(i) where that person is an incorporated company or body, to the secretary, clerk or chief executive of the company or body at its registered or principal office,

(ii) where that person is a public office-holder, to the office-holder at the office-holder's principal office,

(iii) in any other case, to the person at that person's usual or last known place of abode.

### **B. Issues raised in Department's consultation paper but omitted from Bill**

While we support clauses 27-30, there were other issues raised in proposal U the Department's consultation paper that have been omitted.

#### **Give the Department power to issue temporary stop notices and associated provisions**

We supported this proposal and would like to understand why it has not been included.

Stop orders make an activity in general an offence rather than having to establish the actions of an individual at a point in time are damaging.

However, although this appears to be a useful tool for immediate action to stop damage, it should not be used in favour of longer-term solutions, such as ASSI byelaws or Nature Conservation Orders (NCOs), or as an excuse to avoid formal prosecution where this would actually be an appropriate course of action. This point is closely associated with the need to ensure a comprehensive suite of both legal and existing voluntary measures to secure the maintenance of favourable condition and conservation status on both national and internationally designated sites. We discuss this further in section D below.

#### **Give the Department power to issue reinstatement notices and associated provisions**

We supported this proposal, which would allow the Department to seek remediation without recourse to court proceedings. We recognise that, subsequent to the consultation paper, the Environmental Liability (Prevention and Remediation) Regulations (NI) 2009 have been enacted, but these only apply to the most serious incidents. We would like to know why this proposal has not been adopted.

In cases of damage to an ASSI, NIEA's priority must be to secure the restoration of any damaged site features. Current options are for staff to seek voluntary restoration, or a prosecution, which may lead to a restoration order. A successful prosecution would require proof of criminal intent or recklessness. Not only is that process confrontational, but it is also time-consuming, difficult and infrequent, as shown by the limited number of successful prosecutions and restoration orders in Northern Ireland. The reinstatement notice option would be more compelling than voluntary agreement but less confrontational than prosecution. It would be interesting to see whether similar statutory notice provisions are available in other sectors already in Northern Ireland, perhaps for other types of environmental damage e.g. pollution incidents.

Similar proposals have been made in Scotland. At present, restoration orders can only be made following a conviction under s19 NC(S)A, but a consultation on the proposed WNE(S)B proposes that Scottish Ministers will be enabled, on application by Scottish Natural Heritage (SNH), to make a restoration order without a criminal conviction<sup>[3]</sup>. This will presumably use civil standards of proof similar to those already used to withhold single farm payment for wildlife-related breach of Good Agricultural and Environmental Condition (GAEC).

## **C. RSPB recommendations for further amendments to the Environment Order**

### **A new statutory purpose**

We suggest there is a need to include a new statutory purpose for the Department that refers to the need for a series of ASSIs 'representative of the diversity and geographic range' of natural features (with three geographic contexts – Northern Ireland, Ireland and the EU).

Scotland contains a similar purpose for SSSIs by virtue of s3 NC(S)A:

3) In determining for the purposes of subsection (1) whether any land is of special interest SNH must have regard to—

(a) the extent to which giving notification under that subsection in relation to the land would contribute towards the development of a series of sites of special scientific interest in Scotland representative of the diversity and geographic range of—

- (i) Scotland's natural features,
- (ii) the natural features of Great Britain,
- (iii) the natural features of the member States.

### **Protection of Natura 2000 sites**

We strongly believe the Department should secure the protection and management of Natura 2000 sites in Northern Ireland by extending the provisions of the Environment Order to cover all

Special Protection Areas (SPAs) and Special Areas of Conservation (SAC). This is particularly important given the recent designation of SPAs for hen harriers and merlin that are not underpinned by ASSI notification. We believe this is needed to comply with the provisions of the Habitats Directive. We provide more detail in section D.

## **Article 28. Declaration of ASSIs**

The various SSSI notification and other procedures in Scotland are covered by Schedule 1 of NC(S)A. This is useful, as the schedules can be varied without amending the Act itself and may be an advantageous approach in Northern Ireland as well.

Section 10: The Environment Order rightly states that a declaration ceases to have effect if it is rescinded under Article 28(6)(b)(ii). It remains unclear, however, what happens if neither of the conditions of Article 28(6)(b)(i) or 28(6)(b)(ii) are met. If the Department fails to confirm or rescind the declaration, in theory it appears the declaration stands, but this may not stand up in court. Article 28(6) of the WCA ensures that this cannot happen, as does schedule 1 (5) of NC(S)A (quoted below), and similar wording would benefit the Environment Order:

" If SNH does not give notice under paragraph 10 within the period mentioned in paragraph 4(a) or that period as extended, it is to be treated as having withdrawn the notification and as having given notice of that fact on the day on which the period expired."

There remains nothing in the Environment Order to say that a declaration should be a local land charge. This may cause problems for variations and additions to declarations, i.e. new owner/occupiers are not aware of their role and responsibilities. All declarations should be a local land charge in Northern Ireland. S22 NC(S)A sets up a national SSSI register, which means all SSSI details are held at a national level rather than at local authority level. We believe a register would be useful given the move to great local authority powers, especially for those ASSIs that will span more than one local authority area.

## **Article 31. Denotification**

Section 4(b)(i): The Environment Order should not have the power to confirm the notification with or without modification if the area to be denotified is larger than that declared in Article 31(1). We recommend underlined wording below, from s9 NC(S)A to provide clarity:

9(1) SNH may, where it considers that all or any part of a site of special scientific interest is no longer of special interest by reason of the natural feature specified in the SSSI notification, give notification to the persons set out in subsection (2) of its intention to revoke the SSSI notification or, as the case may be, modify it so as to disapply its effect to the part of the site in question.

When denotifying, we believe the Department should also have regard to the statutory purpose, should it be introduced, and recommend wording similar to that in s9(3) NC(S)A.

Section 4(b)(ii): The consequences of doing neither (i) or (ii) are established. If the Department does not rescind the declaration to denotify, then the declaration made under Article 32(1) must cease to have effect. We believe it would add clarity to include the wording, 'if they do neither the notification shall cease to have effect' - this is similar to our point we make regarding Article 28(10) above.

We believe it would also be useful to use the word 'denotification' throughout Article 31, which currently refers to the 'notification of a denotification' and is hence less than clear.

### **Article 33. Appeals in connection with consents**

Section 3: In WCA 28(F)(3), a longer period is allowed for appeals, if agreed. In 28(F)(4), a hearing can be called in preference to a public inquiry. In Scotland a longer period can also be agreed between SNH and the appellant (s18(3)(b) NC(S)A. We recommend the insertion of the following words after 33(3)(b):

or, in either case, within such longer period as is agreed in writing between the Department and the appellant.

### **Article 34. Management Agreements**

Section 1: We believe it is necessary to insert 'lessees' in addition to 'owner/occupier' in relation to this Article.

This section refers only to 'land included in an ASSI' and 'managed as (or part of) an ASSI'. This greatly restricts the scope of management agreements for the purpose of conserving ASSIs. In England, S75(3) CROW modifies the Countryside Act 1968, which provides for agreements between the statutory authority and those with interests in land within or adjacent to an SSSI, to include 'other' land. This means that statutory nature conservation agencies can enter into management agreements with any owner/occupier (even when they are outwith SSSIs) for the purpose of securing the conservation of SSSIs. Therefore, if a problem occurs outwith an SSSI, these bodies can attempt to reach an agreement to address it.

The definition of management agreement is vague: 'for securing that his land is managed as an ASSI'. In England and Wales, the Countryside Act 1968 states that the management agreement is for the purpose of conserving those flora, fauna, geological or physiogeological (or for SSSIs, other features as well) where it appears to Natural England and the Countryside Council for Wales to do so.

### **To meet all of these requirements, we therefore recommend a replacement of 34(1) with**

The Department may, for the purpose of conserving those flora, fauna or geological or physiographical features of an ASSI, enter into an agreement ("a management agreement") with the owners, lessees and occupiers of any land included in an ASSI (or of any other land).

Section 6: It remains unclear why the Department should be given the power to waive any condition imposed by a management agreement which is inconsistent with the provisions of a development plan or development order. We seek the removal of this section.

The Environment Order does not replicate any of the provisions of Section 28(J) of the WCA that relate to the serving of management schemes. These are seen as an interim step between a negotiated approach to positive management and the heavy hand of management orders. The Environment Order moves straight from a management statement under Article 28(2) and the serving of a management order forcing an owner/occupier to take action. We suggest the introduction of management schemes would be beneficial in Northern Ireland.

### **Article 35. Management notices**

This Article is acceptable if management schemes are not introduced.

### **Article 36. Appeals against management notices**



Section 1: There are some additions to the appeals mechanism that are currently omitted:

- Grounds for appeal can include the fact that another owner/occupier should do the work or pay for it (s28 L(2) WCA);
- That money should be paid to the owner/occupier in relation to carrying out the works; and
- An ability to introduce regulations that set out the procedures for appeals (s28L(8) WCA).

We suggest the Department includes these in their amendments to the Environment Order. In Scotland, the LMO itself must set out circumstance under which an appeal may be brought (s32(1)(g)).

**To achieve this, we suggest the insertion of 36(1A) and 36(4):**

36(1A) An appeal may be on the ground that:-

(a) some other owner or occupier of the land should take all or any of the measures specified in the management notice, or should pay all or part of their cost, or

(b) the Department should make a payment in accordance with 37(2).

36(4) The Department may introduce regulations made by statutory instrument, or issue guidance, on the appeal process for appeals under this section, including about —

(a) the period within which and the manner in which appeals are to be brought, and

(b) the manner in which they are to be considered,

and any such regulations may make different provision for different cases or circumstances.

The latter may also be achieved by guidance issued by the Planning Appeals Commission.

### **Article 37. Payments by Department**

Section 2: Under s50 WCA, amended by CROW, the statutory nature conservation agencies may, in relation to management agreements, make payments to anyone. They do not have to be owner/occupier of a SSSI. This allows these bodies to make payments in relation to actions required outside SSSIs that are needed in order to conserve an SSSI. In Scotland, LMOs apply to any land.

We believe it would be advantageous to introduce similar provisions in the Environment Order to secure the favourable condition of ASSIs. This would apply if our recommendation for 34(1) is accepted, as 37(2) refers to any land in relation to which a management agreement has effect.

### **Article 38. Public bodies: general duty**

Section 3: The definition of 'public body' does not include reference to Minister of the Crown, persons holding office, or any other public body of any description. S28G(3) WCA and s58(1) NC(S)A (giving definition of "public body or office-holder") cover the same issue in Great Britain. This should be amended to bring Northern Ireland in line with the rest of the UK.

## **Article 39. Public bodies: duties in relation to operations**

Section 7: There appears to be no reason why the Department itself should be excluded from these requirements, particularly given that so many licences and consents are issued by various divisions within the Department, and therefore we seek the removal of 39(7).

## **Article 40. Public bodies: duties in relation to authorising operations**

Article 39(6) should also apply to Article 40 (i.e. the requirements to minimise damage and restore damage caused). In Scotland this is provided for under:

- s14(3)(b) - obligation to minimise damage when carrying out an operation;
- s15(10)(b) NC(S)A - obligation to minimise damage when consenting; and
- s14(5)(b) - obligation to restore damage.

### **We suggest the insertion of 40(6A):**

40(6A) On issuing the permission, the body shall include sufficient conditions as to ensure that:

(a) the operations are carried out by the applicant in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest (taking account, in particular, of any such advice as is referred to in paragraph (5)(b)); and

(b) the site will be restored to its former condition by the applicant, so far as is reasonably practicable, if any such damage does occur.

## **Article 41. Powers to acquire land**

Section 1: The Department should consider whether it would be useful to allow the compulsory purchase of rights associated with land (e.g. shooting or fishing rights) but not the land itself. For example, in Scotland there is already a provision under s39 NC(S)A to acquire easements, which sets the precedent that it should be possible to acquire rights where those rights affect the site features.

s39(4) NC(S)A "The power to acquire land under this section includes power to acquire a servitude or other right in or over land by the creation of a new right."

As we seek the inclusion of 'any other land' with respect to management agreements, so it would be useful for the Department to have powers to acquire land outside an ASSI where it was necessary to the management of the ASSI. We therefore seek the inclusion of 'any other land' in 41(1) i.e. The Department may in the circumstances set out in paragraph (2) make an order vesting all or any part of land included in an ASSI, or any other land, in the Department. Similar provisions are made in England, Wales and Scotland.

## **Article 45. Power to make byelaws for ASSI**

Section 2. The purposes for byelaws are far too restrictive in the Environment Order. We recommend the following insertions, which add relevant sections (s19(2)(b,c,e)) of the Nature Conservation and Amenity Lands Order (NCALO) 1985 (NCALO):

45(2)

(c) regulate or prohibit the lighting of fires, or the doing of anything likely to cause a fire, on the land;

(f) prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in the ASSI, the taking, destruction or disturbance of eggs, larvae or other immature stage, of any such creature, the taking of, or interference with, vegetation of any description in the ASSI, or the doing of anything therein which will interfere with the soil or damage any object in the ASSI;

(g) prohibit or restrict the shooting of birds or of birds of any description within such area surrounding or adjoining the ASSI (whether the area be of land or of sea) as is requisite for the protection of the ASSI;

#### **Article 46. Offences**

There is no provision for offences by bodies corporate, for example similar to s47 NC(S)A, and we recommend this be included in the Environment Order.

#### **Article 49. Application of this Part to the Crown**

Section 2. It remains unclear why Crown land is exempt from Articles 32-37 of the Environment Order. This is not the case elsewhere in the UK and we believe the exemption should be removed.

#### **Article 50. Statutory charges**

If this is the equivalent of a local land charge, then there must be a requirement to alter the local land charge when the ASSI declaration is varied, added to or denotified e.g. amend insertion under 50(b):

"43. Any declaration under Article 28(1) of the Environment (Northern Ireland) Order 2002, any variation under 29(1) of that Order, any additional under 30(1) of that Order, any denotification under 31(1) of that Order, any management agreement under Article 34 of that Order or any waiver relating thereto and any management notice under Article 35 of that Order."

#### **Transitional arrangements**

Given the potential magnitude of changes to the site protection process, we suggest that the Department outlines how it will manage transitional arrangements.

#### **Guidance**

We suggest a provision for the Department to issue guidance on the exercise of functions under the Environment Order. For example, s54 NC(S)A makes a similar provision for Scottish Ministers:

s54(1) The Scottish Ministers may issue guidance (or approve guidance issued by others) containing recommendations, advice and information for the assistance of—

(a) public bodies and office-holders in complying with the duty under section 1(1) to further the conservation of biodiversity,

(b) SNH in exercising its functions under Part 2, and

(c) persons affected or likely to be affected by the exercise by SNH of any of those functions, and may issue revisions of any guidance issued by them (or approve revisions of guidance issued by others).

## **D. Sites – management and protection**

### **Protection of Natura 2000 sites**

Article 6(2) of the Habitats Directive requires the Government to take appropriate steps to prevent habitat deterioration or disturbance to species in relation to Natura 2000 sites. Article 4(4) of the Birds Directive also requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbance affecting Annex 1 species. We believe this requires a proactive approach from the Department, where owners, occupiers and third parties are informed, management secured and damage minimised by early intervention should it occur. There should also be a reliable legal mechanism to prosecute damage to habitats and ensure restoration.

In Northern Ireland, we have two SPAs not underpinned by ASSIs – the Antrim Hills and Slieve Beagh SPAs, for hen harrier (and merlin in Antrim Hills). Where damage occurs on ASSIs, the Environment Order sets out the powers available for prosecution.

Depending on the nature of damage to habitats, landowners may be in breach of the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007 (the EIA Agriculture Regulations), but awareness is low and as far as we are aware, no prosecutions have yet been brought.

There is no provision for tackling damage were it to take place on privately owned, non-ASSI upland within the SPAs, for example by quad bike trials or peat cutting outside the nesting season. These actions would not trigger application of the EIA Agriculture Regulations; the Environment Order does not apply outside ASSIs; and outside the breeding season, it is unlikely damage would directly disturb the Schedule 1 species, proscribing use of the Wildlife Order. Nor do these activities require any other consent or licence, so there would be no involvement of a statutory body, which would have to undertake an appropriate assessment of the likely effects of the proposal on the SPA. NIEA would only be able to act after the damage had taken place, which is not compliant with Articles 6(2) and 4(4) mentioned above.

Agri-environment measures have been introduced on some land to secure management, yet European case law would indicate this to be insufficient. The Poitevin Marsh judgment<sup>[4]</sup> was extremely clear that agri-environment measures do not provide the necessary protection required for SPAs:

“26. So far as the agri-environmental measures are concerned, it must be held, as the Commission has argued and as the Advocate General has pointed out in paragraph 26 of his Opinion, that these are voluntary and purely hortatory in nature in relation to farmers working holdings in the Poitevin Marsh.

27. Those measures cannot therefore, in any event, be capable of supplementing effectively the protection regime for the classified SPAs.

28. It must for that reason be held that, by failing to adopt measures conferring a sufficient legal protection regime on the SPAs classified in the Poitevin Marsh, the French Republic has failed to

fulfil its obligations under Article 4(1) and (2) of the Birds Directive. The Commission's application must therefore also be upheld on this point."

It therefore appears to the RSPB that the Department has no means to guarantee appropriate management of SPA habitats on land outside Forest Service managed land.

In Scotland this has been tackled to some extent through the NC(S)A and resulting amendments to the Scottish Habitats Regulations. In practice, this means that certain SSSI measures also apply to European sites, regardless of their SSSI status:

- Nature Conservation Orders (NCOs) (Chapter 2 NC(S)A), are made by Scottish ministers on application by Scottish Natural Heritage (SNH), and prohibit the carrying out of operations that could damage the site. This includes operations by third parties (e.g. cockle dredging). There is no restriction on what the operation may be other than "where the Scottish Ministers consider that...the carrying out of an operation...should be wholly or partly prohibited" in order to protect the site (s23(1)).
- Land Management Orders (LMOs) (Chapter 3 NC(S)A) are made by Scottish Ministers on application by SNH. LMOs direct owners/occupiers to carry out specific management operations to protect the interest of the site. LMOs can also be made for land outside the site boundary. The NC(S)A requires SNH first to have offered a management agreement and that the owner/occupier has rejected that offer, before an application for an LMO can be made.
- Other SSSI measures have been made to also apply to European sites including: SNH power to purchase land; power for the courts to make restoration orders in the event of a conviction for reckless or intentional damage to a site; powers for police to investigate; powers of entry etc.

In addition, Regulation 18 of the Scottish Habitats Regulations now covers the offence of "reckless or intentional damage to a European site". This applies to any person, not just owners and occupiers, and is not restricted to any named operations. Proof is required that damage occurred and that it was the result of a reckless or intentional act.

However, the RSPB believes even this Scottish approach does not easily guarantee prevention of damage to European site features. The reasons by which a person may not be guilty include that the damage was the "incidental result of a lawful operation". Potentially therefore an owner/occupier of a non-SSSI SPA could change their land management to the detriment of a European site since they would have the defence of lawful operation. In those circumstances, SNH must offer a voluntary management agreement (MA), as a precursor to seeking a compulsory Land Management Order (LMO). That is an extra burden on the statutory authority, and may be time consuming, unless an NCO had already been put in place specifying that certain changes in management were prohibited operations.

Whereas, if the European site was underpinned by a SSSI, and the operations requiring consent (ORCs) reflected the operations that may cause damage to the European site features as well, the owner/occupier would have to apply for consent before undertaking any changes. This provides the statutory authority with some security that operations can be prevented, rather than needing intervention (MAs or LMOs) or foresight (NCOs).

In our response to the consultation on the Habitats Regulations in England and Wales consultation, we have recommended there be an extension of the Regulation 22 powers (Power to make Special Nature Conservation Orders (SNCOs)). This would require that on all European Sites where all features are not also notified features of the coincident SSSI(s), SNCOs should be

issued as standard to specify operations capable of destroying or damaging (including deterioration or disturbance) those features<sup>[5]</sup>.

We recommend a similar approach in Northern Ireland:

- Application of Environment Order powers protecting ASSIs to Natura 2000 sites;
- Introduction of NCOs and SNCOs; and
- Requirement that on all Natura 2000 sites with features that are not features of a coincident ASSI, an SNCO should be issued specifying prohibited operations.

Claire Ferry  
Senior Conservation Officer  
RSPB Northern Ireland

[1] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

[2] Sites protected under the Habitats Directive and the Birds Directive (Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds)

[3] Q78 in consultation document available at  
<http://www.scotland.gov.uk/Publications/2009/06/17133414/6>

[4] ECJ case C-96/98

[5] Provision to make SNCOs in Scotland has been replaced by that to make NCOs applying to European sites regardless of their SSSI status. An "operation" in s23 NC(S)A does not have to be an ORC - it can be any operation Scottish Ministers care to identify in the NCO.

Ulster Farmers' Union Submission



## **FROM THE PRESIDENT**

The Committee for the Environment,  
Parliament Buildings,  
Stormont Estate,  
Belfast,  
BT4 3XX

5th February 2010

To: The Environment Committee

## **Wildlife and Natural Environment Bill**

Thank you for the opportunity to comment on the above. The Ulster Farmers' Union (UFU) represents approximately 11,000 rural families and therefore fully recognises the important interaction between wildlife and rural areas. Farmers are already making a significant

contribution of protecting Northern Ireland's biodiversity, through their active involvement in various agri-environment schemes e.g. Countryside Management Scheme.

We have responded to past consultations on this matter.

**Clause 4 - Protection of nests of certain birds and Clause 5- Offences-recklessness, referring to Articles- 4, 10, 14 and 16 of the bill**

Making it an offence to damage or destroy the nest of particular birds at any time of the year.

'action which, when carried out recklessly, causes harm to wildlife, will be treated in the same way as action carried out intentionally to cause such harm.'

The UFU would have concern with these provisions as they are too broad and open to inconsistent interpretation. A person may not be aware of the presence of certain wildlife or plants therefore may unknowingly cause unintentional damage. For example, a farmer cutting silage or a contractor carrying out work for a farmer/landowner e.g. hedge cutting, drainage etc, could unintentionally damage nests of certain birds, particularly if the nest is uninhabited. As it currently exists, the bill may class this as reckless behaviour and a farmer could face the same penalty as an intentional offender. The UFU feel this would be unfair.

If harm to wildlife occurs the UFU would query if a farmer takes all reasonable measures to mitigate against any wildlife harm (e.g. conducting field checks) prior to conducting an agricultural activity, could this still be considered as recklessness? All landowners in receipt of Single Farm Payment must comply with all Statutory Management Requirements of Cross Compliance regulations. SMR 1 and SMR 2 specifically relate to the conservation of wild birds and habitats and specify 'deliberate' harm to wildlife. Also, landowners/farmers already have to comply with existing closed periods for hedge cutting that aim to protect nesting birds. Indeed the UFU question whether this will apply to hedges/road verges being cut for road safety reasons.

The UFU consider that these proposals conflict with, and duplicate existing requirements.

**Clause 6 – Offences- causing or permitting unlawful acts, referring to Article 4 of the bill**

'...anyone who knowingly causes or allows someone else to carry out those acts will be committing an offence.'

The UFU want to highlight that landowners often sign gun licence agreements allowing certain people access to their land to shoot. Permitted people may access this land without necessarily needing to inform the landowner. The landowner therefore has little control over what the gun user shoots and we feel it would be unfair if this example could be considered a case where the landowner has 'allowed someone else to carry out these acts'. The UFU seek clarification on this issue.

**Clause 12 – Introduction of new species and Clause 13- Prohibition on sale, etc of invasive, non-native species, referring to Article 15 of the bill.**

The UFU would support this Article, provided it acknowledges the responsibility of the public sector and other bodies. Farmers are already required to control certain invasive species and any new guidance should be consistent with existing guidance. Many invasive species are noxious to animals/humans and are removed/controlled as part of farm management activities.

The UFU would stress the need for all relevant sectors to play their part in controlling the spread and introduction of invasive species. We would suggest two areas where we feel this is particularly relevant and feel that more needs to be done.

#### 1. During Road Maintenance/Development

If road verges are left undisturbed for long periods of time, e.g. during periods of road development. Certain species of invasive plants may take hold, if allowed these species quickly spread to neighbouring land and can become rife. We feel more onus should be placed on DRD and those contracted by DRD, or other public departments to carry out road improvements on their behalf, and other public departments, to take proper action to control the spread of invasive species.

#### 2. Control at entry points to Northern Ireland e.g. ports and airports

Some countries, such as Australia, conduct stringent checks on passengers/vehicles/luggage entering the country. This significantly limits the introduction and continued spread of invasive plant and animal species. We feel that the same level of checks should be conducted at all entry points to Northern Ireland.

There must be a degree of leeway in the interpretation of this requirement. It is impossible to totally prevent the spread of invasive species. We feel that a person should be able to demonstrate that they are utilising all appropriate mitigation measures.

### **Clause 16 – Licences relating to deer, referring to Article 21 of the bill**

‘...giving the Department broader powers to issue licences to kill, injure or take away any (fallow, red or sika) deer during the close season.’

The UFU would support this addition and stress that in order to be effective this must also apply to the public sector. The UFU would highlight that proposals contained in the new DARD Forestry Bill permits Forestry Service, in the event of damage to trees by wild animals, to cull such wild animals (e.g. deer) at any time. These proposals also include protection from prosecution for persons authorised for control of wild animals, citing the NI Wildlife Order 1985. The Forestry proposals extend this provision to allow them to enter neighbouring lands. We feel it would be unacceptable for everyone else, other than Forestry Service, to have to comply with the requirements of the Wildlife and Natural Environment Bill as it would significantly inhibit the objective of the bill.

### **Clause 17 – Offences: possession of articles for purposes of committing offences, referring to Article 24 of the bill**

Making it an ‘offence for anyone to be in possession of any article that is to be used for committing offence under the Wildlife Order.’

The UFU would have concern about this provision and seek assurance and further clarification that this will not implicate innocent individuals conducting genuine agricultural duties. For example, using the situation cited in the explanatory memorandum of persons with spades and dogs in the pursuit of badger baiting. During field inspections farmers may have spades and dogs necessary as part of maintenance (e.g. clearing drains) and farming duties. The UFU would suggest that the bill specifically clarifies what types of articles and breeds of dogs that may be questionable.



### **Clause 19 – Powers of constable in connection with samples, referring to Article 25 of the bill**

‘Provision for entry to premises under the authority of warrant issued by a lay magistrate to investigate any offence under Parts 2 and 3 of the Wildlife Order.’

The UFU query the use of a lay magistrate and feels that the warrants should be issued by a magistrate fully qualified in this area under scrutiny.

‘Provision also permits a police officer who enters upon any land to be accompanied by other persons and to take any equipment or other material onto that land, and to take samples of anything found on that land and remove them.’

The UFU feels that this would increase the risk of bio security breaches as well as having implications for health, welfare and safety. The bill should stipulate necessary checks and precautions to be adhered to.

The UFU acknowledge the Review’s stipulation that police officers will ensure that when leaving premises, they have been secured as they found it upon entry.

### **Clause 20 – Enforcement: Wildlife inspectors, referring to Article 25 of the bill**

The UFU do not feel that wildlife inspectors should have powers to enter and inspect premises, without the need of a warrant or being accompanied by a police officer.

Again, the UFU feels that this would increase the risk of bio security breaches as well as having implications for health, welfare and safety. The bill should stipulate necessary checks and precautions to be adhered to.

The UFU feels that it is not necessary for wildlife inspectors to enter premises to facilitate processing of applications for licences or to check for on-going compliance with licence conditions. All necessary compliance standards will already be guaranteed from the submission of necessary paperwork during application stage. Relevant paperwork and further guarantees can also be sought, for certain licences e.g. from PSNI: when applying for a deer culling licence a person should already have applied for a special gun licence that allows him to carry a gun capable of killing a deer.

### **Clause 24 – Review of Schedules to the Wildlife Order, referring to Article 28 of the bill**

‘This clause places a duty on the Department to review those Schedules, together with new Schedule A1, every 5 years.’

The current NI Wildlife order has been operative for over 20years. While recognising the importance of regular reviews, we would question whether or not it is appropriate that the schedules of the bill are reviewed every 5 years. This is a fairly short time period making it difficult for people to keep track of any changes. We would instead suggest that this review should take place at 10year intervals to allow for any changes to be established and evaluated.

### **Clause 27 – Offences in connection with ASSI’s, Clause 28- Notification of change of owner or occupier, Clause 29- Notices and signs relating to ASSIs and Clause 30- Effect of failure to serve certain notices in connection with ASSI’s, referring to Articles 46 and 48 of the bill**

Already within Northern Ireland there are very stringent controls in place in relation to ASSI's and the UFU feel that the proposed changes would significantly increase the regulatory burden on landowners in ASSI's without any additional outcome benefit.

The UFU are very strongly opposed to the requirement for the owner of the land within an ASSI to inform the Department of change of ownership/tenancy. Tenancy of a parcel of land can alter throughout the year e.g. a dairy farmer will often let out silage ground to sheep farmers solely for the winter months. Therefore we feel, this is an unnecessary bureaucratic requirement and it is excessive to create it an offence for failure to comply with these requirements. The Department could have easy access to this information via land registry or through DARD. In the past we have suggested that DARD include all ASSI designations on farm maps.

The UFU are also opposed to the Department having power to erect maintain and remove signs/notices about an ASSI on land included in that ASSI. This could be a major bio security risk.

'Any public body which fails to (inform the Department of the Environment before conducting or permitting work within an ASSI) will be committing an offence'

The UFU welcome this addition.

'...declarations and notices will not be invalidated in the event that an owner has not been identified.'

Considering the implications of conducting certain agricultural activities within an ASSI we feel it would be irresponsible and unfair that the Department is not obligated to inform all landowners within new ASSI designations. We would question where it would not be possible to inform landowners as all necessary information should be easily accessible via the routes mentioned above.

## **Other Issues**

In addition to the points raised above the UFU would like to suggest the inclusion of the following;

### **Closed Hedge Cutting Period**

While this particular issue has not been included as part of this consultation, the UFU requests that it is considered as part of this Wildlife and Natural Environment Bill.

The background to this request stems from the inclusion of a 'closed period' for hedge cutting as an integral part of maintaining land under Good Agricultural and Environmental Condition (GAEC). This is required under the EU Commission framework for 'cross-compliance' for the EU's Single Farm Payment Scheme. The dates covered by this period differ within the United Kingdom:

Northern Ireland – 1 March to 31 August

England/Scotland – 1 March to 31 July

Wales – 15 March to 31 August

The UFU is fully supportive of ensuring that birds are not disturbed during the main nesting season. However, the delivery of the objectives of maintaining the land in good agricultural and environmental condition and the non-disturbance of birds must be balanced against permitting practical farming operations to continue.

We have previously raised this issue with the Department and understand that the Wildlife (NI) Order 1985 covers the principle of avoiding the disturbance of birds during the nesting season but does not include specific dates for a 'closed hedge cutting period'. It also allows a defence against bird disturbance if such action was necessary under certain defined conditions such as for the purposes of public/animal health.

It is against this background that we are requesting that the end date of the closed hedge cutting period in Northern Ireland (31 August) should be brought forward to 31 July from this year onwards. This date would still avoid the disturbance of hedge nesting birds during the main nesting season but also permit practical farming operations such as hedge trimming or the erection of field boundary fences to take place during the month of August rather than September (as would be the case otherwise). Ground conditions during August would be much more suited to such operations. Indeed, there are certain areas where such work in September is virtually impossible.

We therefore request that this particular issue should now be reconsidered as part of the current review of the Wildlife and Natural Environment Bill and Northern Ireland should be aligned with GB.

Whilst the UFU acknowledges and supports the protection of wildlife and the natural environment, we are opposed to the duplication of existing legislation and the unnecessary burden of red tape.

Yours sincerely,



Graham Furey

## **Ulster Wildlife Trust Submission**

### **Wildlife and Natural Environment Bill Committee Stage: Written evidence from the Ulster Wildlife Trust.**

The Ulster Wildlife Trust is a local nature conservation charity with over 6,400 members which works to achieve an environment rich in wildlife and valued by all.

The Ulster Wildlife Trust has strongly welcomed the proposal to review the Wildlife (Northern Ireland) Order 1985. In this document our responses are constructed to follow the clauses set out in the Wildlife and Natural Environment Bill, as introduced to the Assembly.

#### **Duty to conserve biodiversity**

The Ulster Wildlife Trust supports clause 1. However, there is no specific mention of the genetic component of biodiversity (ie diversity within species) within clause 1. The Convention on Biological Diversity defines biological diversity as "the variability among living organisms from all

sources, including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems."

## **The Biodiversity Strategy**

The Ulster Wildlife Trust supports the proposal in clause 2 (1), 2(2) and 2(3). This enables Northern Ireland to contribute to obligations under Article 6(a) of the Convention on Biological Diversity which states that each contracting party shall "develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity...". This convention was ratified by the UK in 1994 and by the Republic of Ireland in 1996.

Clause 2(4) of the Wildlife and Natural Environment Bill states that the Department must 'from time to time' publish a report regarding the implementation of the biodiversity strategy. The Ulster Wildlife Trust is concerned that this seems a rather vague statement and the original consultation proposal was to place a statutory duty on the Department to provide progress reports on the implementation every three years.

The Ulster Wildlife Trust considers it would be good practice to align the reporting schedule under the biodiversity strategy to the national and international reporting rounds and commitments in relation to biodiversity eg the Convention on Biological Diversity (see COP8 Decision VIII/14). Given limited resources, such an approach can offer efficiency savings.

## **Biodiversity Lists**

The Ulster Wildlife Trust supports clause 3, while recognising that it is important that the lists of species and habitats also take account of responsibilities at an EU level.

### **Protection of nests of certain birds.**

The Ulster Wildlife Trust welcomes the inclusion of the Golden eagle (*Aquila chrysaetos*).

Barn owls (*Tyto alba*) tend to use the same roost and nest sites from year to year. Since there is an estimated population of only 45-55 breeding pairs the Ulster Wildlife Trust believes there is a case for the year round protection of sites.

## **Offences**

The Ulster Wildlife Trust supports the insertion of 'or recklessly' within the articles listed in 5(2). In our consultation response we welcomed the proposal that reckless action that harms wildlife on Schedules 1, 5 and 8 should be an offence. We also welcomed the proposal that it should be an offence for a person to cause or permit another person to carry out certain acts against wildlife.

### **Protection of basking sharks from disturbance**

We support the insertion of clause 4A after 10(4) of the Wildlife Order but would also wish to see this extended to seals. Dr. S. Wilson (pers. comm.) has reported that the common seal (*Phoca vitulina*) colony at Minerstown has been disturbed by jet skis.

## **Licences under Article 18**

14 (7) "Article 10(4) does not apply to anything done for the purpose of any development if it is done under and is in accordance with the terms of a licence granted by the Department". We note that both NIEA and Planning Service are within the same government department.

If development has the same meaning in Article 18 (power to grant licences) as is given in Article 11 of the Planning (Northern Ireland) Order 1991, then 'development' means 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'. There are, however a number of excluded activities including use of land for agriculture or forestry and the carrying out of works affect only the interior or do not materially alter the external appearance of the building.

### **Enforcement and Penalties**

We welcome the proposed new powers in clause 22 for courts to impose custodial sentences for serious offences. We stress that where fines are imposed they must be sufficient to act as a deterrent to crime.

### **Application to the Crown**

As we stated in our consultation response the Ulster Wildlife Trust is of the opinion that the Crown should be seen to take a lead in protecting the environment and we therefore support the proposal to add 27A.

### **Review of Schedules to the Wildlife Order**

The proposed clause 28(8) states that the Department 'shall' review on a 5 yearly basis the following schedules:-

A1 and 1 Birds; 2 Birds which may be killed or taken; 5 Animals protected at all times; 8 Protected plants.

There is no mention of Schedule 9 'Animals and Plants to which Article 15 Applies' ie the introduction of new species. We would hope that the intention of this clause is to permit the Department to undertake more frequent review of this schedule given the need to be able to respond quickly to potential threats from non-native invasive species. The ability to respond quickly to invasive species is a crucial factor in keeping down costs to the public purse.

We would also welcome clarification on the legal status of any species where there is a change to the Latin name as a result of research findings. Is it potentially no longer protected under the Bill? Will it require formal review to rectify the name change or can there be a mechanism within the legislation to take account of changes in Latin names? At the moment the Bill states that in the event of any dispute or proceedings only the second column, that is, the official Latin name, is to be taken into account but what if the official Latin name of a species is changed after the Bill becomes an Act?

### **Offences in connection with ASSI**

We welcome the amendments to the Environment Order in clauses 27-30 of the Bill. The importance of preventing damage to ASSIs cannot be overemphasised. While the Trust supports the principle that those who cause environmental damage through unlawful activity should pay for putting it right the difficulties and costs of habitat restoration can be considerable, as can also be the time-scales required. It is important that this section gives the enforcement authorities the power to intervene as soon as unauthorised or illegal activity is identified.

In relation to 27 (3) of the Bill which inserts clause 6A after 46(6) of the Environment Order we question whether a fine not exceeding level 4 on the standard scale is a sufficient financial deterrent in cases where a person intentionally damages an ASSI with the aim of securing a financial gain for themselves.

The addition of clause 48A to clause 48 of the Environment Order provides a valuable safeguard in some habitats where notifying every single owner and occupier is extremely difficult because of the historic complexity of ownership and where those with rights may not have exercised them for a generation or more. The legal requirement on the Department to take all reasonable steps provides an adequate safeguard to the public and seems a sensible way to proceed in terms of the allocation of public servants' time, and thus public money. It is important to stress that for most land it is relatively straightforward to establish who the owners and occupiers are.

## **Changes to Schedules**

### **Schedule 1 Birds which are protected by special penalties.**

#### **Part 1 At all times**

The Ulster Wildlife Trust supports the proposal to amend Schedule 1 and insert the following species:- Cuckoo (*Cuculus canorus*), Stock Dove (*Columba oenas*), Little Egret (*Egretta garzetta*), Spotted flycatcher (*Muscicapa striata*), Mediterranean Gull (*Larus melanocephalus*), Hobby (*Falco subbuteo*), Red Kite (*Milvus milvus*), Sand martin (*Riparia riparia*), Puffin (*Fratercula arctica*), Tree sparrow (*Passer montanus*), Manx shearwater (*Puffinus puffinus*), Lesser whitethroat (*Sylvia curruca*) and Yellowhammer (*Emberiza citrinella*).

We consider that there is a case for the curlew (*Numenius arquata*) being moved to Schedule 1 from schedule 2. The curlew is an all-Ireland Red-listed species, a UK amber-listed species and a priority species in the Northern Ireland Biodiversity Strategy (see <http://www.habitats.org.uk/>). Winter counts of the bird are higher because of an influx of the birds from Britain and further afield to winter around coastal areas whereas the local breeding population has experienced a decline since the 1980s.

In addition we would support the addition of bullfinch (*Pyrrhula pyrrhula*) and raven (*Corvus corax*) as birds which have a history of persecution. The raven in particular is vulnerable to persecution.

### **Schedule 2 Birds which may be killed or taken outside the close season.**

The Ulster Wildlife Trust supports the addition of the Ruddy duck (*Oxyura jamencis*) to schedule 2 because of the threat inter-breeding poses to native duck populations.

### **Schedule 5 Animals which are protected at all times.**

The Ulster Wildlife Trust supports the addition of the following species to schedule 5:- Real's wood white butterfly (*Leptidea reali*), white-clawed crayfish (*Austropotamobius pallipes*), Irish Damselfly (*Coenagrion lunulatum*), spiny lobster (*Palinurus elephas*), fan mussel (*Atrina fragilis*), short-snouted seahorse (*Hippocampus hippocampus*), spiny seahorse (*Hippocampus guttulatus*), common skate (*Dipturus batis*), angel shark (*Squatina squatina*) and basking shark (*Cetorhinus maximus*).

The Common skate (known as *Dipturus batis*) is severely depleted in Northern Ireland's waters. It has been on IUCN's Red List of threatened species since 2006. We would stress the need to

ensure that the legislation reflects the taxonomic status of the species in a way that offers the intended legal protection. From the mid-nineteenth century until the work of Clark in the 1920s it was described as two distinct species. The European common skate has recently been subject to further taxonomic investigation, including modern techniques of molecular genetics, and it is now thought it is actually two species *Dipturus intermedia* (blue skate) and *Dipterus flossada* (flapper skate) both of which need to be listed on schedule 5 to ensure legal protection. *D. intermedia* is the world's largest skate and the more endangered of the two species.

The Ulster Wildlife Trust suggests the addition of the black skate (*Dipturus nidarosiensis*) the white skate (*Rostroraja alba*) and the long-nose skate (*Dipturus oxyrinchus*) on the following grounds.

- White skate are now rarely observed in Northern Ireland Waters. Under the OSPAR Convention it is defined as a species 'under threat and/or in decline for Region III Celtic Seas.
- Black skate have been assessed as 'near threatened' by IUCN and the Shark Trust have noted that the species is extremely scarce though little is known about the status of the stocks. What is known about its biology ie. its slow growth and slow time to reach maturity, suggests the precautionary principle should be followed and this species added to schedule 5.
- The long-nose skate is listed as near threatened by IUCN and the Shark Trust suspects it may even have disappeared from the Irish sea.

The angel shark is deserving of protection over the whole territorial waters. It is a species under threat for Region III Celtic seas (OSPAR Convention).

#### **Schedule 6 Animals which may not be killed or taken by certain methods.**

The Ulster Wildlife Trust supports the addition of the white clawed crayfish (*Austropotamobius pallipes*) and pygmy shrew (*Sorex minutus*) to schedule 6.

#### **Schedule 8 Plants which are protected**

##### **Part 1**

The Ulster Wildlife Trust welcomes the proposal to add these species to schedule 8 (part 1).

##### **Part 2**

The Ulster Wildlife Trust welcomes the proposal to add the bluebell (*Hyacinthoides non-scripta*) to schedule 8 part 2.

#### **Schedule 9 Animals and plants to which Article 15 applies.**

##### **Part 1 Animals**

The Ulster Wildlife Trust is particularly pleased to see the inclusion of the brown hare (*Lepus europaeus*) in schedule 9 part 1.

##### **Part 2 plants**

The Ulster Wildlife Trust supports the addition of these species and is pleased to see the inclusion of *Lagarosiphon major* (curly waterweed) and *Egeria densa* (large flowered waterweed).

### **Contact details**

Ulster Wildlife Trust, 3 New Line, Crossgar, Co. Down BT30 9EP

E-mail: [info@ulsterwildlifetrust.org](mailto:info@ulsterwildlifetrust.org) Tel: 028 4483 0282

## **Northern Ireland Environment Link Submission**



### **Comments by Northern Ireland Environment Link**

**4 February 2010**

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 58 Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are agreed by Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

Prof Sue Christie, Director  
Northern Ireland Environment Link  
89 Loopland Drive  
Belfast, BT6 9DW

P: 028 9045 5770  
E: [Sue@nienvironmentlink.org](mailto:Sue@nienvironmentlink.org)  
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### **Introduction**

Northern Ireland Environment Link (NIEL) responded in some detail in June 2008 to the publication of the consultation paper as part of the review of the Wildlife (Northern Ireland) Order 1985. We believe that biodiversity in Northern Ireland requires better protection and management. This was highlighted in the State of the Environment Report (DOE, April 2008), which detailed a worrying picture of continued decline in biodiversity in Northern Ireland. It notes that in 2004 over 50% of Northern Ireland's priority species were classed as declining.



In this response to the draft Bill we consider further some of the Clauses and Schedules in order to further improve the Bill so that Northern Ireland's wildlife can be properly protected and to help bring the legislation in Northern Ireland into line with that in England and Scotland and to help Northern Ireland meet its obligations under the European Habitats and Species Directive.

## **Responses to Clauses and Schedules**

- We welcome Clauses 1, 2 and 3 establishing a new Duty on government and all public bodies to further the conservation of biodiversity when undertaking their functions. However, it is not clear what guidance will be provided to public bodies and what resources will be available to assist in compliance and to ensure that they will comply. There should be a standard format report that public bodies must complete annually to declare that they have met this Biodiversity Duty and they should be required to submit the completed report to the Department of the Environment. Clause 2.4 in the earlier draft of the Order included the requirement for the Department to publish a report on the Biodiversity Strategy every three years. This seems to have been changed to 'periodic reports about implementation of the strategy' in the latest version of the Bill and the three-yearly reporting cycle should be re-instated. The lists of species and habitats should take account of responsibilities at a European Union level.
- We feel that barn owls and swift colonies should be included under Clause 4 (Protection of nests of certain birds). We welcome the proposal to make it an offence to intentionally or recklessly disturb or harass basking sharks (Clause 9) but seals, cetaceans and turtles should also be included.
- Clauses 5 and 6 extend the scope of existing offences such as reckless behaviour that causes harm to wildlife. Although the Bill strengthens controls on the use of snares with a requirement for regular daily inspection of snares, this is still inadequate and should be changed to a 12-hour inspection requirement. If the use of snares is to be allowed it must only be done under strict licensing. However, since enforcement would still be problematic and since there is no good reason for anyone to possess or use snares, we believe that the possession of snares should be made an offence. This is the only action that would be simple to enforce and would give adequate protection to wildlife (including non-target species), domesticated animals and agricultural livestock.
- Clause 22 will give the courts powers to impose custodial sentences for serious offences and this is a welcome and necessary change. Penalties for wildlife crime have been completely inadequate and steps are needed to ensure that genuinely punitive fines and custodial sentences will be imposed as appropriate. It is only through this that wildlife crime will become truly unacceptable. Fines must be punitive in order to act as a deterrent. There is a need to educate the judiciary and adequate resources will be required to implement the legislation.
- The Department of the Environment will have a new Duty to review the Schedules to the Wildlife (Northern Ireland) Order 1985 lists every five years. Although, in general, this is a worthwhile improvement there should also be provision for more frequent review where there is new information, especially new scientific evidence or data, showing rapid changes in the distribution of invasive alien species (Schedule 9) so that corrective action can be taken before there is irrevocable damage to wildlife habitat and the wider environment. There should therefore be provision for emergency additions or removals from the Schedules outside the five-year cycle.
- We believe that the provisions for alien species are totally inadequate. There is a need for primary legislation in relation to invasive species control. A requirement for landowners to control invasive species is necessary to protect both biodiversity and economic interests.

- It is most unfortunate that no change is proposed to the level of protection afforded to the Irish hare. Clearly, measures to protect the habitat of the Irish hare are to be applauded but the only satisfactory outcome is to give the Irish hare the same level of protection as other native animals such as the red squirrel. The sooner this is done the better and there is no excuse for unnecessary delay. The proposed review of protection of the Irish hare is therefore unsatisfactory.
- The amendments to Part 4 of the Environment (Northern Ireland) Order 2002 are a welcome, if rather belated, change. The new provisions in Clauses 27 to 30 to protect ASSIs from damage are a necessary new development. However, there is still some concern regarding how these new powers will be carried out in practice and the resources that will be allocated to them. We are concerned that financial cuts may limit the number of enforcement officers in the Department of the Environment and there seems to be no plan to give the PSNI adequate resources to deal effectively with wildlife crime. The PSNI currently has only one wildlife officer covering the whole of Northern Ireland. There is also a need to integrate wildlife crime with all other environmental crime in the NIEA's Environmental Crime Unit.
- Legislative protection for Sites of Local Nature Conservation Importance (SLNCIs) should be included. These sites are of major local importance and will contribute substantially to halting the loss of biodiversity and assist in the implementation of the The Conservation (Nature Habitats, etc.) Regulations (Northern Ireland) 1995 by protecting landscape features that are essential for the migration, dispersal and genetic exchange of wild species. The designation of SLNCIs and associated policies should also assist in the implementation of the Council of Europe Recommendation (Rec(2004)3) "on conservation of the geological heritage and areas of special geological interest" whereby Member States, through "sustainable development and restoration should respect and reflect the natural patterns and processes: the geology, the geomorphology and the soils." The identification and designation of SLNCIs in development plans does not and will not ensure their protection.
- Protection for priority habitats on non-designated sites has not been addressed in the legislation. The loss of biodiversity in the wider countryside is a significant issue that must be addressed.

We agree that the changes currently proposed will have some positive impact on the conservation of biodiversity and the protection of our wildlife, but the additional measures that we have specified above are also required to make the Bill fit for purpose. Wildlife crime continues to be a major problem in Northern Ireland and the changes that we suggest are necessary for the effective, practical and timely solution of this problem.

## **Department of Agriculture and Rural Development Submission**

### **Animal Health and Welfare Policy Division Animal Identification, Legislation and Welfare Branch**

Sean McCann Assistant Clerk Committee for the Environment Room 245 Parliament Buildings STORMONT BELFAST BT4 3XX	Room 914, Dundonald House Upper Newtownards Road BELFAST BT4 3SB Telephone: 028 9052 5290 Fax: 028 9052 5281 Email: Colette.Connor@dardni.gov.uk
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12 February 2010

Dear Sean

## **Wildlife and Natural Environment Bill**

Thank you for your letter of 12 January 2010 to our DALO in which you sought comments from the Department on the Wildlife and Natural Environment Bill.

DARD welcomes the new biodiversity duty contained in the Bill, and envisages that it will complement the work that DARD currently undertakes in relation to reversing the decline in farmland biodiversity.

We also welcome the enhanced sanctions placed on any body damaging, or permitting damage to, an Area of Special Scientific Interest (ASSI), and understand that this is unlikely to fundamentally alter the already close co-operation between DOE and DARD on issues around the management of agricultural land in ASSIs.

The use of snares is regulated under the Wildlife (Northern Ireland) Order 1985. On the basis of recent advice, we understand that DOE considers that the use of certain types of snares should be available to land managers as a legal method of dealing with pest species and when used properly, they can be an effective and relatively humane form of control. DOE has no plans to outlaw the use of snares. The Wildlife and Natural Environment Bill will provide for enhanced control over the use of snares to prevent unnecessary suffering. The new Bill proposes that anyone setting a snare will have to inspect it at least once every 24 hours and to remove, or release, any animal that has been caught.

Under Section 21(1) (d) of the Welfare of Animals Act 1972 which is the responsibility of DARD, it is an offence to fail to inspect an approved trap (approved under the Spring Traps Approval Order (Northern Ireland) 1996 No.515) or snare that has been set for the purpose of taking or killing animals. The 1972 Act requires that such inspections must be undertaken at reasonable intervals of time, and at least once every day. The PSNI is responsible for enforcing this legislation as it pertains to non-farm animals.

Given the remit of the DOE Wildlife legislation, it is the Department's view that it is entirely logical, and in line with the position in Britain and the south, that DOE should assume overall responsibility for traps and snares. The Department plans to meet DOE officials shortly to discuss the transfer of the current powers contained in the Welfare of Animals Act relating to snares and traps to the Wildlife and Natural Environment Bill in order that it falls to one Department only to regulate snares and traps in line with the principles of Better Regulation.

In legal terms, DOE need to repeal Section 21 of the Welfare of Animals Act 1972 and re-inact its provisions in their Wildlife and Natural Environment Bill. That should be quite straightforward. There are 2 SRs made under Section 21 of the 1972 Act, the Small Ground Vermin Traps Order 1961 and the Spring Traps Approval Order 1996. DOE will need to enact comparable Orders under their legislation. As a consequence, the new Welfare of Animals Bill, which DARD is currently bringing forward, will have no specific powers in respect of snares or traps, although the general provisions in respect of cruelty offences will still apply to snares and traps. The new Welfare of Animals Bill is expected to be introduced to the Assembly before the summer recess.

The Department notes that the Irish Hare is not to be added to the list of protected animals in Schedule 5 of the Wildlife Order. Nevertheless, we have decided to exclude it from the wild animals that may be controlled to protect woodlands under the Forestry Bill.

We note the broader powers to cull deer, under licence, during the close season to protect the natural heritage and property. However, the Department welcomes that the power under Article 20 to control deer to protect crops and growing timber is unaffected. Deer control in the close season is covered under the Forestry Bill, but separate provision will be necessary to protect woodlands grown for any purpose.

The Department welcomes the addition of Muntjac deer to the list of Schedule 9 animals but is disappointed that Roe deer and Chinese Water Deer which also pose a high risk to native woodland have not been included.

Secondary legislation to license keeping Muntjac deer under Destructive Importation of Animals Act (Northern Ireland) 1933 would be required to be drafted by DARD. While, we certainly would have no difficulty in accommodating DOE in this matter, there would be some resource issues to be addressed in the first instance.

I am copying this letter to Joe Cassells, the DARD DALO and also to Paul Carlisle, the Clerk of the Agriculture and Rural Development Committee.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Colette Connor', with a horizontal line drawn underneath it.

Colette Connor  
Animal Identification, Legislation and Welfare Branch

Tel: 905 24290

**Department of Culture, Arts and Leisure Submission**



Department of  
**Culture, Arts  
and Leisure**

*Leasainn, Ealaíon  
agus Fírlíochta*

**Cultúr, Ealaíon  
agus Fírlíochta**

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**Our ref: COR/20/2010**

1 February 2010

Dr Kathryn Bell  
Clerk  
Committee for Culture, Arts and Leisure  
Room 424  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

Dear Kathryn

#### **WILDLIFE AND NATURAL ENVIRONMENT BILL**

Thank you for your recent letter enclosing correspondence from the Committee for the Environment on its Wildlife and Natural Environment Bill.

Minister Poots wrote to Ministerial Colleagues during the latter half of last year seeking comments on the proposals contained within this Bill. At that time we consulted widely amongst the DCAL family and had no substantive comments to offer. That position remains unchanged.

**MICHAEL WILLIS**  
Head of Minister and Permanent Secretary's Office

**CONFIDENT, CREATIVE, INFORMED AND VIBRANT COMMUNITY**

## **Department of Enterprise, Trade and Investment Submission**



Northern Ireland  
Assembly

Committee for Enterprise, Trade  
& Investment, Room 424 Parliament Buildings  
Tel: 028 9052 1230  
Fax: 028 9052 1355

To: Alex McGarel  
Clerk to the Committee for the Environment

From: Jim McManus  
Clerk to the Committee for Enterprise, Trade & Investment.

Date: 12 February 2010

Subject: Wildlife and Natural Environment Bill

At the meeting of 11 February, the Committee for Enterprise, Trade and Investment discussed a letter from DETI in relation to the Wildlife and Natural Environment Bill and agreed to forward it to your Committee.

I attach the letter and would be grateful if you would bring it to the attention of your Committee.

Please feel free to contact me if you have any questions.

## **Department of Enterprise, Trade and Investment Submission**

Netherleigh  
Massey Avenue  
Belfast BT4 2JP  
Tel: 028 9052 9422  
Textphone: 028 9052 9304  
Email: david.mccune@detini.gov.uk

Mr Sean McCann  
Assistant Clerk  
Committee for the Environment  
Room 247  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3XX 9 February 2010

Dear

### **Wildlife and Natural Environment Bill**

Thank you for your 12 January 2010 letter seeking the Departments views on the above Bill.

I have consulted with relevant colleagues and I have been advised that DETI has no specific comments to make on the Bill.

Yours sincerely

**DAVID MCCUNE**  
**DETI Assembly Liaison Officer**

## **Department for Finance and Personnel Submission**

From: Morris, Duncan [mailto:Duncan.Morris@dfpni.gov.uk]  
Sent: 21 January 2010 11:45  
To: McKee, David  
Subject: RE: Wildlife and Natural Environment Bill

David,

Nil return from DFP on this one.

Thanks

Duncan

DUNCAN MORRIS  
DFP Assembly Section  
Phone 028 90529183 ext 29183

From: McKee, David [mailto:David.McKee@niassembly.gov.uk]  
Sent: 20 January 2010 15:51  
To: Morris, Duncan  
Subject: Wildlife and Natural Environment Bill

Please see attached correspondence from the Committee for Finance and Personnel.

Regards

David McKee: Clerical Supervisor | Committee for Finance and Personnel | Northern Ireland Assembly

Contact: David.McKee@niassembly.gov.uk | Tel: 028 90521887 (Ext 21887)

## **Deperment for Social Development Submission**

Mr Sean McCann Assistant Clerk to the Committee for the Environment Northern Ireland Assembly Room 247 Parliament Buildings BELFAST BT4 3XX	Social Policy Unit - Licensing Level 1, James House 2 – 4 Cromac Avenue Gasworks Business Park Ormeau Road Belfast BT7 2JB Telephone: (028) 9081 9152 Facsimile: (028) 9081 9147 Email: Pat.mcalister@dsdni.gov.uk
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2 February 2010

Dear Mr McCann

## **Wildlife and Natural Environment Bill**

Thank you for your letter of 12 January 2010 inviting the Department's views on the proposed Wildlife and Natural Environment Bill and in particular on Clause 1 and Clause 31. The Social Development Committee considered your letter at its meeting on 14 January and agreed that a response should be provided by the Department.

### **Clause 1 - Biodiversity**

The Department or its agencies have no direct responsibility for the conservation of biodiversity and therefore have no comment on Clause 1.

### **Clause 31 -Abolition of game licences and game dealers' licences**

Game laws in Northern Ireland are the responsibility of the Department of the Environment. However, for historic reasons the Department for Social Development administers the game and game dealers' licensing systems, a discrete aspect of the overall game laws, under the Miscellaneous Transferred Excise Duties Act 1972.

Game and game dealer licensing dates back to the 19th Century. It is thought that the requirement for a person to hold a game licence to hunt game was introduced to restrict poaching, to encourage compliance with close seasons for conservation purposes and to restrict the availability of game to those who were able to pay a significant amount for a licence. Similarly, the requirement that people have a licence before they can sell game is likely to have been intended to help restrict the sale of poached game. There may also have been a hygiene issue in that game must be sold within 10 days of the end of the shooting season.

The game licensing system in England and Wales was abolished in August 2007 following a review by the Department for the Environment, Food and Rural Affairs (DEFRA) which concluded that the game licensing system no longer served any useful purpose. It was also felt that, given today's comprehensive food standards legislation covering hygiene aspects of game, there is no longer any justification for requiring retailers to hold a game dealers licence.

From a local perspective, the Minister for Social Development concluded that the same policy considerations applied and that it would be sensible to adopt the measures that had been introduced in England and Wales. The DOE review of the Wildlife (Northern Ireland) Order 1985 offered an appropriate opportunity to consult and a proposal to abolish the system was included in the public consultation document issued by DOE in February 2008.

Responses to the consultation showed wide support for the proposal to abolish the current requirements for anyone who hunts game or deals in game to have a licence. Following consideration of the results of the consultation exercise, Minister Ritchie concluded that it would be in order to make legislative provision to abolish the game licensing system and for the planned Wildlife and Natural Environment Bill to be used as the legislative vehicle. The views of the Social Development Committee (SDC) were also sought and, following briefing by DSD officials in May 2009, the SDC unanimously agreed to Minister Ritchie's proposal to abolish the game licensing system and to the proposed legislative vehicle.

Therefore, the Department welcomes the inclusion of Clause 31 which provides for the revocation of the game and game dealers' licensing systems and replicates measures introduced in England and Wales from August 2007.

Yours sincerely



*Patricia K. McAlister*

Patricia K McAlister  
Head of Social Policy Unit  
- Licensing

cc Clerk to the Social Development Committee

## **Department for Regional Development Submission**



Committee for Regional Development  
Room 402  
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To: Alex McGarel  
Environment Committee Clerk  
From: Roisin Kelly  
Regional Development Committee Clerk  
Date: 18 February 2010  
Subject: Department for Regional Development's response to the Wildlife and Natural Environment Bill

1. The Committee for Regional Development, at its meeting on 20 January 2010, considered correspondence dated 12 January 2010 from the Environment Committee seeking the views of the Department for Regional Development on the Wildlife and Natural Environment Bill, and agreed to forward the correspondence to the Department for consideration.
2. At its meeting on 17 February 2010, the Committee for Regional Development considered that attached response from the Department and agreed to forward the correspondence to the Environment Committee for information.

*R. Kelly*

Roisin Kelly  
Clerk to the Committee for Regional Development  
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**Your reference:** DALO 331  
**Our reference:**

5 February 2010

Dear Roisin

**THE COMMITTEE FOR THE ENVIRONMENT) CONCERNING THE WILDLIFE AND  
NATURAL ENVIRONMENT BILL**

I refer to your letter of 12 January and attached correspondence from the Committee for the Environment in relation to the Wildlife and Natural Environment Bill.

The Committee for the Environment is seeking a view from the Department, on the proposed Bill, particularly in relation to the new biodiversity duty on public authorities that it will introduce.

Departmental officials were aware of the proposals and had previously advised their DOE counterparts that we had no comments to make and this remains our position. Officials from Translink have reviewed the correspondence and have advised that they have been proactive in the sphere of biodiversity by working on a 3-year partnership with the Ulster Wildlife Trust on a Biodiversity Project.

You may therefore wish to note that as a result of this liaison a Biodiversity Action Plan has been drawn up. Reference to this can be found at the following web link:  
<http://www.translink.co.uk/biodiversity.asp>.

Translink welcomes the review of the Wildlife Order and the inclusion of a biodiversity duty for every public body.

Invasive, non-native species are a cause of concern for the organisation, particularly Japanese knotweed and to a lesser extent giant hogweed. There is a need for primary legislation to bring the issue of its management and control to the forefront.

The Bill is silent on the sensitive area of dealing with invasive animals such as the grey squirrel and the damage being caused by over-population of animals with little or no natural predators. This is leading to an imbalance in nature and the damage this does to indigenous wildlife, flora and fauna is not addressed by the intention of the Bill as produced.

Translink welcomes the introduction of custodial sentences.

Yours sincerely,



**ALAN DOHERTY**  
Assembly Liaison Officer

2019.10.04.02

## **Northern Ireland Local Government Association (NILGA) Submission**

### **NILGA Views on the proposed Wildlife and Environment Bill**

#### **Pre-amble**

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities

and is supported by all the main political parties in Northern Ireland. Biodiversity is a key issue for local government due to the huge part it plays in the quality of our environment. NILGA is pleased to be able to have an opportunity to comment on the proposed bill and we trust that our comments will be taken into account when developing the final proposals. This response has been developed in liaison with the local Biodiversity Officers.

NILGA would be happy to discuss this issue with the Committee, should an oral evidence session be planned in the future. For further information on this submission please contact [k.smyth@nilga.org](mailto:k.smyth@nilga.org) or call Karen Smyth at the NILGA Offices (028) 90798972

## **General**

NILGA welcomes the opportunity to comment on the Wildlife and Natural Environment Bill. The Bill will replace current legislation which is outdated and lacks the necessary means of enforcing and delivering real protection for our important species and habitats.

Vital to the success of the legislation is the need to ensure its adequate resourcing and enforcement. It is essential that those who damage or destroy our important plants and animals are held accountable so that the message to all is clear – biodiversity is important in its own right, but is vital to the health and well-being of human-kind and contributes to other essential services.

## **The Proposed Biodiversity Duty**

In general, NILGA would welcome the new duty to conserve biodiversity. We recognise the importance of biodiversity for the following reasons:

- Biodiversity has an intrinsic worth
- Biodiversity affects our quality of life in terms of enhancing a sense of well-being, contributing to landscape and townscape value and is an indicator of a healthy environment.
- It provides essential services such as flood mitigation, food, medicine, pollution control and carbon capture.
- It is an intrinsic part of sustainable development and will help to deliver many requirement of the Sustainable Development Strategy

At present, several local authorities in Northern Ireland have experience in the protection and enhancement of biodiversity. Some have appointed Biodiversity Officers on a three year contract, but only a few have retained these staff beyond NIEA's three year funding period. Many more councils have no experience or qualified staff to deliver the Biodiversity Duty and there will be a huge gap to fill, in terms of knowledge of what the biodiversity resource is, what state it is in and how it should be managed. High levels of support will be required from central government to enable these councils to begin this process.

Another concern is in how the success or failure of local authorities and other public bodies in delivering the duty will be measured. Will assessment be carried out by the public bodies themselves or will this be carried out by central government or an independent organisation? Self-assessment is less acceptable to the public as there is a belief that statistics and measures can be made to look more effective than they actually are. Perhaps if this method of reviewing was adopted then a system such as BARS (Biodiversity Action Reporting System) or similar could be rolled out to input data and information. NILGA would also wish to raise the issue of lack of

compliance. If a public body does not adequately deliver on the biodiversity duty, what are the penalties for this?

In summary, our comments on the biodiversity duty are as follows:

- The wording of the bill is ambiguous. The interpretation of 'to further the conservation of biodiversity' and 'have regard to any strategy' will be difficult to define. It is essential that this is spelt out more clearly in due course.
- Paragraph (3) (a) and (b) should include the word 'protecting', since conserving what is already there is the baseline for further work as follows:

(a) in relation to any species of flora or fauna, protecting, restoring or enhancing a population of that species

(b) in relation to any types of habitat, protecting, restoring or enhancing the habitat

- What are the penalties for not complying with the duty?
- Consideration must be given to the discrepancies between the (current) 26 local authorities in terms of their existing provision for biodiversity. While a few may 'hit the ground running' with the new duty, many others will be starting from a very basic level, so a period of adjustment needs to be factored in.
- Extensive training must be provided to enable a full understanding of what the biodiversity duty entails, as well as a suggested action plan for its delivery.
- A mechanism for assessing compliance with the duty must be devised at an early stage. If self-assessment is to be used, a system of recording must be put in place at the outset – BARS is already in use in places and further training will be required.
- If not using self-assessment, the assessment body must be decided upon and adequately resourced.
- There are several examples of areas where local authorities work together with or alongside other public bodies and central government. On occasions, local authorities carry out management tasks on other's land and vice versa. Where this work affects or potentially affects biodiversity, it must be carefully considered eg cutting of roadside verges and dredging of waterways.

## **The Biodiversity Strategy**

NILGA would welcome a review of the Biodiversity Strategy as the current strategy is now out of date and does not adequately reflect current issues such as concerns over climate change and recent EU policies.

## **Biodiversity Lists**

NILGA agrees that the Department must publish up-to-date lists of important species of flora and fauna but would query the ambiguity of the action in 3. (3) (a) take such steps as appear to the Department to be reasonably practicable ...

## **Offences and Licensing**

### **Recklessness**

NILGA would support a clause on recklessness since many breaches of Wildlife law can either be due to recklessness or cannot be proved to be intentional. However, we would ask that consideration be given to including this in Schedule 9 (invasive alien species). Local authorities may well end up allocating a lot of resources to reduce or remove alien invasives, in order to enhance native biodiversity or protect public health eg Giant Hogweed. Careless dispersal or introduction of such species through recklessness should therefore also be included as an offence.

### **Protection of Basking Sharks from Disturbance**

NILGA would agree with this action but would query how such disturbance could be monitored or detected.

### **Introduction of new Species**

NILGA agrees with these proposals. As was mentioned previously, there should be an offence of intentionally and/or recklessly allowing the dispersal or introduction of alien invasive species as this can be done through careless disposal or movement of contaminated soil.

### **Prohibition on sale etc of invasive non-native species**

NILGA would strongly support this clause. The species included in the relevant schedules should be subject to review or addition as soon as a species is recognized as a potential invasive. It is likely that the prohibition on selling certain ornamental 'garden' species may lead to alternatives being imported which may be equally damaging, therefore early action is required before the species becomes too difficult to control.

### **Enforcement of Wildlife Inspectors**

NILGA supports these proposals but strongly believe that adequate resources will need to be provided to enable wildlife inspectors to investigate and deal with offences in an efficient and effective manner.

### **Amendments to the Game Preservation Act**

We would agree with the repeal of The Game Act 1831.

Consideration should be given to a requirement to report on numbers and species of birds taken. This is standard in other European countries and would allow for a better understanding of the level of wildfowling and the potential effects it has on species of wild game birds.

### **NILGA would also support the proposals regarding**

- Causing or permitting unlawful acts
- Defences in relation to offences under Article 4
- Disqualification for registration
- Protection of wild plants
- Licenses under Article 18
- Discharging firearms etc from a vehicle
- Licenses relating to deer

- Possession of articles for purposes of committing offences
- Possession of articles for purposes of committing a certain offence
- Enforcement
- Powers of Constables
- Protection of the Nests of Certain Birds
- Snares
- TIME LIMIT FOR PROSECUTION OF SUMMARY OFFENCES
- Time limit for prosecution for summary offences
- Penalties
- Application to the crown
- Review of Schedules (every five years is appropriate)
- Offences in connection with Areas of Special Scientific Interest

## **Northern Ireland Biodiversity Group Submission**



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10 February 2010

Sean McCann  
Assistant Clerk  
Committee for the Environment – Northern Ireland Assembly

Dear Mr McCann

**Wildlife and Natural Environment Bill**

Thank you for the opportunity to provide written evidence for the Committee Stage of the Wildlife and Natural Environment Bill. The attached response has been prepared by the members of Northern Ireland Biodiversity Group following due consideration.

As you will be aware NIBG is responsible for monitoring progress towards the objectives of the Northern Ireland Biodiversity Strategy. The group believes that this legislation represents an important step forward in providing increased powers to halt biodiversity loss. You will see however that the group has proposed some amendments. We recommend these to you as strengthening the legislation and as an important tool in meeting UK and international commitments on biodiversity.

May I acknowledge the valuable contribution of my predecessor in the NIBG Chair Dr Bob Brown in preparing this evidence.

Please contact me if you require any clarification or if you would like us to attend the Environment Committee.

Yours sincerely

Judith A. Annett  
Chair Northern Ireland Biodiversity Group



## **NORTHERN IRELAND BIODIVERSITY GROUP**

### **Response to the Wildlife & Natural Environment Bill**

#### **General Introduction to NIBG its role and membership**

The Northern Ireland Biodiversity Group is a non-statutory advisory body, set up to coordinate and monitor implementation of the Northern Ireland Biodiversity Strategy and its associated action programmes. The Group's 20 members are nominees of various sectors on Northern Ireland society including aquaculture, agriculture, education, environmental groups, industry, estates management, local government and construction. This response is provided based on detailed consideration of the Wildlife and Natural Environment Bill by the Group.

#### **Main response:**

Northern Ireland Biodiversity Group welcomes the Wildlife and Natural Environment Bill which contains many elements that are likely to assist in halting biodiversity loss and in achieving the objectives of the Northern Ireland Biodiversity Strategy. We would however like to draw your attention to the following issues and ask that you will consider amendments based on our considered comment:

#### **Clause 1- Duty to Conserve Biodiversity**

Whilst NIBG supports clause 1 we would like to see specific reference to the genetic component of biodiversity (i.e. diversity within species) within clause 1. The Convention on Biological Diversity defines biological diversity as "the variability among living organisms from all sources, including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems."

NIBG would also suggest the rewording of the biodiversity duty to read "to halt the loss of biological diversity, and to protect, restore, enhance and further the conservation of biological diversity, consistent with the exercise of their functions and policies".

#### **Clause 1 (4)**

NIBG believes the wording should be changed to "The Department will (or must) issue guidance ...." as it is vital for guidance to be produced detailing what the biodiversity duty actually means for public bodies.

#### **Clause 2 - The Biodiversity Strategy**

NIBG broadly supports the proposals as outlined in 2(1), 2(2) and 2(3) as this enables Northern Ireland to contribute to obligations under Article 6(a) of the Convention on Biological Diversity which states that each contracting party shall "develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity...". We would propose however that the Northern Ireland Biodiversity Strategy (NIBS) is the designated strategy under these proposals and that UK and Northern Ireland Species and Habitat Action Plans are

identified as the key mechanism to support and promote the conservation of species and habitats of principal conservation importance.

In relation to 2 (4) NIBG believes the proposal that Department must 'from time to time' publish a report regarding the implementation of the biodiversity strategy is wholly inadequate. We recommend strongly that such reports are published every three years as proposed in the original consultation and that the report should review work carried out by government and public bodies under the biodiversity duty. We also recommend that such reports are produced in a standard format, with the reporting schedule aligned to the national and international reporting rounds and commitments in relation to biodiversity. Such an alignment would also facilitate public understanding and contribute to efficiency savings.

#### **Clause 3 - Biodiversity Lists**

NIBG supports this placing of a statutory duty on the Department to maintain lists of species and habitats of principal conservation importance and to support and to promote and support their conservation. NIBG recommends that such lists should take account of NI's responsibilities at a European level.

#### **Amendments to the Wildlife Order**

##### **Clause 4 - Protection of nests of certain birds**

NIBG strongly supports the introduction of this new schedule to protect the nests of birds which re-use their nests. NIBG fully endorses the view and reasoning expressed by the RSPB and Ulster Wildlife Trust in their submissions that Schedule A1 needs to be amended to include: peregrine, hen harrier, merlin, barn owl, chough, white-tailed eagle, osprey and red kite. The Group also recommends that consideration be given to the protection of swift colonies within buildings, many of which are currently destroyed during repair or development. Bat colonies have protection similar to that proposed, and we draw your attention to this.

##### **Clause 5 – Offences: recklessness**

NIBG fully supports the insertion of 'or recklessly' within the articles listed in 5(2). We do however believe that this should apply to all species, not just those identified on Schedules 1, 5 and 8 including Schedule 9 where reckless behaviour leading to introduction/dispersal of an invasive alien should be an offence. We assume this will also include damage to wildlife features such as nests (e.g. heronry) and roosting sites (e.g. bats) and not just to the species themselves. This amendment will overcome the difficulty of proving intent, where misidentification could be claimed as a defence.

Consideration should also be given to a requirement that someone undertaking an operation should have checked to ensure that no species on Schedules 1, 5, and 8 were present and likely to be affected by the operation. Ignorance of the presence of a species should not be an acceptable explanation for its destruction.

##### **Clause 6 – Offences: causing or permitting unlawful acts**

We welcome the proposal to make it an offence for a person to cause or permit another person to carry out certain acts against wildlife. NIBG is supportive of

RSPB's suggestion of the inclusion of legislation to make the employer liable for any offence committed by their employee. RSPB proposes that an employer should be guilty of an offence if a person in his/her employ commits an offence contrary to Articles 4, 6, 10 and 12 of the Wildlife Order, where the offence is in furtherance of the employer's commercial interest, e.g. the illegal killing of predators to protect game birds for shoots run by an employer. This measure is designed to discourage employers from providing tacit support for the illegal activities of their employees or indeed subcontractors. RSPB considers that this would have the potential to reduce significantly the incidence of persecution of raptors. NIBG would concur with this view.

**Clause 7 – Defences in relation to offences under Article 4**

NIBG is supportive of this proposal as it stands.

**Clause 8 – Disqualification for registration**

NIBG is supportive of this proposal as it stands.

**Clause 9 – Protection of basking sharks from disturbance**

NIBG supports the insertion of clause 4A after 10(4) of the Wildlife Order but would also wish to see this extended to seals, cetaceans and turtles. Codes of conduct are operated in many areas of UK and abroad. These can be enforced as a licence condition for commercial boat operators, and to control the conduct of private leisure craft where regulated. We suggest that in Northern Ireland, local authorities should be given this responsibility.

**Clause 10 – Snare**

NIBG is supportive of this proposal but would suggest that a 12-hour snare inspection regime would not be more humane.

**Clause 11 – Protection of wild plants**

NIBG is supportive of this proposal.

**Clause 12 – Introduction of new species**

NIBG is supportive of this proposal.

**Clause 13 – Prohibition of sale, etc. of invasive, non-native species**

NIBG supports this proposal but would like to see a duty of care being placed on anyone possessing, selling or advertising for sale a non-native species, underpinned by the Codes of Practice. In addition NIBG would also like to see the introduction of a requirement for landowners to control invasive species to protect both biodiversity and economic interests.

**Clause 14 – Licences under Article 18**

NIBG supports this clause apart from 14.7: "Article 10(4) does not apply to anything done for the purpose of any development if it is done under and is in accordance with the terms of a licence granted by the Department" NIBG cannot support this until the detail of the licensing procedure has been made available for scrutiny and until the term 'development' has been defined. If it has the same meaning in Article 18 (power to grant licences) as in Article 11 of the Planning (Northern Ireland) Order 1991, then 'development' means 'the carrying out of building, engineering, mining or

other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'. There are, however a number of excluded activities including use of land for agriculture or forestry and the carrying out of works affect only the interior or do not materially alter the external appearance of the building.

**Clause 16 - Licences relating to deer**

NIBG reserves judgement on these proposals. We consider that a more robust justification is required, and would propose that non-lethal methods of controlling deer should first be tried. Impact on native deer populations needs to be monitored to secure the favourable conservation status of these species.

**Clause 17 - Offences: possession of articles for purposes of committing offences**

NIBG fully endorses the inclusion of 24A. However, the Group also recommends that the Wildlife Order should be amended to include the text:

*Any person who attempts to commit an offence under the foregoing provisions of this Part shall be guilty of an offence and shall be punishable in like manner as for the said offence.*

**Clause 19 – Powers of constable in connection with samples**

Whilst welcoming these proposals, NIBG is concerned that the delay in obtaining a warrant may mean that police officers are unable to identify, observe and record offences.

NIBG proposes powers are extended to enable an officer to go onto, and remain on land without a warrant, where that officer has reasonable grounds to believe that Schedule 1 or 5 species are present for the purpose of ascertaining whether or not offences are being committed with regard to those species.

NIBG supports the remainder of the proposals in this section. It should be noted that additional and better powers do not constitute greater effectiveness unless they are accompanied by matching resources in terms of personnel and equipment. We consider that the Department will need to address this point when the proposals become law.

**Clause 20 – Enforcement: wildlife inspectors**

NIBG is supportive of this proposal but as outlined above additional and better powers do not constitute greater effectiveness unless they are accompanied by matching resources in terms of personnel and equipment, and the Department will need to address this point when the proposals become law.

**Clause 21 – Time limit for prosecution of summary offences**

NIBG is supportive of this proposal.

**Clause 22 – Penalties**

NIBG is very supportive of this proposal and believes it will increase public confidence that wildlife crime is taken seriously in Northern Ireland.

**Clause 23 – Application to the Crown**

We welcome this proposal and believe that the Crown should be seen to take a lead in protecting the environment and we therefore support the proposal to add 27A.

**Clause 24 – Review of Schedules to the Wildlife Order**

NIBG supports this proposal which should apply to all Schedules. The Group recommends that the reviews of the Schedules should be taken forward through public consultation. It also considers that there should be provision for both emergency additions and removals from the Schedules outside the 5 year cycles, to accommodate e.g. sudden concerns about any species arising from new information, research or disaster, and including the arrival of new alien invasive species. Such provisions should also be subject to consultation in all but the most extreme cases.

**Clause 25 – Amendment to Schedules 1 to 9 of the Wildlife Order**

**Schedule 1**

NIBG supports the proposal to amend Schedule 1 as outlined but would make the following comments: Consideration should be given to protection of golden plover for the same reasons as would apply to the proposed inclusion of curlew. Given the proposal for 5 yearly reviews, we suggest a study be undertaken to determine the merits of including golden plover, in time for the first review, but further that consideration be given to reviewing the status of all Schedule 1 (pt 2) and Schedule 2 species in the same timescale. We also propose the addition of the following species with outline reasons:

- Curlew (perilous conservation status)
- Bullfinch (conservation status)
- Reed bunting (conservation status)
- Whinchat (conservation status)
- Raven (risk of persecution)
- Lapwing and redshank should also be included because of recent large declines and risk of disturbance.

**Schedule 2**

Any revision of the quarry list must be based on sound science and the precautionary principle, as required under the Biodiversity Convention. We believe that the impact of shooting on the population status of all quarry species in Northern Ireland should be reviewed in time for the next review of schedules.

As detailed above, given its perilous local and global conservation status, NIBG strongly recommends that the Bill is amended such that curlew is removed from Schedule II and added to Schedule I, Part 1, as a matter of priority.

NIBG supports the inclusion of ruddy duck on Schedule 2, because of the threat inter-breeding poses to native duck populations and the ongoing UK programme to eradicate the species.

**Schedule 4**

NIBG believes that insectivorous birds (e.g. wagtail spp) should not even be considered because of the enormous difficulties of maintaining them in captivity. In relation to the other species, we would not be in favour of their introduction to the

Schedule until a proper case had been made for their inclusion, with appropriate research and discussion. Perhaps this also could be undertaken over the first 5 year review period.

#### **Schedule 5**

NIBG assume that bats have not been listed here because of their inclusion within the Habitats Directive regulations – this should be checked. The same point applies to some key fish species, e.g. pollan and the three species of lamprey.

NIBG supports the addition of the species listed to schedule 5. The Common skate (known as *Dipturus batis*) is severely depleted in Northern Ireland's waters. It has been on IUCN's Red List of threatened species since 2006. The European common skate has been subject to recent taxonomic investigation and it is now thought it is actually two species *Dipturus intermedius* (blue skate) and *Dipterus flossada* (flapper skate) both of which need to be listed on schedule 5 to ensure legal protection.

NIBG suggests the addition of the black skate (*Dipturus nidaroslensis*) the white skate (*Rostroraja alba*) and the long-nose skate (*Dipturus oxyrinchus*) to Schedule 5 on the following grounds.

- White skate - Under the OSPAR Convention it is defined as a species 'under threat and/or in decline for Region III Celtic Seas.
- Black skate have been assessed as 'near threatened' by IUCN.
- The long-nose skate is listed as near threatened by IUCN and the Shark Trust suspects it may even have disappeared from the Irish sea.

NIBG also believes that the angel shark is deserving of protection over the whole territorial waters. It is a species under threat for Region III Celtic seas (OSPAR Convention).

#### **Schedule 6**

NIBG members would like to query inclusion of the pygmy shrew, because we are not aware of evidence that trapping causes a serious problem for this species. If found to be the case we would agree the proposal.

NIBG supports the addition of the white clawed crayfish (*Austropotamobius pallipes*) and pygmy shrew (*Sorex minutus*) to schedule 6.

#### **Schedule 7**

Members agree the proposed deletion of fox.

#### **Schedule 8**

Members support the addition of native bluebell to the Schedule.

#### **Schedule 9**

Schedule 9; there are numerous complexities associated with this Schedule which the Department should address. The Schedule includes both widespread and common aliens that are already 'in the wild' with species that are not presently widespread but whose human-induced spread could be extremely damaging, (e.g.

zebra mussel). We suggest that consideration be given to a tiered approach with different categories subject to different measures. Consideration should also be given to acquiring powers to apply orders to landowners whose properties hold damaging species, particularly adjacent to designated sites like ASSIs, requiring them to remove or control invasive species.

NIBG welcomes proposals aiming to reduce the number and severity of introductions of non-native species to Northern Ireland. Although the current proposal to update Schedule 9 is a step in the right direction, the group believes that a more comprehensive review of the legislative framework relating to non-native species, in particular, Article 15 of the Wildlife Order, is necessary.

#### **Clauses 27- 30 – Areas of Special Scientific Interest**

NIBG broadly welcomes the proposals listed within clauses 27- 30. We consider they are essential if ASSIs, the keystone designations for conservation of priority species and habitats in Northern Ireland, are to be safeguarded, and there are clear recent examples of where damage might have been avoided or reduced had these measures been available to Environment and Heritage Service. NIBG would however recommend the following amendments:

- We are disappointed that temporary stop and reinstatement notices have not been included. We believe that these notices are necessary (alongside additional changes) to complete a comprehensive suite of methods to ensure protection and management of sites, from voluntary to compulsory measures. These notices should however not replace longer term solutions such as ASSI byelaws, or replace formal prosecution where this would be appropriate.
- We recommend additional changes to the Environment Order. There are no proposed opportunities for further amendments to the Environment Order other than via this Bill, and we feel it would be a missed opportunity not to take this chance to make small amendments to bring our legislation up-to-date. In particular, we seek provision for management agreements on land outside ASSIs since much of our biodiversity lies outwith these areas.
- We seek a new statutory purpose for the Department that refers to the need for a series of ASSIs that are 'representative of the diversity and geographic range' of natural features.
- We seek an extension of the protection afforded by the Environment Order to cover all Natura 2000 sites, which we believe is needed to comply with the provisions of the Habitats and Birds Directives.

#### **Clause 31 - Abolition of game licences and game dealer's licences**

NIBG agrees with the proposal to repeal game licensing laws. However, we are strongly of the view that serious progress should be made in the requirements to report on numbers and species of birds taken; this is a standard requirement in many European countries, and should be here also. We suggest reporting each season on birds taken could be enforced as a requirement for issuing a gun

license. Without this data and monitoring no agency can make a judgement on a 'sustainable harvest'. This is very important in all areas but particularly so where Government Departments hold the shooting rights, so that an example is set.

#### **Other Comments –**

##### **Sites of Local Nature Conservation Importance**

NIBG believe that legislative protection for Sites of Local Nature Conservation Importance (SLNCIs) should be included in this Bill. These sites are of major local importance and will contribute significantly to halting the loss of biodiversity and assist in the implementation of the Conservation (Natural Habitats, etc.) Regulations (NI) 1995 by protecting landscape features that are essential for the migration, dispersal and genetic exchange of wild species. The designation of SLNCIs and associated policies should also assist in the implementation of the Council of Europe Recommendation (Rec(2004)3) "on conservation of the geological heritage and areas of special geological interest" whereby member states through "sustainable development and restoration should respect and reflect the natural patterns and processes: the geology, the geomorphology and the soils." The identification and designation of SLNCIS in development plans does not and will not ensure their protection.

Protection for priority habitats on non-designated sites has not been addressed in the legislation. The loss of biodiversity in the wider countryside is a significant issue as outlined in recent EU communications.

##### **Conclusion**

NIBG welcomes the proposed Bill and supports most of the proposals, whilst offering suggestions for improvement in a number of cases.

Following the passage of this legislation we recommend that a strong information campaign is undertaken to inform the public of the new requirements, and that (subject to legal safeguards) a document explaining the new regulations and revised Schedules is published at the earliest opportunity.

## **Talnotry Avian Care Trust (T.A.C.T) Submission**

Letter to the Assembly on the Wildlife and Natural Environment bill

Tact (Talnotry Avian Care Centre) is a wildlife rehabilitation and education centre which looks after sick and injured wildlife, mainly wild birds, but also other wild animals brought to us by the public.

T.A.C.T (Talnotry Avian Care Trust) operates a voluntarily run Wildlife Centre in the village of Crumlin, County Antrim, Northern Ireland. The Charity cares for and rehabilitates sick, injured



and abandoned wild birds and mammals. The Trust's primary aim is to return birds and mammals back to the wild where practicable. T.A.C.T however operates a policy whereby NO animal is humanely destroyed if it cannot be released or found a good home

Animals that cannot be returned to the wild are given a home at the Centre and looked after for the rest of their natural lives by a team of dedicated staff and volunteers. Over the years thousands of animals have been brought to T.A.C.T from a wide variety of sources, including vets, members of the public, the farming community and other animal trusts.

T.A.C.T cares for a variety of birds and mammals native to Ireland, as well as a few non - native birds and abandoned animals. T.A.C.T currently has around 350 animals in its long term care. These include gannets, swans, kestrels, sparrowhawks, owls, foxes, hedgehogs, geese and ducks, as well as rabbits, guinea pigs, cockatiels, budgies, pigeons, terrapins and ferrets

Our main aim is to rehabilitate the casualties and release them back to the wild .We also provide an education resource and jobs for disadvantaged and young adults with social problems.

There is a weakness in the current legislation in that there is no provision to licence wild birds and animals to be cared for if they cannot be returned to the wild. The current proposal envisages a licence where wild birds can be rehabilitated, namely nursed to health and then released back to the wild. T.A.C.T does this whenever possible. However in many cases the birds can be nursed back to health but are not able to be released back into the wild. This can occur, for example, where a wing or a foot has had to be amputated. The bird is quite happy to be provided for, but would die is released back to the wild. The current draft order does not provide for this situation. T.A.C.T is a rescue and rehabilitation centre, and we request that this situation be addressed in the Order, as follows:

We would ask that the following be added to Article 18 (2)

**(h) for the purposes of caring for sick and injured wild birds.**

We would further request that a group licence be made available to cover the work of a centre like T.A.C.T. Individual bird licences for such a large number of birds, with a high turnover arising from new arrivals, releases and deaths are administratively burdensome and not practical for a centre of this type.

We would request that a licence be added to cover the work of a licensed rehabilitation centre, that would not require each bird to be separately licensed.

Yours sincerely

**Peter JG Baillie, FCA**  
**Chairman of Board of Trustees T.A.C.T**

Badgerwatch (Ireland)  
5, Tyrone Avenue  
Waterford  
Ireland  
16<sup>th</sup> February 2010

Committee for the Environment  
Wildlife and Natural Environment Bill

Please accept submission by Badgerwatch (Ireland) for the abolition of snares in Northern Ireland.

Badgerwatch (Ireland) is a Non-Government Organisation concerned with the welfare and conservation of wildlife in general and badgers in particular. We are affiliated to the Badger Trust (U.K.) and the Irish Wildlife Trust. We are a voluntary group, funded by our members' subscription and donations. We liaise with Badger Groups in Northern Ireland.

Introduction.

The use of snares, the scourge of the countryside cause untold suffering to any creature, whether it enjoys protected status or otherwise, who is unlucky enough to get trapped. Large numbers of animals, including domestic and farm animals regularly fall prey to the device. They suffer prolonged terror and mutilation from hours of struggling to free themselves which usually ends in strangulation. Wounds caused by wire cutting deep into flesh eventually, through the prolonged cutting off of the blood supply, turns gangrenous and sadly, rescued animals often succumb.

Snares may be free-running or self-locking, the latter being illegal in the U.K. but still in use. Both are capable of causing the injuries referred to in the previous paragraph and are generally used by gamekeepers to control predators e.g. foxes or any other animals preying on gamebirds being reared on shooting estates, by farmers controlling rabbit populations on their land and indeed by persons for no other reason than animal abuse.

Unnecessary suffering

The definition of this is unclear. It suggests there are situations or where suffering is acceptable or justified. All types of snares, legal or otherwise cause terror and suffering to their unfortunate occupants.

Monitoring of snares.

Introducing regulations on snaring are largely unworkable. In the Irish Republic, for example, badger-snaring for 'research purposes' is carried out by Department of Agriculture, Food and Fisheries under licence from the National Parks and Wildlife

Services. Snares are by order to be checked at least every twenty-four hours. It is not known for certain who is accountable for enforcing this ruling. It would appear to be self-regulatory.

Snares need only be checked twice in almost forty eight hours without an offence being committed, e.g. first hour of twenty four hour period and last hour of the second twenty four hour period covers the regulations. This gives rise to serious welfare problems for animals trapped. They are abandoned in a state of high risk (from other animals and indeed, humans) for almost forty eight hours.

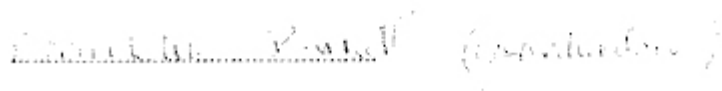
Decomposed carcasses of animals have been seen in snares that were simply left unchecked. Such cases cannot be proven.

**The case for an outright ban on snaring.**

- It is impossible to regulate snaring on the grounds that people involved are unlikely to adhere to regulations.
- It is impossible to monitor snares. Wildlife officers, police and conservation rangers would need to cover vast areas of rural countryside on a regular basis. Snares are set in locations often far from public view and difficult to locate. Few countries have the resources necessary to accomplish the task.
- Snares are indiscriminate.
- It is impossible to prove ownership as users do not require a licence.
- It is impossible to prove that snares have not been inspected during the required periods.
- Snares, whatever the type, whether they be legal or illegal, regulated or unregulated, cause untold suffering to all animals.
- The use of humane methods needs researching.

The enclosed pictures demonstrates the horrors of legal and illegal snares. They speak for themselves.

Yours sincerely,





**Consultation on the Wildlife and Natural Environment Bill**

**Submission of the  
League Against Cruel Sports**

**February 2010**

League Against Cruel Sports  
New Sparling House, Holloway Hill, Godalming, Surrey GU7 1QZ  
Tel 01483 524250 Email [info@league.org.uk](mailto:info@league.org.uk) Web [www.league.org.uk](http://www.league.org.uk)  
Registered Charity Number 1095234

## Introduction

1. The League Against Cruel Sports (League) contributed to the initial consultation of the Wildlife (NI) Order 1985 in 2008, and as such, broadly welcomes the Bill and the progress the Department has made in updating this piece of legislation. We acknowledge the major steps made in securing biodiversity commitments and also the introduction of custodial sentences to those who commit wildlife crimes. The League believes this Bill reflects the Department's commitment to reform and to bring about positive change in this sector.
2. The League has expressed concern on the classification of the protection status of the Irish hare for a number of years. The League's policy is to call for the protection status of the Irish hare to be upgraded from the temporary protection offered by Schedule 6 (animals which may not be taken or killed by certain methods) to receive full permanent protection under Schedule 5 (animals which are protected at all times).
3. The League has also highlighted concern on the current provisions in the Bill to further regulate snares (clause 10). The League's policy calls for a complete end to the sale, manufacture and use of snares. These traps are a crude and outdated form of predator control, which are indiscriminate and causes unnecessary suffering to the trapped animal. The negative impact it has on animal welfare far out ways any reason to justify their continued use.
4. Queries regarding the League's policy on the Irish hare, snaring, or on this submission specifically, should be addressed to either:

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## Schedule 1 - Amendments to Schedules to the Wildlife Order

### 1. Irish hare - The case for upgrading protection from Schedule 6 to Schedule 5

#### **1.1 Introduction**

Recent work indicates that the Irish hare (*Lepus timidus hibernicus*) is genetically unique from the mountain (brown) hare and can be considered one of the oldest surviving Irish mammals, estimated at over 60,000 years old<sup>1</sup>, making this species of particular conservation interest.

Historically, the Irish hare was widespread and common throughout Ireland; however the population underwent a substantial decline in the 1980-90s<sup>2</sup>. As a result of these findings the Irish hare became subject to both a Northern Ireland and an All Ireland Species Action Plan (SAP). The SAP states the Irish hare to be 'one of the highest priority species for conservation action.'<sup>3</sup>

The League advocates that NIEA's precautionary principle should be applied to provide permanent protection for the Irish hare. Schedule 5 would ensure that this vulnerable species receives the upmost legislative protection.

#### **1.2 Current status of the Irish hare population**

In a report made to the European Commission on the status of EU protected habitats and species in Ireland (2008) the conservation status of the Irish hare was worryingly rated as 'POOR'.<sup>4</sup> The Irish hare has suffered not only a significant population decline over the last decades, but has also experienced localised extinction.<sup>5</sup>

The Northern Ireland SAP, adopted in 2002, aims to improve the conservation status of the Irish hare. As such, the SAP set a target to double the Irish hare population by

<sup>1</sup> Hughes, M., Montgomery, W.I. & Prodohl, P. (2006) *Population genetic structure and systematics of the Irish Hare*. Report prepared by Quercus for the Environment and Heritage Service (DOE, N.I.). UK.

<sup>2</sup> Dingerkus, S. K. & W. I. Montgomery (2002) 'A review of the status and decline in abundance of the Irish Hare in Northern Ireland' *Mammal Rev.* 2002, Volume 32, No. 1, 1-11

<sup>3</sup> Mission statement of the Northern Ireland Species Action Plan for the Irish hare

<sup>4</sup> Conservation Status in Ireland of Habitats and Species listed in the European Council Directive on the Conservation of Habitats, Flora and Fauna 92/43/EEC. Report prepared by the National Parks and Wildlife Services, Department of the Environment, Heritage and Local Government.

<sup>5</sup> Dingerkus, S. K. & W. I. Montgomery (2002) 'A review of the status and decline in abundance of the Irish Hare in Northern Ireland' *Mammal Rev.* 2002, Volume 32, No. 1, 1-11

2010. The Quercus hare surveys, undertaken by the Environment and Heritage Service (EHS) and Queens University since 2002, have shown a fluctuating hare population (this is also a feature of the brown hare (*Lepus europaeus*)) and have reported the population to have fallen to 'critical levels'.<sup>6</sup> Despite increases from the 2002 observation of 55 Irish hares, worryingly, the total number of hares observed in the surveys, peaked in 2004 at 373, with figures since showing a steady decline to 98 hares observed in 2009.<sup>7</sup>

Although there has been an increase in the Irish hare population between 2002 and 2009, interpretation of short-term changes should be made in the context of long-term time series, as 'general population declines can be ongoing, despite short term increases'.<sup>8</sup> Furthermore, according to research conducted at Queens University, the population fluctuates naturally and thus 'population estimates conducted over the recent short-term should thus be treated with caution as apparent increases or decreases may not reflect changes relevant to conservation strategies'.<sup>9</sup>

### 1.3 Existing Statutory Protection: Why permanent protection is required

At present the Irish hare is a quarry species and only enjoys limited protection under the Games Acts and Schedule 6 of the Wildlife (NI) Order 1985. This level of protection has been increased since 2002 by the addition of a number of concurrent temporary protection orders (SPO) as an annual amendment to the Games Preservation Order 2003.

In February 2005, hare coursing clubs challenged the then Environment Minister Angela Smith MP on her decision to bring in the SPO. The Minister's decision was upheld by the Northern Ireland High Court, and set legal precedent that the *Minister was entitled to consider animal welfare as well as conservation issues in deciding to protect hares*.

<sup>6</sup> All Ireland SAP - Irish Hare (2005) Section 1.2

<sup>7</sup> Reid, N., Harrison, A.T. & Robb, G.N. (2008) *Northern Ireland Irish hare survey 2009*. Report prepared by the Natural Heritage Research Partnership, Quercus for the Northern Ireland Environment Agency. Northern Ireland Environment Agency Research and Development Series No. 09/04

<sup>8</sup> Reid, N., Dingerkus, K., Montgomery, W.I., Marnell, F., Jeffrey, R., Lynn, D., Kingston, N. & McDonald, R.A. (2007) Status of hares in Ireland. *Irish Wildlife Manuals*, No. 30. Prepared for the National Parks and Wildlife Service, Department of Environment, Heritage and Local Government, Dublin, Ireland.

<sup>9</sup> Reid, N. (2006) 'Conservation Ecology of the Irish Hare' unpublished PhD, Queen's University, Belfast.

Protection in its current form is limited and only provides protection against the killing and taking of the Irish hare at certain times of the year. The annual lapses in protection cause inconsistencies in enforcement and create confusion for local PSNI officers who deal with reported wildlife crime.

The National Wildlife Crime Unit has listed illegal poaching as one of the three key priorities for Northern Ireland on wildlife crime<sup>10</sup>. In this report, hare coursing and poaching was the most commonly reported incident within the category of illegal poaching.<sup>11</sup>

There is a clear need to have more robust legislative protection for the Irish hare which is consistent at all times and would allow greater powers for the PSNI to intervene in incidents of this wildlife crime. This can be achieved by upgrading the statutory protection of the Irish hare to Schedule 5.

#### **1.4 Hare coursing: the negative impact on animal welfare**

An animal's welfare is defined by both its physical and psychological state.<sup>12</sup> To have good welfare an animal must have good physical health and be free from pain, injury and disease. It must also have good mental health, be free from fear and should not be frustrated or deprived.<sup>13</sup>

##### **1.4.1 Cruelty before coursing**

The Irish Coursing Club's veterinary surgeon, JJ O'Sullivan, states that

*'it is impossible to completely avoid stress in hares once you manhandle them, and take them out of their natural environment. Stress can come in many shapes and forms and as long as you have the hare in captivity, he is prone to it - resulting in his disability and even death at times. I believe a lot of damage can be done to hares by rough handling and netting.'*<sup>14</sup>

<sup>10</sup> 'Proposed Northern Ireland Wildlife Crime Priorities 2009/2010' (2009) Report prepared by the National Wildlife Crime Unit

<sup>11</sup> Ibid.

<sup>12</sup> Dawkins, M.S. (2004) Using behaviour to assess animal welfare. *Animal Welfare*, 2004 13, 53-57

<sup>13</sup> Ibid.

<sup>14</sup> O'Sullivan JJ MRCVS, Some Thoughts on The Feeding and Management of Hares – The Abbeyfeale Experience



Capture, handling, transportation and captivity are stressful experiences for hares.<sup>15</sup> There is a danger of spinal and other injury associated with attempts to escape during the netting process.<sup>16</sup> Furthermore, being captured in a net, put into a box, transported in a van, and kept in captivity prior to coursing clearly restricts the hare's ability to respond to its environment, as they cannot evade humans and the noise made by the transport van.<sup>17</sup>

Irish hares are captured from the wild and held in captivity for up to 8 weeks prior to a coursing event.<sup>18</sup> In captivity, loud noises, unfamiliar surroundings, and the smell and presence of predators (dogs and humans) contribute to the stress levels of a hare.<sup>19</sup> Thus the time the animal is kept in captivity will determine the duration of fear, frustration and deprivation.

#### 1.4.2 Cruelty during coursing

A recent academic study of the impact of the 1993 change to coursing with the requirement to muzzle dogs found that less hares were killed, but more hares 'experienced direct physical contact'.<sup>20</sup> The study also reported that:

*Hares may be buffeted and pawed by muzzled dogs resulting in stumbling, falling or mauling. It is possible, therefore, that some hares may receive injuries that cause pain and suffering that may compromise their subsequent survival. Furthermore, mortality resulting from mauling by muzzled dogs may not follow as swiftly as mortality resulting from being bitten and mauled by unmuzzled dogs.*<sup>21</sup>

In a review of literature on coursing undertaken for the Burns Inquiry, Professor Donald Broom, Professor of Animal Welfare, University of Cambridge stated that:

*When a mammal like a hare is chased by a predator like a dog, it will show physiological changes associated with extreme fear. These include*

<sup>15</sup> Harcourt-Brown F & Whitwell K, (2003) Rabbits and Hares, *BSAVA Manual of Wildlife Casualties*.

<sup>16</sup> *Ibid*.

<sup>17</sup> *Ibid*.

<sup>18</sup> Reid, N., McDonald, R.A. & Montgomery, W.I. (2007) Factors associated with hare mortality during coursing. *Animal Welfare*, 16(4); 427-434

<sup>19</sup> Harcourt-Brown F & Whitwell K, (2003) Rabbits and Hares, *BSAVA Manual of Wildlife Casualties*.

<sup>20</sup> Reid, N., McDonald, R.A., Montgomery, W.I. (2007) Factors associated with hare mortality during coursing. *Animal Welfare*, 16(4); 427-434

<sup>21</sup> *Ibid*.

*greatly elevated heart rate and high levels of emergency adrenal hormone production as well as other changes in hormone levels and enzymes. Extreme responses like those shown when chased by a predator can result in reduced life expectancy due to the immediate dangers of injury during very vigorous activity and greater risk of cardiovascular or other breakdown as a consequence of the response. We must conclude that, whether or not the hare is caught, its welfare is very poor during the chase and for periods afterwards which will be prolonged in some cases.*<sup>22</sup>

Capture myopathy is a stress induced condition in hares which can lead to sudden death by heart failure during a traumatic experience, or later death due to stress hormone effects on the hare's gut and immune system.<sup>23</sup> Capture myopathy can also be induced by the trapping, capture, transport and even restraint of a wild animal.<sup>24</sup> Extreme stress of coursing can bring on acute capture myopathy, which can kill a hare during coursing without any physical contact with the dogs.<sup>25</sup>

#### 1.4.3 Cruelty after coursing

After coursing, surviving hares are released back into the wild. No scientific research has so far demonstrated that even a significant number of those hares released survive. A Queens University study which radio tracked released coursed hares in Northern Ireland only tracked nine hares, a sample size not large enough to draw any significant conclusions. However, it is interesting to note that of the nine hares studied, two died of unknown causes within 11 weeks of being coursed.<sup>26</sup>

There are examples of large numbers of netted and coursed hares dying after release. In Wexford in December 2003, 40 out of 83 hares died after being netted and coursed with muzzled dogs. The vet's report stated that hares are 'significantly

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<sup>22</sup> Broom, DM. (2000) *The welfare of deer, foxes, mink and hares subjected to hunting by humans. An independent review of the scientific literature.* Prepared by Professor D M Broom and the Cambridge University Animal Welfare Information Centre.

<sup>23</sup> Rendle, Mike, (2009) 'Stress and Capture Myopathy in Hares'

<sup>24</sup> Fowler, Anne, BSc (Vet) (Hons) BVSc, MACVSc 'Capture Myopathy'

<sup>25</sup> Rendle, Mike, (2009) 'Stress and Capture Myopathy in Hares'

<sup>26</sup> Preston, Jane, Paulo Protóhl, Alex Portig, Kate O'Neill & Ian Montgomery (2006) *Survival and Dispersal of coursed Irish Hares in Northern Ireland* Environment and Heritage Service Research and Development Series, No. 06/10.

stressed when corralled and coursed<sup>27</sup> and that stress led to a compromise of the immune system, resulting in deaths in this case.

In addition to the numbers of individual hares killed by coursing, the taking of hares may have a wider impact on the population if the hares taken are nursing mothers, or are pregnant when taken, and later abort or give birth to leverets in captivity that are unlikely to survive. Neil Reid of Queen's University, Belfast reported that Irish hares can breed throughout the autumn and winter in mild years.<sup>28</sup> Backing this up, sixteen leverets were found in a coursing compound in Co. Offaly in October 2004, by a National Parks and Wildlife Service ranger who was counting hares held by the Edenderry Coursing Club.<sup>29</sup> Their presence in the compound indicates that pregnant hares were netted from the wild and gave birth while in captivity.

### 1.5 Coursing and conservation?

The report made to the European Commission which rated the conservation status of the Irish hare as 'POOR' stated the reasons for this categorisation as 'loss of habitat, increased urbanisation and hunting.'<sup>30</sup> Furthermore, the report raised concern on the effects coursing has on the 'reproductive viability of hares post-coursing and the impact on local population demographics of hare removal and return.'<sup>31</sup>

The All Ireland Species Action Plan for the Irish hare states, amongst the factors thought to have a negative effect on hare populations is the 'illegal taking of hare' and the 'unsustainable taking of hares for sporting purposes.'<sup>32</sup> The League does not consider any taking of hares for sporting purposes to be sustainable.

Coursing is not a conservation measure; when the numbers fell, Northern Ireland coursing clubs had great difficulty finding hares, even in the areas where their 'conservation efforts' were being made<sup>33</sup>. There is no peer reviewed scientific research that says the activities of Dungannon and Ballymena (the only two formal coursing clubs in NI) have led to an increase in abundance of the Irish hare.

<sup>27</sup> Post-mortem reports, Kilkenny Regional Veterinary Laboratory, 6th January 2004

<sup>28</sup> Reid, N. (2006) Conservation Ecology of the Irish Hare unpublished PhD, Queen's University, Belfast

<sup>29</sup> FOI request, by the Irish Council Against Blood Sports

<sup>30</sup> Conservation Status in Ireland of Habitats and Species listed in the European Council Directive on the Conservation of Habitats, Flora and Fauna 92/43/ECC. Report prepared by the National Parks and Wildlife Services, Department of the Environment, Heritage and Local Government.

<sup>31</sup> Ibid.

<sup>32</sup> All Ireland SAP - Irish Hare (2005) Section: Section 2.7 and 2.8

<sup>33</sup> In 2002, the Dungannon coursing club found only nine hares to net in Northern Ireland

When a population is under threat enough to warrant two Species Action Plans and is listed under the EU Habitat Directive as a species of particular concern, it is even more difficult than usual to justify the taking and killing of this threatened species for 'sport'.

#### **1.6 Illegal coursing (poaching)**

Aside from hares injured or killed in formal hare coursing events, many hares are coursed and killed by poachers, most often using lurchers. This activity is just as cruel as organised coursing, and would be outlawed if all coursing became illegal. Under Schedule 5 a police officers would not have to wait until a hare was killed before making an arrest for poaching. Furthermore landowners would no longer have to attend court to show that they had not given permission to the poacher, thus reducing the risk of landowners being threatened or intimidated.

#### **1.7 Public opinion**

Hare coursing is sometimes seen as a traditional Irish rural 'sport'. However, polling conducted by the League shows the overwhelming support in favour of ending hare coursing. Support is equally weighted from rural and urban centres, dispelling the myth that coursing is a popular rural activity. The following polling figures are from Millward Brown Ulster. This research was carried out on behalf of the League in November 2008:

- 71% of people in the North want permanent protection granted to the Irish hare under the review of the Wildlife (NI) Order 1985
- 75% want a permanent ban on hare coursing<sup>34</sup>

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<sup>34</sup> Polling figures (2008) are available by request from the League

## **2. Clause 10 - Snares**

### **2.1 Introduction**

The League is disappointed that provisions in the draft Bill have sought to further regulate, rather than ban this primitive form of predator control. The proposed amendments to the Wildlife (NI) Order 1985 do not go far enough to eradicate suffering caused by snares. It is our belief snaring has no place in modern society and a complete end to their use is the only option.

We believe there are serious problems with enforcing many of the proposals and these amendments do not tackle the crux of the problem which is the cruelty associated with snaring and the fact snares are indiscriminate and can never be set to be target selective, meaning even animals protected under Schedule 5 and 6 in this Bill are at risk from the continued use of snares.

### **2.2 What is a free-running snare?**

Legal free-running snares are set as restraining devices, primarily for foxes and rabbits, and are designed to catch the target animal around the neck, but to slacken off when the animal stops struggling.<sup>35</sup> However, as the Burns Inquiry reveals the reality of free-running snares is they have the potential for strangulation or serious injury.<sup>36</sup> It is a crude and simple device, unable to distinguish between protected and non-protected species or domestic and wild animals.<sup>37</sup>

### **2.3 Why ban snares?**

#### **2.3.1 Snares are ineffective and indiscriminate**

Although snares are set to catch foxes and rabbits, there is a volume of evidence which shows that free running snares frequently catch other non-target species.<sup>38</sup> This is due to the inherent indiscriminate nature of snares, which cannot select the animal which becomes trapped.

<sup>35</sup> Report of the Independent Working Group on Snares (2005) Section 2.2.1

<sup>36</sup> Report of the UK Governments Burns Inquiry (2000)

<sup>37</sup> Report from the Scottish SPCA (2007) 'Snaring in Scotland'

<sup>38</sup> Harris et al (2007) Trapped by bad science the myths behind the international humane trapping standards

- The Independent Working Group Report on Snares concluded that: "it may be very difficult, when using snares to catch foxes in some environments, to reduce the overall proportion of non-target animals caught to below about 40%."<sup>39</sup>
- The British Association for Shooting and Conservation and the Game Conservancy Trust, have admitted that up to 48% of captured animals were non-targets.<sup>40</sup>
- A report on snaring compiled from evidence of Scottish SPCA inspectors, wildlife crime police officers and vets showed that of 269 animals reported as having been caught in snares, only 23 per cent were the animal they were set for such as foxes and rabbits. Companion animals accounted for 17 per cent of the total, and European protected species (EPS) a further 12 per cent.<sup>41</sup>

### 2.3.2 Snares are cruel and cause unnecessary suffering

Snares are meant to act as a restraining device but in reality they can inflict horrific injuries and/or kill many of their targets, often in a slow and painful way. In the report compiled from evidence of Scottish SPCA inspectors, wildlife crime police officers and vets on snaring showed, of 269 animals reported, 154 (57%) suffered injuries that proved to be fatal.<sup>42</sup>

The UK Government's Independent Working Group on Snaring lists some of the injuries caused by snares to include:

- the stress of restraint, which could include frustration, anxiety and rage; fear of predation or capture whilst held by the snare
- friction, penetration and self-inflicted skin injuries whilst struggling against or fighting the tether
- pain associated with dislocations and amputations especially with un-stopped snares

<sup>39</sup> Report of the Independent Working Group on Snares, DEFRA (2005) section 2.7

<sup>40</sup> Figures produced by the BASC and the Game Conservancy Trust, as cited by the Report of the Independent Working Group on Snares (2005) section 2.7

<sup>41</sup> Report from the Scottish SPCA (2007) 'Snaring in Scotland'

<sup>42</sup> Report from the Scottish SPCA (2007) 'Snaring in Scotland'

- ischaemic pain (pain due to lack of blood supply) associated with ligation of body parts
- compression or injuries in muscles, nerves and joints associated with violent movements against restraint
- thirst, hunger and exposure when restrained for long periods
- inflammatory pain and pain from contusions associated with injuries during restraint, and in some cases persisting following escape
- pain and malaise associated with infections arising from injuries, in escapees
- neuropathic pain in those escapees that experience nerve injuries; reduced ability of injured escapees to forage, move and hence survive
- stress of capture and handling before despatch by the snare operator
- pain and injury associated with killing by the snare operator if unconsciousness is not immediate.<sup>43</sup>

Stops on free-running snares can prevent the snare tightening beyond a certain point. However, placement of stops is based on the average target animal. If the animal that enters a snare is larger than average, or of a different, larger species, then the stop may not work. An example of this is when a fox snare with a stop placed with the fox's neck in mind captures a badger round the abdomen. (Appendix A)

The Burns Inquiry into hunting found that: "Although experience suggests that snares with a 'stop' carry less risk, even in the case of legal snares, where the stop is required, there is still the possibility of strangulation or serious injury."<sup>44</sup> The League agrees with this view, and feels that while stops may help reduce the welfare impact on some animals, they do not render a snare in any way 'humane'.

The League also has major welfare concerns on the subsequent release of animals which have been caught in snares. An animal may 'seem fine' when in fact it could have very serious injuries. In a report on the animal welfare standards of killing and restraining traps it highlights that certain insidious injuries deriving from free running snares can manifest themselves days after the release of the animal.<sup>45</sup> The report develops, 'pressure from the wire ligature can damage cellular structures, which can

<sup>43</sup> Report of the Independent Working Group on Snares (2005) section 2.6

<sup>44</sup> Report of the Committee of Inquiry into Hunting with Dogs in England and Wales, HMSO, 2000

<sup>45</sup> Jossa et al (2007) Mammal trapping a review of animal welfare standards of killing and restraining traps *Animal Welfare* 2007, 16: 335-352

in turn lead to necrosis of tissues (pressure necrosis) and ultimately death in the days following release.<sup>46</sup>

#### 2.4 Inspection frequency

The League has concerns over the humaneness of holding an animal in a snare for any length of time, and note that there is a lack of scientific evidence regarding the welfare consequences of snare inspection frequencies<sup>47</sup>. The British Association of Shooting and Conservation (BASC) recommends twice daily inspections,<sup>48</sup> but the League does not believe that snares can be inspected regularly enough when used in the field to ensure good animal welfare for captured animals. This practical problem is particularly a concern on remote shooting estates, where snares may be set over a wide area, and when drag snares are pulled away from their original location by the snared animal.

The longer an animal is held in a snare, the more potential there is for serious injury. Dr Chris Cheeseman states:

*"With snaring, snares carry a very significant risk in terms of the welfare of any captured animal: the longer an animal is in a snare, the more likely it is to sustain injury. When we operated snares the frequency of the inspections were not more than three hours, but I do not think that is a very practical option for a control method."*<sup>49</sup>

While training and codes of practice are freely available (BASC), deliberate setting of non-stopped snares where they are illegal, snares set where they may catch protected species or where animals may kill themselves, and snares not checked daily, are common.<sup>50</sup> Recent League investigations into the uptake of the DEFRA code of practice on snares found that 78% of estates using snares were doing so in contravention of the code<sup>51</sup>, and previous research exposed bad practice on the

<sup>46</sup> Ibid.

<sup>47</sup> Report of the Independent Working Group on Snares, DEFRA, (2005) Section 2.8.2

<sup>48</sup> Fox snaring code of practice, report by BASC <http://www.basc.org.uk/content/foxsnarepractice>

<sup>49</sup> Dr Chris Cheeseman, Q46, EFRA select committee oral evidence: bovine TB: badger culling, February 7<sup>th</sup> 2006

<sup>50</sup> Iossa et al (2007) Mammal trapping: a review of animal welfare standards of killing and restraining traps *Animal Welfare* 2007, 16, 335-352

<sup>51</sup> The Silent Killer: Can the Code of Practice Stop the Cruelty? (2008) Report by the League Against Cruel Sports.



estates of key figures in the shooting industry<sup>52</sup>. Enforcement of a total ban on snares would be far simpler to enforce.

## 2.5 Snaring and land management

The use of fox snares on shooting estates appears to be in decline. In 1994, the Game Conservancy Trust noted that, 'reports indicate that gamekeepers have shifted away from them in favour of night shooting with a rifle and spotlight'<sup>53</sup>. A League investigation into the use of snares on 68 shooting estates in the UK found that only 23 (34 %) of the estates appeared to be using snares<sup>54</sup>.

Where snares are currently used to control rabbits, they can be replaced with a range of techniques that are more humane, effective and cost efficient. The Central Science Laboratory, which specialises in environmental management, lists snaring as a form of rabbit control 'not recommended.'<sup>55</sup> They state: 'these methods are not considered to be particularly effective or humane and can result in other animals, including pets, being caught'<sup>56</sup>. DEFRA recommends live capture traps<sup>57</sup> and fencing<sup>58</sup> in their fact sheets on agricultural damage, and they do not produce a fact sheet on rabbit control through snaring.

The use of snares is not considered to be a common farming practice in Northern Ireland. In particular, modern sheep farming in Northern Ireland is shaped by pedigree breeders or mainstream commercial varieties which are mainly lambed indoors and will only go to field at a bigger size when foxes are not a big threat.<sup>59</sup>

Despite antidotal evidence suggesting that snaring is not a preferred or popular method of predator control, there is a real need for the Bill to address the animal welfare concerns associated with the use of snares, and as such, move toward eradicating what use of snares still exists in Northern Ireland.

<sup>52</sup> The Killing Game: Out of Control Predator Control. (2006) Report by the League Against Cruel Sports

<sup>53</sup> Reynolds, J. & Tapper, S. (1994). The Game Conservancy Review of 1993.25,94-95

<sup>54</sup> The Killing Game: Out of Control Predator Control. (2006) Report by the League Against Cruel Sports

<sup>55</sup> Dendy, J.A. and McKillop, I.G. Advice on Rabbit Management for Growers of Short Rotation Willow Coppice, CSL 2000, Page 6

<sup>56</sup> Ibid.

<sup>57</sup> Defra (2004a) Rabbits: Use of cage-trapping to prevent agricultural damage. Rural Development Service Technical Note 17. Defra, London.

<sup>58</sup> Ibid.

<sup>59</sup> Correspondence with UFU on 04.11.2009

## 2.6 Snares and the EU

The UK and Republic of Ireland are two of only five countries within the EU which permits the use of snares, the others being France, Spain and Belgium.<sup>60</sup> Northern Ireland and indeed the whole of the UK and Ireland should ban the use of snares to come in line with other European legislation. In the light of big changes in animal welfare law in recent years, it is concerning that the UK and Ireland still lags behind the majority of Europe on this issue.

The UK and Republic of Ireland are signatories to the Bern Convention on the Conservation of European Wildlife and Natural Habitat which prohibits the use of *'all indiscriminate means of capture or killing'*.

Although it is illegal to target protected species, due to the indiscriminate nature of snares, it is impossible to set a snare which is target specific. As such, there are serious concerns over the actual legality of the unintentional and reckless snaring of European Protected Species (EPS).

Under Section 39(1) of the Conservation (Natural Habitats, &c) Regulations 1994 (amended 2007), it is an offence to *'deliberately or recklessly to capture, injure or kill a wild animal of a European protected species'*. This calls into serious question the future of snaring, as snares can, and do, capture, injure and kill EPS (Please see Section 2.3.1 in the League's submission).

The League believes that the only way to comply with the legal obligation under European law, with regards to protected species, is to impose a complete ban on the use of snares. The NI Assembly must use this consultation to address the issue of killing legally protected species through the use of snares, and not leave itself open to referral to the ECJ for failing to adequately enforce the Habitats Directive.

## 2.7 Proposals in Clause 10 of the Wildlife and Natural Environment Bill

10, (3) (aa) Make it illegal to *'set in position or otherwise uses any other type of snare which is either of such a nature or so placed (or both) as to be*

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<sup>60</sup> Consultation on snaring (2006) issued by the Scottish Executive

*calculated to cause unnecessary suffering to any wild animal coming into contact with it;*"

There are two fundamental problems with this proposal. Firstly, it wrongly premises that a snare can be set in such a way that eliminates unnecessary suffering (Section 2.3.2). The proposed legislation fails to address the inherent nature of the device to cause suffering, as setting a snare even under stringent guidelines does not eliminate the potential for unnecessary suffering.

Secondly there is a problem with the definition of the 'animal' which will come in contact with the snare, as the draft Bill only addresses the intended species, rather than the actual animals caught in snares. Although snares are set primarily to catch rabbits and foxes, they are not target specific and can catch and cause suffering to domestic and farmed animals. By only defining wild animals as trapped in snares, the Bill fails to address almost half of the animals estimated to be caught in snares (section 2.3.1.). Furthermore, defining all wild animals in one bracket is problematic. It fails to take into account that snares trap European protected species as well as Schedule 5 species, which are illegal to trap and/or kill (section 2.6). The only way to address these fundamental welfare and conservational problems intrinsic to regulation is to move to a complete ban on the use of snares.

10. (4) (2a) *"Any person who sets a snare in position or who knowingly causes or permits a snare to be so set must, while it remains in position, inspect it or cause it to be inspected at least once every day at intervals of no more than 24 hours."*

Checking snares every 24 hours is vastly inadequate in preventing suffering from being inflicted upon wild, domestic and farmed animals which are indiscriminately trapped. It only takes a short space of time for an animal to receive serious injuries from a snare (section 2.3.2. and 2.4.). The League believes that regulation cannot prevent animal suffering and is also extremely difficult to enforce against. The League has found mass breaches of the code of practice laid out by DEFRA across the UK, including traps not being checked for significant periods of time.<sup>41</sup>

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<sup>41</sup> 'War on Wildlife', (2009) Report by the League Against Cruel Sports

10. (4) (2d) *"Any person who, without reasonable excuse, is in possession of a snare which is capable of operating as a self-locking snare shall be guilty of an offence."*

In effect this means any person in possession of any snare, including a legal free running snare could be prosecuted because any snare has the ability to become self locking. Simple kinking of the wire, rusting or matting with blood or animal hair can impair the action of a legal snare to the extent it becomes self-locking (Appendix B).

### 3. Conclusion

We urge the Department to consider and move with the League's recommendations:

1. to upgrade the protection status of the Irish hare from the temporary protection offered by Schedule 6 (animals which may not be taken or killed by certain methods) to receive full permanent protection under Schedule 5 (animals which are protected at all times).
2. to implement a full ban on the sale, manufacture and use of snares. Further regulation as proposed in Clause 10 of the draft Bill fails to address the crux of the matter, the cruelty and suffering caused by snares as well as their indiscriminate nature. In particular, how their continued legality provides a loophole in the law to recklessly trap and kill EPS.

The League is delighted to have the opportunity to respond to the draft Wildlife and Natural Environment Bill. We look forward to the progress the Department will make in the coming stages of the Bill process and look forward to continuing to provide a positive contribution to the Bill.

## **Northern Ireland Badger Group's Submission**

### **(Draft) Wildlife and Natural Environment Bill**

### **A response by the Northern Ireland Badger Group 15**

### **February 2010**

#### **Introduction**

In this response to the draft Wildlife and Natural Environment Bill the Northern Ireland Badger Group considers further some of the Clauses and Schedules in order to further improve the Bill so that Northern Ireland's wildlife can be properly protected and to help bring the legislation in Northern Ireland into line with that in England and Scotland and to help Northern Ireland meet its obligations under the European Habitats and Species Directive.

Furthermore we believe this Bill is an opportunity for the Northern Ireland Assembly to enact exemplary legislation to demonstrate a genuine commitment to provide effective environmental protection for the 21st century and for future generations.

We recognise that some aspects of this Bill will be subject to conflicting views and recommendations. We respectfully draw your attention to recommendation 1 of the Northern Ireland Biodiversity Strategy which states:

**RECOMMENDATION 1: Assess all new or revised policies and programmes for their impact on biodiversity and apply the precautionary principle**

## **Duty to Conserve Biodiversity - Clauses 1, 2 & 3**

We welcome Clauses 1, 2 and 3 establishing a new duty on government and all public bodies to further the conservation of biodiversity when undertaking their functions. However, it is not clear what guidance will be provided to public bodies and what resources will be available to assist in compliance and to ensure that they will comply. There should be a standard format report that public bodies must complete annually to declare that they have met this Biodiversity Duty and they should be required to submit the completed report to the Department of the Environment.

There should be a requirement for the Department of the Environment to publish a report on the Biodiversity Strategy every three years, as set out in Clause 2.4 in the earlier draft of the Order.

## **Snares – Clause 10**

Clauses 5 & 6 extend the scope of existing offences such as reckless behaviour that causes harm to wildlife. In respect of snares (clause 10), the Northern Ireland Badger group believes there is no defensible agricultural, environmental or welfare case for the continued practice of using any form of snare for the purpose of catching or controlling wildlife.

**We believe that this practice should be outlawed in this Bill and that possession and use of snares should be an offence.**

This is the only action that would be simple to enforce and would give adequate protection to wildlife (including non-target species), domesticated animals and agricultural livestock.

We note that snares have been outlawed in almost all EU states.

Current legislation requiring the use of free-running snares along with daily inspection does nothing to prevent collateral damage or great suffering.

In spite of a code of practice, the fact is that a great many badgers and other non-target animals are caught in snares every year. Other animals caught in snares include dogs, cats, sheep, horses, deer, and even otters. Many of these animals suffer a terrible fate. Snares are not humane and animal welfare costs are high to both target and non-target species.

There is a growing body of evidence that physical injury or trauma is not the only threat to a snared animal's survival. Stress-induced capture myopathy may have immediate or longer term fatal effects, even in animals that do not display any apparent serious physical injury.

(Please see Appendix 1: Snares - The Way Forward, the Badger Trust's Submission to DEFRA's consultation on snares and traps.)

## **Enforcement – Clauses 18 & 20**

We are concerned that financial cuts may limit the number of enforcement officers in the Department of the Environment.

Wildlife crime should be integrated with all other environmental crime in the NIEA's Environmental Crime Unit.

There appears to be no provision to give the PSNI adequate resources to deal effectively with wildlife crime. The PSNI currently has only one wildlife liaison officer covering the whole of Northern Ireland.

PSNI personnel currently receive little, if any, training concerning wildlife Crime. Many officers are unaware of the existence of the PSNI wildlife liaison officer, much less the procedures for recording or investigating wildlife crime. Wildlife crime remains under-recorded because many members of the public believe that reporting incidents to the PSNI is a waste of time.

**PSNI personnel must receive adequate training and resources to effectively record and investigate wildlife crime.**

## **Penalties - Clause 22**

Clause 22 will give the courts powers to impose custodial sentences for serious offences and this is a welcome and necessary change. Penalties for wildlife crime have been completely inadequate and steps are needed to ensure that genuinely punitive fines and custodial sentences will be imposed as appropriate. It is only through this that wildlife crime will become truly unacceptable.

Fines and sentences must be punitive in order to act as a deterrent.

## **Schedules – Clause 24**

### **Duty to review the Schedules**

We welcome the introduction of the Department of the Environment's new Duty to review the Schedules to the Wildlife (Northern Ireland) Order 1985 lists every five years.

We note that in 2004 over 50% of Northern Ireland's priority species were classed as declining.

**There should be provision for more frequent review where there is new information, especially new scientific evidence or data about species of concern.**

## **Schedule 5 – the Irish hare (*Lepus Timidus hibernicus*)**

We note that the Irish hare is a priority species which is genetically distinct to Ireland.

As a group which conducts regular fieldwork across Northern Ireland, in close contact with the rural community, we are very concerned about the very low numbers of Irish hares. It is very clear that the Irish hare has become locally extinct in many areas. We also believe that two significant annual time-series surveys carried out by the Northern Ireland Department of Agriculture (1986-1995) and NIEA/Quercus (2004-2009) clearly show an ongoing population decline (Please refer to survey results in Appendix 2).

Therefore we are dismayed that this vulnerable mammal remains on the quarry list and that this draft Bill does not address the clear need for greater legal protection. Measures to protect the habitat of the Irish hare are welcomed but the only satisfactory outcome is to give the Irish hare the same level of protection as other native animals such as the badger.

**This Bill should provide for the Irish hare to be added to Schedule 5 (animals which are protected all times).**

## **END NOTE**

We agree that the changes currently proposed will have some positive impact on the conservation of biodiversity and the protection of our wildlife, but the additional measures that we have specified above are also required to make the Bill fit for purpose. Wildlife crime continues to be a major problem in Northern Ireland and the changes that we suggest are necessary for the effective, practical and timely solution of this problem.

The Badger Group will be pleased to discuss any aspect of the responses contained in this document.

On behalf of the Northern Ireland Badger Group,

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### **Enclosures with this document:**

Appendix 1: Snares - The Way Forward, the Badger Trust's Submission to DEFRA's consultation on snares and traps.

Appendix 2: Survey results showing Irish hare decline in Northern Ireland.

*(Draft) Wildlife and Natural Environment Bill*

*A response by the Northern Ireland Badger Group*

15 February 2010

#### **Appendix 1**

#### **Snares - The Way Forward**

**Submission to DEFRA's consultation on snares and traps**

National Federation of Badger Groups

November 2003

**NI Badger Group Submission - Appendix 1**





## **Snares – The Way Forward**

### **Submission to DEFRA's consultation on snares and traps**

National Federation of Badger Groups  
November 2003

#### **This paper is supported by the following organisations:**

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International Fund for Animal Welfare  
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Woodland Trust  
World Society for the Protection of Animals

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## 1. National Federation of Badger Groups (NFBG)

The NFBG is a registered charity which promotes the conservation, welfare and protection of badgers in Britain. We represent many thousands of people in more than 80 badger protection groups across the UK, who are committed to protecting badgers and the habitats in which they live.

We are respected as an authoritative voice for badgers and are recognized as a major player in the wider field of welfare and conservation in the UK. We also work with, and provide information and advice to, other conservation and welfare groups, the Police, statutory Government bodies, MPs, the public and others.

## 2. Supporting Organisations

This NFBG report is supported by the following organisations: Environmental Investigations Agency, Friends of the Earth, International Fund for Animal Welfare, Woodland Trust and the World Society for the Protection of Animals.

## 3. Executive Summary

This report focuses on the use of snares.

DEFRA's recent consultation on the use of traps and snares in England and Wales does not address the question of whether their use should now be entirely prohibited, focussing instead on improving their use.

There is no doubt that misuse occurs. There is also no doubt that large numbers of non-target wildlife, including numerous protected animals, are caught, killed and maimed by their use, with substantial consequences both for nature conservation and for animal welfare. The question is whether, as DEFRA appears to presuppose, this toll on biodiversity and animal welfare is adequately explained by misuse, and therefore adequately addressed by promoting good practice.

We consider it wholly unrealistic to suppose that improved voluntary codes of good practice will significantly reduce these consequences of the use of snares. Further, we consider that even the criminalisation of bad practice would do little to reduce those consequences, because in all practical use scenarios snares are inherently indiscriminate. Accordingly, we consider the only workable solution to be to prohibit all uses of snares.

Even with the simplification of the law which such a ban would bring, it should still be supplemented by provisions to address the acknowledged weaknesses in the existing enforcement regime for snares.

## 4. Introduction

This paper has been produced in response to DEFRA's consultation on the use of snares and traps in England and Wales, announced in September 2003. We welcome the consultation and believe that it is timely: the Scottish Parliament is currently consulting on its draft Nature Conservation (Scotland) Bill, which addresses snares (Scottish Parliament, 2003). In addition, concern is being increasingly voiced about the use of snares, by the public (NFBG, 2002a; 2002b, enclosed), parliamentarians (APGAW, 2002; Hansard, 2002), Government statutory nature conservation agencies (Scottish Natural Heritage, 2001) and a range of non-Governmental organisations (NFBG, 2002b; RSPCA, 2000; SSPCA, 2002; Woodland Trust, 2002).

The consultation identifies five issues on which DEFRA is particularly interested to receive views and suggestions, and all of these are addressed below. However, we are concerned that DEFRA appears to pre-judge the crucial question of whether the use of snares at all should remain lawful. In particular, we are concerned at five statements made in the consultation:

- The consultation states, "*legislative controls remain broadly effective*". What is DEFRA's evidence for that statement? All the available evidence, in relation to the use of snares, of which we are aware appears to suggest the contrary.

- The consultation states “currently, we believe that snares and traps should remain available to land managers as a legal method of dealing with particular species”. Is this a foregone conclusion, or is DEFRA open to accepting a case for the prohibition of the use of all currently existing types of snare? We make that case below.
- The consultation states “we are aware of instances where bad practice has allowed (maiming or killing by free-running snares) to occur”. We are concerned that DEFRA may be making the false assumption that, where a free-running snare maims or kills, this must be attributable to bad practice. Is DEFRA aware of cases where free-running snares have killed or maimed despite the use of good practice? Does DEFRA even know whether bad practice was used in the instances of which it is aware? What are those instances, and what is DEFRA’s evidence as to whether good or bad practice was used?
- The consultation states, “it is important that until viable alternatives are available to land managers the humane use of traps and snares is improved”. We consider that viable alternatives are already available, as discussed below. What is it about these alternatives which DEFRA considers unviable? And is not a ban on unacceptable trapping methods the best way to drive the development of viable alternatives?
- The consultation states “The lack of information currently available leaves... enforcement authorities without clear guidance on when an offence has been committed”. This is true – good practice would of necessity involve a detailed site-specific assessment to ensure that non-target species are not caught, and presumably the authority would often have to undertake the same exercise in order to demonstrate beyond reasonable doubt that good practice had not been used. But this is only one of the problems they face under the current law: among other things, the authority would also have to link the snare beyond reasonable doubt to a particular individual.

In addressing this issue, we believe that the Government should be guided by three key principles: the conservation of protected wildlife, high standards of animal welfare and compliance with national and international legal obligations.

In this paper, we therefore outline our specific concerns relating to the use of snares in the UK. We examine whether the UK Government is complying with its obligations under national and international legislation and discuss whether measures may be introduced to improve the protection of wildlife. We also discuss whether snares should be banned or more strictly regulated, and examine possible humane alternatives to snares.

## 6. The use of snares

The UK is one of a minority of countries in Europe which permits the use of snares.

Snares are wire nooses set to trap wild animals. In the UK, snares are largely used by gamekeepers to control foxes and are used to a lesser extent by farmers and landowners to control rabbits. Snares are set in a variety of circumstances, but are usually placed along runs or pathways thought to be used by the target species. They are sometimes also placed over the entrances to rabbit burrows or fox earths.

## 6. Types of snare

Several types of snares are used in Great Britain.

Free-running snares are legal and are intended to hold the target animal alive until the operator returns to humanely dispatch it, usually by shooting. The snare should tighten as a captured animal struggles, but relax when the animal stops pulling. Free-running snares can also have a ‘stop’ which prevents the noose from closing too tightly.

Self-locking snares are illegal in Britain because they are designed to kill the target animal. When an animal is caught in a self-locking snare, the noose tightens, but has a ratchet effect and does not

slacken off when the victim stops struggling. Animals are usually caught around the neck and die through strangulation or by dislocation of the neck.

Dual-purpose snares can act as free-running snares or self-locking snares, depending on how they are set. A relatively new type of snare has divided expert opinion on whether it is free-running (and therefore legal) or self-locking (and therefore illegal).

A more detailed outline of the types of snares used in the UK, including photographs, has been described previously (NFBG, 2002b).

## 7. Current legislation relating to snares

### 7.1. Wildlife and Countryside Act 1981

The Wildlife and Countryside Act 1981 (as amended by the Wildlife and Countryside (Amendment) Act 1991) seeks to implement one of the central pillars of the international law on nature conservation, the Bern Convention on the Conservation of European Wildlife and Natural Habitat. The Convention:

imposes an international law obligation on the UK Government, as a signatory, to take "*all appropriate and necessary legislative and administrative measures to ensure the protection*" of wild animals which are protected by the Convention. These include pine marten, polecat, badger and otter. This obligation is not discharged by having legislation and codes of practice in place – it requires the actual protection, on the ground, of the animals in question.

and to this end, prohibits the use of "*all indiscriminate means of capture or killing*" which capture or kill protected wild animals, and in particular, snares (which the Convention recognises as inherently indiscriminate and the indiscriminate (non-selective) use of traps.

The Wildlife and Countryside Act makes it an offence for a person:

to set a self-locking snare in such a way as to be calculated to cause bodily injury to any wild animal (this includes dual purpose snares set in the self-locking position), or to knowingly cause or permit the setting of a self-locking snare in this way;

to kill or take, or to knowingly cause or permit the killing or taking of any wild animal using a self-locking snare;

to set a snare (or other article) in such a way as to be calculated to cause bodily injury to any animal listed in Schedule 6 of the Act, or to knowingly cause or permit the setting of a snare in this way. (Schedule 6 species include badger, otter, pine marten, polecat, red squirrel and wild cat);

to kill or take, or to knowingly cause or permit the killing or taking of any animal listed in Schedule 6 of the Act using a snare;

who sets a snare, or knowingly causes or permits a snare to be set, to fail to inspect that snare (or have someone else inspect it) at least once every day;

to possess a snare for the purpose of committing any of the above offences (HMSO, 1981).

Case law on the term "calculated" (as in, "calculated to cause bodily injury"), in other equivalent legislative contexts, has established that it does *not* mean intended to cause such injury. It means likely to cause such injury.

### 7.2. The Conservation (Natural Habitats &c.) Regulations 1994

These Regulations implement the EU Habitats and Species Directive and protects species of animals listed in Annex IV of the Directive whose natural range includes any area in Great Britain. The Regulations prohibit the use of various specified methods of taking or killing certain wild animals, including "traps which are non-selective according to their principle or their conditions of use". The Regulations give full protection to European 'protected' species listed in Schedule II, including wildcat and otter. They also regulate the use of various specified methods of taking or killing wild animals listed in Schedule III. Animals in Schedule III include the mountain hare, pine marten, polecat and otter.

### 7.3. Other legislation

Snares are also regulated by the Deer Act 1991, which makes it an offence to set a snare for deer, or attempt to do so (HMSO, 1991). The Protection of Animals Act 1911 and Protection of Animals (Scotland) Act 1912 make it an offence to set a snare to trap domestic animals (HMSO, 1911; HMSO, 1912).

## 8. Practical concerns and weaknesses in the legislation

We believe that there are three key problems with the use of snares in the UK. Firstly, there is clear evidence that people using snares do not adhere to the legislation or voluntary codes of conduct. Secondly, weaknesses in the legislation allow the intentional abuse and accidental misuse of snares to take place unpunished. Thirdly, even legal snares, set in accordance with the law, are indiscriminate. Below, we outline our key concerns.

### 8.1. Snares are indiscriminate

A large amount of information exists to indicate that non-target species (including protected wildlife) are often injured or killed in snares. This includes illegal snares, but also legal, free-running snares that have been set in accordance with the law.

For example, a trial on the use of snares as a means of taking foxes found that 155 foxes and 132 non-target animals were caught (Forestry Commission, 1997). And a report on snares by Lawyers for Animal Welfare (LAW) stated that: "upon challenge, a large proportion of gamekeepers whose snares have caught animals of protected species claim to have taken precautions against this outcome". (LAW, 1999). The Burns Inquiry into Hunting with Dogs also expressed concern over the indiscriminate nature of snares. It received evidence that "About half of the captures made by snares are of non-target species..." (Burns, 2000).

Protected wildlife species that have been found trapped in snares - among them snares apparently used legally - include otter, pine marten, polecat, badger and mountain hare. (Ryedale Natural History Society, 1999; Paul Yoxon, pers com; Jeffries and Critchley, 1994; Birks and Kitchener, 1999; NFBG, 2002b). A wide range of other wild animals also fall victim to both legal and illegal snares, including deer, squirrel, stoat, partridge and mallard (RSPCA, 2000; Animal Aid, 2002).

It is also illegal to snare any bird. However, the capercaillie, an animal of significant conservation concern in the UK, is a frequent victim of snares set for foxes. RSPB Scotland has recently advised the Scottish Executive that: "In light of the perilous conservation status of this species, we recommend it should be an offence to use snares in woodland where capercaillie are known, to the 'owner or occupier' or the 'authorised person', to be present. For the avoidance of doubt, SNH could be required to notify owners and occupiers that this is the case in areas where capercaillie are regularly found and these data are known to SNH". (RSPB Scotland, 2003).

It therefore appears that - as recognised by the Bern Convention (see above) - snares are indiscriminate by their very nature.

### 8.2. Operators fail to comply with legislation and codes of practice

The problem for protected wild animals is compounded by the fact that many operators fail to comply with legislation and voluntary codes of conduct. This may be either through lack of training (those using snares do not need to demonstrate competence or receive appropriate training) or simply due to a lack of respect for the law.

For example, a voluntary code of practice on fox snaring, produced by the British Association for Shooting and Conservation (BASC), advises that, "When setting snares every effort must be made to avoid the capture of non-target and protected species. A knowledge of the tracks, trails and signs of both target and non-target species is essential." (BASC, 2002). It is likely that if all who use snares adhered to this advice, the situation would be somewhat improved.

### **8.3. Illegal self-locking snares are still used in the UK**

Despite being illegal, there is clear evidence that self-locking snares are still being used in Britain (NFBG, 2002b). It is currently illegal to use self-locking snares but it is not unlawful to possess such snares.

### **8.4. Legal snares are not defined by legislation**

Current legislation states that the use of self-locking snares is illegal. However, the law does not define self-locking snares and problems arise, particularly in court cases, in determining whether a snare is self-locking or not.

Lawyers for Animal Welfare (LAW) has proposed that if the general use of snares is to continue, the Wildlife and Country side Act must provide a clearer description of unlawful snares. (LAW, 1999). Alternatively, it could be argued that a clearer description of what is legal should be provided, and that any snare not matching that description would, by default, be illegal.

### **8.5. Enforcement powers are weak and police resources limited**

Wildlife legislation, including that relating to snares, is extremely difficult to enforce for a number of reasons. Firstly, weaknesses and ambiguities in the legislation frequently hamper investigations by the police and other prosecuting authorities. Secondly, the use of snares is difficult to monitor when many are used on private land, in isolated locations and away from public scrutiny. Thirdly, enforcement powers available to the police are limited, compounded by the lack of police resources in many rural areas. Indeed, many police forces are coming under increasing pressure to divert resources away from wildlife crime to prioritise on offences that are notifiable. For example, in May 2003, the Force Wildlife Officer for Thames Valley Police was not replaced due to the force having other policing priorities (Thames Valley Police, 2003).

It is therefore essential that, once DEFRA has identified areas of concern, it improves the legislation such that it can be effectively enforced.

### **8.6. Specific practical concerns**

#### **8.6.1. Snares are set when protected species are present**

BASC's guidelines on fox snaring advise users of snares to: "Ensure that only foxes are using the site where snares are to be set" (BASC, 2002). However, the fact that protected species are frequently trapped in snares, indicates that both the law and voluntary guidance is either ignored or – in practice – impossible to apply effectively.

As an example of the guidelines being ignored, snares are commonly found at badger setts and even over sett entrances. In May 2002, the South Yorkshire Badger Group discovered three free running snares on entrances to a sett near Barnsley. The area around one snare was churned up and badger hairs found on the snare suggested that a badger had been caught previously and removed. Despite the badger group's extensive search of the area for more snares, a sow badger was found dead in a free-running snare, two days later in an adjacent wood. The snare had cut deeply into the badger's abdomen, resulting in part of its intestines spilling out of the body cavity (NFBG, 2002b).

#### **8.6.2. Snares are set on public footpaths**

Snares set on or close to public footpaths are a hazard to both domestic pets and wildlife. BASC guidelines advise that snares are not set, "on or near public footpaths, rights of way, or in areas used regularly for the exercising of domestic animals" (BASC, 2002), but examples exist of snares being set in such locations (NFBG, 2002b).

#### **8.6.3. Free running snares don't 'run free'**

It is very difficult to set a free-running snare so that it will remain free running (and, therefore, legal). Many snaring incidents involve the use of frayed or damaged free-running snares, which causes them to act as self-locking snares.

In addition, snares are often set such that as the captured animal struggles to escape, fur, skin, vegetation and tree branches become tangled in the snare and it becomes self-locking.

BASC advises that land managers "Ensure that snares run freely and are free of 'kinks'" and to avoid setting snares where it is likely that entanglement will lead to the snare becoming self-locking. As noted above, it is an offence if the snare is likely, by becoming self-locking or otherwise, to injure a Schedule 6 protected species, but otherwise it is not currently an offence. The fact is that it is almost always likely to happen, but it is wholly impracticable to expect the prosecution to be able to show beyond reasonable doubt that it was likely in any given case. This gives DEFRA compelling reason to recognise this likelihood in the only practical way – by outlawing the use of supposedly free-running snares, and bringing UK practice into line with its international obligations.

#### **8.6.4. Snares are set on fence posts, fences, banks and walls**

In many instances, snares are set in circumstances and in particular locations that increase the risks of animals suffering when caught in snares. For example, so-called drag snares are attached to a heavy moveable object, such as a fence post, with the intention that a fox be snared and then exhausted by dragging the object in its efforts to escape from the snare. However, problems arise with this kind of snaring. Firstly, snares must be checked every day, but this is not always possible if the snare has been moved away from its original location and cannot be found. Secondly, foxes, badgers and other animals have strangled themselves while caught in such snares. Therefore this kind of snaring compounds the likelihood of the killing or injury of protected and other wild animals.

#### **8.6.5. Snare ownership is difficult to prove**

Current legislation does not require the users of snares to be registered or in anyway linked to the snares they are using. Therefore, unless a snare is observed being set or checked, it is usually impossible to discover who is responsible for setting a snare. This frequently results in the authorities being unable to prosecute those who commit offences with snares. For example, two snaring incidents in Cheshire in 2003 were investigated by the police, but the individuals who set the snares could not be identified. The Cheshire Crown Prosecution Service was therefore unable to pursue the case (PC Steve Hogarth, pers com).

#### **8.6.6. Snares are not always checked every day**

The Wildlife and Countryside Act 1981 requires that snares be checked "at least once every day". This is usually interpreted as at least every 24 hours. However, as worded, the law technically allows for snares to be left unchecked for almost 48 hours without an offence having been committed. BASC advises that snares should be inspected "at least twice a day..." but numerous examples exist where it is clear that snares have not been checked daily – or even weekly. The animals caught in such snares will have died either as a direct result of their injuries, by infection of their wounds, or by starvation.

Unfortunately, it is usually impossible to prove in court that a snare has not been checked every day. Even the discovery of a long-dead corpse in a snare does not prove beyond doubt that it had not been checked on a daily basis. In such cases, when the person setting the snare is identified, it is often claimed that the animal was already dead when the snare was checked, and that it was then simply left where it was.

On many large estates it is likely that snares cannot be a suitable method of fox control, because it would never be possible for all snares to be checked according to the law. For example, the SSPCA have reported a case where a gamekeeper admitted having over 500 snares set over a vast area, but claimed that he checked each snare daily (SSPCA, 2003). In another case, the SSPCA discovered the systematic use of snares being used to trap and kill mountain hares on the Cawdor Estate in Scotland. Hundreds of home-made snares were found on paths clearly used by mountain hares. No markers were used to aid locating the snares and the isolated location and terrain would have made



it virtually impossible to check them regularly. Some snares contained the bodies of hares, some just a pile of bones on the path beneath the snare (NFBG, 2002b).

## 9. Alternative methods

DEFRA states that, *"It is important that until viable alternatives are available to land managers the humane use of traps and snares is improved."* This statement appears to assume that there are currently no viable alternative measures for the control of 'pest' species. However, a review of fox and rabbit control methods (NFBG, 2003) indicates that a range of legal and effective alternatives to the use of snares does exist. Moreover, most of them are already in use. We therefore urge DEFRA to investigate whether such methods are sufficiently effective and humane to be used instead of snares, and whether banning existing snares would be the most practical way of ensuring that these alternatives are actually used.

In addition, we understand that a leg cuff, currently being developed, may provide a satisfactory alternative to snares. MAFF conducted research on the padded 'Rose cuff' (MAFF, 1999) but has refused to publish the research because it was not completed. However, we understand that the Government is funding a new trial of the leg cuff, for trapping foxes, which is being carried out jointly by the Game Conservancy Trust and DEFRA (George Rose, pers com). This is welcome, but again a ban on the use of existing snares and traps would probably do more to bring forward a wider range of humane and non-indiscriminate alternatives.

## 10. Improve the operation of snares – or ban them?

DEFRA has acknowledged that current legislation contains "weaknesses and ambiguity" (DEFRA, 2003). However, DEFRA makes clear that it is not considering a ban on the use of snares. There is also no indication that DEFRA is even considering legislation to tighten up existing laws on the use of snares. Instead, DEFRA states that "Where possible, we want to remove weaknesses and ambiguity by encouraging the legal and effective practice of snares and traps" and that there should be "robust guidance given to operators to ensure that they follow good practices".

It will be clear from the foregoing that we believe it is unlikely that purely voluntary instruments will reduce the problems caused by snares. Guidance on the 'proper' use of snares is already widely available, for example BASC's code of practice. But as this and other reports clearly demonstrate, such guidance is often ignored. Unless 'misuse' of snares is clearly defined and outlawed by legislation, there would appear to be little chance of ensuring compliance with any "good practices" which DEFRA's review may identify.

Furthermore, we believe that it is a somewhat simplistic approach to assume that all problems with snares are simply a result of the 'misuse' of snares and 'bad practice', resulting from a lack of guidance and training. It is abundantly clear that 'proper' and legal use of snares is also causing unintended suffering and death on a large scale. We therefore contend that there is a more fundamental problem with snares: they are inherently indiscriminate.

DEFRA has therefore failed to address a more fundamental question: "Can snares be used non-indiscriminately and humanely?" DEFRA must also then ask: "Are there viable alternatives to snares" and, if not, "Is it both legally and morally acceptable to continue to permit the use of snares in the interim?"

## 11. Conclusions

At the beginning of this paper, we outlined the three key principles that should guide the Government when addressing snares: the conservation of protected wildlife; high standards of animal welfare and compliance with national and international legal obligations.

In this paper, we have demonstrated that:

- Protected wild animals are trapped in snares;
- Target and non-target animals are suffering in both legal and illegal snares;

- Snares are indiscriminate and trap a wide range of non-target animals, including protected wildlife;
- The evidence suggests that in practice most uses of existing snares – even using good practice – are likely to injure or kill protected species, and therefore illegal;
- Preserving the distinction between good and bad practice merely fosters the illusion – unsupported by any evidence of which we are aware – that good practice would solve the problem, and compounds the difficulties facing anyone seeking to prosecute for the misuse of snares, and;
- The UK Government may well be failing in its national and international obligations to protect wildlife.

We therefore recommend that the Government:

- Legislates for a complete ban on the use of all snares, and considers how to legislate to overcome existing enforcement difficulties associated with, for example, proving who used the snare in question;
- Investigates whether there are effective, humane and legal alternatives to snares;
- Funds research into effective, humane and legal pest control measures;
- Publishes information on research conducted on the 'Rose leg cuff'.

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November 2003  
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## NI Badger Group Submission - Appendix 2

## Appendix 2

### Survey results showing Irish hare decline in Northern Ireland

Fig 1 - Northern Ireland Department of Agriculture Survey 1986-1995  
Source: Quercus (Data courtesy Alan Bell)

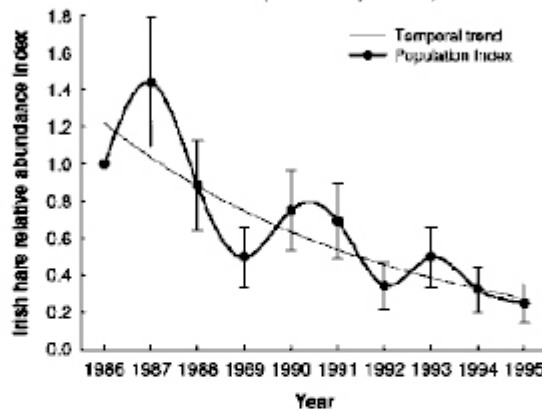
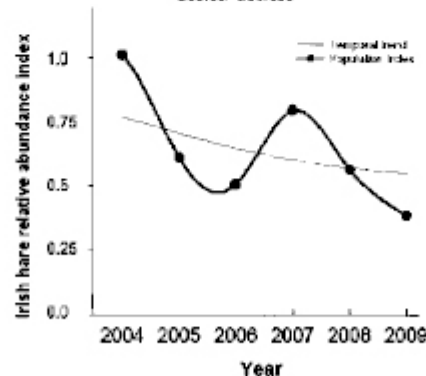


Fig 2 - NIEA Northern Ireland Hare Survey 2004-2009  
Source: Quercus



Note: Only valid annual time-series data have been included in these graphs. Both graphs illustrate regular population cycles of three year period now associated with Irish hares. In both cases the underlying temporal trend line shows an ongoing population decline.

## Irish Hare Initiative Submission

### 1. Introduction

The Irish Hare Initiative is a voluntary NGO working to conserve and protect Irish hares since 2002.

As such, we are very concerned that this draft Bill in its present form fails to provide the Irish hare with the increased and robust protection compatible with its priority status.

We believe that current legislation and practice fails to adequately protect Irish hares and other species. In this response, we detail changes which we believe are necessary to make this Wildlife and Natural Environment Bill fit for the purpose of protecting Northern Ireland's wildlife and implementing best practice.

NOTE – All of the information provided in this response is evidence-based. In the interests of clarity of reading, only some sources and references have been included. However, we will be pleased to provide evidence in support of any aspect of this document.

## **2. Schedule 5 – the Irish hare (*Lepus Timidus hibernicus*)**

Many in the environmental sector, along with the majority of Northern Ireland citizens, will be surprised that this bill in its present form has not placed the Irish hare on Schedule 5 (animals which are protected all times).

Whilst we welcome the annual Irish Hare Temporary Protection Orders that have been granted since 2003, temporary measures cannot form any realistic part of a long-term conservation and recovery strategy for the Irish hare.

### **2.1 Irish hare population decline**

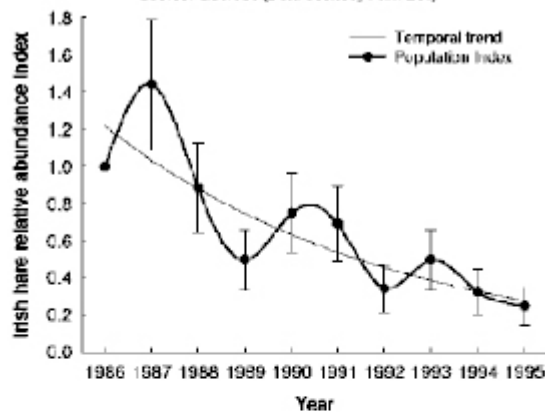
There is a growing body of scientific and anecdotal evidence detailing the ongoing Irish hare population decline since the beginning of the 20th century. It is also very evident that the Irish hare has become locally extinct in many areas of Northern Ireland. The hare population in Northern Ireland is fragmented and potentially vulnerable to the cumulative effects of local extinction.

Recent surveys carried out by the Northern Ireland Department of Agriculture and the Northern Ireland Environment Agency clearly point to a contemporary ongoing population decline since 1985 (Figs 1&2). The three year population cycles evident in both surveys are now a feature of Irish hare dynamics. However, notwithstanding these fluctuations, both graphs show a clear downward temporal trend. There is no evidence of recovery, or any evidence that recovery is likely in the foreseeable future unless every tool at our disposal is used to safeguard this species.

Figs. 1&2 - Graphs showing time-series evidence of Irish hare population decline in Northern Ireland during the periods 1986-1995 and 2004-2009

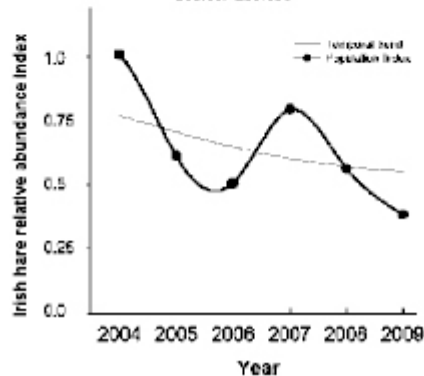
**Fig 1 - Northern Ireland Department of Agriculture Survey 1986-1995**

Source: Quercus (Data courtesy Alan Bell)



**Fig 2 - NIEA Northern Ireland Hare Survey 2004-2009**

Source: Quercus



**Note: Only valid annual time-series data have been included in these graphs. Both graphs illustrate regular population cycles of three year period now associated with Irish hares. In both cases the underlying temporal trend line — shows an ongoing population decline.**

## 2.2 Hunting and coursing

**It is unacceptable that the Irish hare, a priority species which is genetically distinct to Ireland, should remain on the quarry list.**

There is no valid argument for retaining the Irish hare as a quarry species. Neither is there any reliable evidence that activities such as hunting or coursing make any positive contribution to Irish hare conservation.

**Irish hares breed throughout the year and may be pregnant, birthing or nursing in any calendar month. In any recovery strategy, protecting and maximising population recruitment by protecting the breeding period should be a priority objective.**

We welcome and applaud the voluntary moratorium on shooting hares adopted by the major shooting organisations in Northern Ireland. It is apparent from our contact with game shooting enthusiasts that they are acutely aware of the absence of hares in the wider countryside.

### 2.2.1 Coursing

We are very concerned about the potential impact of coursing on the local and wider Irish hare populations. Coursing is not the benign activity that its supporters suggest. We believe there is compelling evidence that coursing has the capacity to damage the wider Irish hare population, especially at the present time when numbers are low.

Hares are caught indiscriminately and, as they breed throughout the year, pregnant females and nursing mothers are taken, compromising population recruitment.

- If a nursing mother is taken from the wild, her leverets will die
- Pregnant females may abort or give birth in captivity
- Leverets born to these captive mothers have no prospect of survival

Coursing targets and depletes fragile local populations of Irish hares, contributing to the cumulative effects of local extinction. Coursing clubs are reporting increasing difficulty in finding and catching hares. Irish Coursing Club records show an overall decline in the number of hares caught annually since 1988.

Keeping a wild animal such as an Irish hare in an unnatural environment for several weeks and allowing it to be pursued by dogs in an enclosed space clearly raises serious welfare issues which have the capacity to reduce a hare's immediate or longer-term survival.

### **2.2.2 Capture myopathy**

Capture myopathy is a life-threatening condition caused by stress and, whether or not the hare is physically injured by the dogs, its welfare is very poor during the chase and for periods afterwards which will be prolonged in some cases. Capture, handling, transport, confinement and coursing are all contributing factors. The onset of this condition can occur from point of capture, and death may occur suddenly or some time after exposure to trauma. The role of capture myopathy in hare mortality is becoming clearer and there is compelling evidence to support the link between enclosed hare coursing and the factors responsible for capture myopathy.

In his book, *The Abbeyfeale Experience*, the Irish Coursing Club's veterinary surgeon, JJ O'Sullivan, states that

'it is impossible to completely avoid stress in hares once you manhandle them, and take them out of their natural environment. Stress can come in many shapes and forms and as long as you have the hare in captivity, he is prone to it - resulting in his disability and even death at times.'

Mr. O'Sullivan goes on to elaborate on causes of stress of netted hares as follows:

'Stress can start from the very minute you get him out of his form until you land him in the net, followed by rough handling, boxing and transporting. Sudden environmental changes such as fluctuating temperatures and varying humidity - being hot and sweating in a bag and later over-crowded in boxes.'

Compelling evidence of the link between capture myopathy and coursing was provided at an Irish Coursing Club event held at Wexford in December 2003. Of the eighty three hares coursed, forty individuals died – almost 50%. The reporting vet, Dr Peter Murphy, stated, 'under the influence of stress, the hare's immune system is compromised'. He went on to say, 'Hares are significantly stressed when corralled and coursed, and this combination of circumstances has resulted in the deaths in this case'.

**This Bill should provide for the Irish hare to be added to Schedule 5 (animals which are protected all times).**

**Adding the Irish hare to Schedule 5 is consistent with the first recommendation of the Northern Ireland Biodiversity Strategy.**

'RECOMMENDATION 1: Assess all new or revised policies and programmes for their impact on biodiversity and apply the precautionary principle'

The definition of the Precautionary Principle is generally accepted as:

The precautionary principle is a response to uncertainty, in the face of risks to the environment. In general, it involves acting to avoid serious or irreversible potential harm, despite lack of scientific certainty as to the likelihood, magnitude, or causation of that harm.

**We contend that the Irish hare's inclusion on Schedule 5 will underpin the wider conservation strategy and copper-fasten the Northern Ireland Assembly's commitment to support a long-term strategy to nurture and protect our oldest surviving native mammal.**

### **3. Duty to review schedules**

We welcome the introduction of the Department of the Environment's new duty to review the Schedules to the Wildlife (Northern Ireland) Order 1985 lists every five years.

However, as a number of Northern Ireland's priority species are classed as declining, there should be provision for more frequent review where there is new information, especially new scientific evidence or data about species of concern.

### **4. Snares**

Snares pose a serious threat to hares along with other wildlife, pets and livestock. Snares have been outlawed in almost all EU states and have no place in the future of Northern Ireland.

The Irish Hare Initiative believes there is no valid agricultural, environmental or welfare argument for the continued practice of using any form of snare for the purpose of catching or controlling wildlife.

We believe that this practice should be outlawed in this Bill and that possession and use of snares should be an offence.

Current legislation requiring the use of free-running snares along with daily inspection does nothing to prevent great suffering or collateral damage to nontarget species.

In spite of a code of practice, the fact is that a great many non-target animals are caught in snares every year. Animals caught in snares include dogs, cats, sheep, horses, deer, and even otters. Many of these animals suffer a terrible fate. Snares are not humane and animal welfare costs are high to both target and non-target species.

There is a substantial body of evidence that physical injury or trauma is not the only threat to a snared animal's survival. Stress-induced capture myopathy (please see section 2.2.2) may have



immediate or longer term fatal effects, even in animals which appear unharmed to the naked eye.

## **5. Enforcement**

We are concerned that financial cuts may limit the number of enforcement officers in the Department of the Environment.

**Wildlife crime should be integrated with all other environmental crime in the NIEA's Environmental Crime Unit.**

There appears to be no provision to give the PSNI adequate resources to deal effectively with wildlife crime. The PSNI currently has only one wildlife liaison officer covering the whole of Northern Ireland.

PSNI personnel currently receive little, if any, training concerning wildlife crime. Many officers are unaware of the existence of the PSNI Wildlife Liaison Officer, much less the procedures for recording or investigating wildlife crime. Wildlife crime remains under-recorded because many members of the public believe that reporting incidents to the PSNI is a waste of time.

**PSNI personnel must receive adequate training and resources to effectively record and investigate wildlife crime.**

## **6. Penalties**

Clause 22 will give the courts powers to impose custodial sentences for serious offences and this is a welcome and necessary change. Penalties for wildlife crime have been completely inadequate and steps are needed to ensure that genuinely punitive fines and custodial sentences will be imposed as appropriate. It is only through this that wildlife crime will become truly unacceptable.

**Fines and sentences must be punitive in order to act as a deterrent.**

## **7. Duty to conserve biodiversity**

We welcome Clauses 1, 2 and 3 establishing a new duty on government and all public bodies to further the conservation of biodiversity when undertaking their functions. However, it is not clear what guidance will be provided to public bodies and what resources will be available to assist in compliance and to ensure that they will comply. There should be a standard format report that public bodies must complete annually to declare that they have met this Biodiversity Duty and they should be required to submit the completed report to the Department of the Environment.

There should be a requirement for the Department of the Environment to publish a report on the Biodiversity Strategy every three years, as specified in Clause 2.4 in the earlier draft of the Order.

## **Summary**

Whilst the legislative changes currently proposed will have some positive impact on the conservation of biodiversity and the protection of our wildlife, the additional measures that we have specified above are also required to make the Bill fit for purpose. Wildlife crime continues

to be a major problem in Northern Ireland and the changes that we suggest are necessary for the effective, practical and timely solution of this problem.

We believe this Bill this is an opportunity for the Northern Ireland Assembly to enact exemplary legislation to indicate its commitment to effective environmental protection for the 21st century and for future generations.

We welcome the opportunity to discuss any aspect of the responses contained in this document or present evidence to support our position.

Submitted by

The Irish Hare Initiative

Glenlark Nature Reserve  
County Tyrone  
BT79 8NU

[www.irishhare.org](http://www.irishhare.org)  
Email: [info@irishhare.org](mailto:info@irishhare.org)

17 February 2010

## **Badger Trust submission**



Owen Hydes OBE  
Badger Trust  
PO Box 708  
East Grinstead  
RH19 2WN  
Tel: 08458 287878  
Fax: 02380 233896  
Web: [www.badgertrust.org.uk](http://www.badgertrust.org.uk)  
E-mail: [owen.hydes@badgertrust.org.uk](mailto:owen.hydes@badgertrust.org.uk)  
18 February 2010

Dear Sir/Madam

## **Consultation on Wildlife and Natural Environment Bill: Clause 10**

The Northern Ireland Badger Group, one of the member groups of Badger Trust, has drawn the Trust's attention to the consultation on the draft Wildlife and Natural Environment Bill. Badger Trust is a UK wide organisation whose mandate is to promote and enhance the welfare,

conservation and protection of badgers, their setts and habitats, for the public benefit. We fully support the response made by the Northern Ireland Badger Group.

Generally we welcome and support the aims of the Bill to enhance the protection of all forms of wildlife. But we very much regret that Clause 10 proposes the continuation of snaring. The experience of our member groups over many years is that snaring is inherently cruel, indiscriminate (non-target protected species are frequently maimed or killed) and invariably lacks any kind of credible monitoring. In particular we would ask you to note that badgers, large, powerful (protected) animals, are often deliberately snared and frequently suffer indescribable mutilation.

Our conclusions: Clause 10 of the Bill, whilst containing some additional provisions, does not go far enough because it still allows snares to be used. Badger Trust urges the NI Assembly Government to ban completely the use of snares with appropriate penalties for committing the offence.

We also urge the NI Assembly Government to ensure that the enforcement authorities have sufficient personnel and other resources to investigate wildlife crime and bring the perpetrators to court with appropriate penalties. In this context we would like to refer specifically to paragraph 2A which reads: "Any person who sets a snare in position or who knowingly causes or permits a snare to be so set must, while it remains in position, inspect it or cause it to be inspected at least once every day at intervals of no more than 24 hours".

We accept that this condition is well intentioned but from experience, and to emphasise our earlier point, we would argue strongly that in the absence of a sufficiently well resourced/ monitoring/policing inspectorate it is virtually unenforceable and will have little or no practical impact.

We ask that (should you decide to allow snaring to continue) you consider imposing a minimum requirement that when challenged anyone who legally sets snares must be able to satisfy the appropriate authority that the resources to inspect those snares every 24 hours are available and regularly in use.

Yours faithfully

Owen Hydes  
Chief Executive

## **Irish Hawking Club Submission**

To: The Committee Clerk, Room 247, Parliament Buildings, Belfast, BT4 3XX  
doecommittee@niassembly.gov.uk

From: Eoghan Ryan, President of the Irish Hawking Club (eoghanryan500@gmail.com)

Date: 17th February, 2009.

### **Introduction**

The Irish Hawking Club, is a falconry body representing falconers in Northern Ireland and in the Republic of Ireland.

Falconry is the art and practice of training a bird of prey to hunt quarry in a natural environment – we do not encourage the keeping of birds of prey for the sake of it. Birds of prey are not pets and should be flown and hunted for their physical and mental well being.

Falconry is the 'greenest of hunting sports' and we wish to retain this recognition. Falconry (in Belgium) has recently received recognition from UNESCO as an intangible cultural heritage and as such should be protected. There are many other positive benefits deriving from falconry – most of the rehabilitation of lost species relies on falconry techniques (such as hacking) and most falconers regularly support local vets in providing a service in the rehabilitation of injured and sick birds of prey, using particular skill that would even be limited among avian vets.

The IHC broadly supports the aims of the Wildlife and Natural Environment Bill, particularly in its objective to protect native flora and fauna, and to conserve the rich biodiversity on the Island of Ireland. The future success of falconry will only depend on a healthy natural environment that supports good habitat and the protection of vulnerable species.

However, there are a number of measures which could potentially impact on falconry and the ability of falconers to pursue this ancient and distinctive pastime, with its rich associations in our history and heritage.

## **Key Areas**

We have identified key areas which potentially impact on falconry, they are as follows:

### **1. The definition of 'wild bird' – we request a change to the definition**

Currently the Wildlife (Northern Ireland) Order defines wild bird as follows:

"wild bird" means, subject to paragraph (4), any bird of a [F2 species] which is ordinarily resident in or is a visitor to [F2 the European territory of any Member State] in a wild state but does not include poultry; or any bird which has been captive bred and close ringed provided its parents were lawfully in captivity when the egg was laid.

We ask that this captive bred resource be classified outside the wildlife order/ bill and their welfare be cared for under animal welfare legislation.

Case Law has been established in relation to this practise by a ruling of the European Court on the bird's directive. The parent document to the wildlife order, The Birds directive by case law does not apply to captive bred birds. An extract of the ruling is as follows:--

The first part of the question

12 As regards specimens born and reared in captivity, the Commission, the French Government and Mr Vergy essentially argue that the aim of the Directive is to protect bird populations present in their natural environment and that the extension of the protective regime to specimens of wild birds born and reared in captivity is not consonant with that environmental objective.

13 Those arguments must be upheld. As the Advocate General has pointed out in paragraph 31 of his Opinion, to extend the protective regime in that way would serve neither the need for the conservation of the natural environment, as described in the second recital in the preamble to the Directive, nor the objective of long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe, referred to in the eighth recital.

## THE COURT (Third Chamber)

in answer to the questions referred to it by the Tribunal de Grande Instance, Caen, by decision of 22 March 1994, hereby rules:

2. Directive 79/409/EEC is not applicable to specimens of birds born and reared in captivity.

Article 4 of the Wildlife (Northern Ireland) Order seeks the protection of wild birds, their nests and eggs. Unless the definition of 'wild bird' is changed, to exclude closed ringed captive bred birds of prey, then Article 4(2)(a) could have a very serious impact on falconers and birds in their possession; and Article 4(2)(b) could impact on breeders of birds of prey. Inadvertently, the well intentioned falconer could be deemed guilty of an offence, where a bird has been acquired through legal means and from a breeder of birds of prey. We would respectfully ask that provision is made for the trade in captive bred falconry birds, with legitimate traceability.

### **2. Retrieval of Lost Birds belonging to Falconers and other Incidents**

Some years ago, I recall an incident where a wildlife ranger called on the assistance of some falconers in the Dublin area, to try to capture a young wild peregrine, whose talons had become ensnared accidentally in a six foot length of nylon rope. This falcon's ability to fly was laboured by the weight of the rope and it was unable to hunt. The incident had occurred in a quarry where the parents of the young bird had nested. The ranger wanted assistance in trapping the peregrine so as to release it from the rope, otherwise the peregrine would inevitably die. Such rare incidents should be provided for in legislation, with approval from an authorised person/ranger.

Similarly, any falconer who loses his bird should be allowed to retrieve his bird through reasonable methods, including the use of a net if necessary. This would be particularly important for the retrieval of non-native birds of prey.

Article 6 (4)(b) states that 'nothing in paragraph (1) shall make unlawful -

(b) the use of a cage-trap or net for the purpose of taking any game-bird, if it is shown that the taking of the bird is solely for the purpose of breeding;

but nothing in this paragraph shall make lawful the use of any net for taking birds in flight or the use for taking birds on the ground of any net which is projected or propelled otherwise than by hand.'

We would suggest the insertion at the end of this paragraph as follows:

Article 6 (4)(b) states that nothing in paragraph (1) shall make unlawful -

(b) the use of a cage-trap or net for the purpose of taking any game-bird, or closed ringed captive bred bird, if it is shown that the taking of the bird is solely for the purpose of breeding; or retrieving a lost bird;

but nothing in this paragraph shall make lawful the use of any net for taking birds in flight or the use for taking birds on the ground of any net which is projected or propelled otherwise than by hand, and

Nothing in this paragraph shall make unlawful, the use of any net or other device for taking birds under special license through the Department or approved by the Department.

### **3. The Sale of Captive Bred Birds of Prey for the purposes of Falconry**

Article 7 of the Wildlife (Northern Ireland) Order (relates to the sale of birds, eggs, etc.) and makes it an offense for anyone to sell 'any live wild bird' or 'any live bird one of whose parents was such a wild bird'. Because of the current definition of wild bird, any closed ringed captive bred bird cannot legally transfer hands. However, this has never been enforced in Northern Ireland. Throughout the UK and Europe, birds of prey can be sold and passed between falconers and this should be the case in Northern Ireland. It is therefore imperative that the definition of wild bird – as outlined above – exclude closed ringed captive bred birds, specifically closed ringed captive bred birds of prey.

### **4. Introduction/Escape of New Species and Hybrid Species**

Article 15 (Introduction of new species), of the Wildlife (Northern Ireland) Orders states that —  
(1) Subject to the provisions of this Part, if any person releases or allows to escape into the wild any animal which—

(a) is of a kind which is not ordinarily resident in and is not a regular visitor to Northern Ireland in a wild state; or

(b) is included in Part I of Schedule 9, he shall be guilty of an offence.

The Bill proposes to insert into paragraph (a) after 'wild state' 'or is a hybrid of any animal of that kind' and it is proposed to insert into paragraph (b) after "Schedule 9" insert "or is a hybrid of any animal included in that Part".

Schedule 9 (3) – (Animals and plants to which Article 15 applies) - The Introduction of New Species – we welcome the removal of the Goshawk from the list of 'new species' to be controlled. This gives due recognition of the Goshawk as a native species. Indeed there are many historical literary references to the Goshawk as a native bird in Ireland down through the centuries (Ref. D'Arcy's Lost Birds of Ireland).

The Irish Hawking Club welcomes this provision of Article 15. As we understand it, in the wild natural hybridisation between native/natural species can occur but is generally not common. However, hybrid falcons have become fairly popular in recent years among some falconry communities and we understand that there have been rare examples of them breeding in the wild – though not in Ireland. This can be avoided if the young bird (i.e. a peregrine X saker falcon) is not reared by a native bird of prey species (i.e., in the example above, the young bird should not be reared by a peregrine falcon, as it becomes imprinted on the peregrine and is therefore more likely to try and mate with a peregrine on reaching sexual maturity). Furthermore, the Irish Hawking Club has requested its members not to fly any hybrid without telemetry and a transmitter (attached neatly to the bird), so that if the bird is lost, it can be tracked down. Ultimately, however, it has taken thousands of years for nature to evolve and for each and every bird of prey to adapt to its unique environment and prey species – Goshawks and Sparrowhawks with large tails and short wings to manoeuvre through thick woodland, Buzzards with broad wings to enable them to soar in the skies; Merlins to tail chase birds in open landscapes; etc. Each species has their niche in the overall ecosystem, hunting a unique set of prey and to date, no distinct advantage has been demonstrated by a hybrid over a native/natural species.

There are a number of falconers who are also bee keepers in the IHC. As a beekeeper, it would appear that hybridisation has not necessarily strengthened the native bee stock but if anything, made it more susceptible to foreign, introduced parasites, mites and fungal infections.

The Irish Hawking Club notes (in Article 12 (7) of the bill, and relating to Article 15 of the Wildlife Order) that Department may issue guidance (or approved guidance issued by others) for the purpose of providing persons with recommendations, advice and information regarding any animal mentioned in paragraph (1), i.e., hybrids or new species. We would welcome the opportunity to meet with the Department to discuss this issue further in the future and to provide practical advice to address this issue to the satisfaction of the Department.

Article 13 of the Bill (relating to Article 15 of the Wildlife Order), relates to the prohibition on sale, etc. of invasive, non-native species and anyone who sells, offers, advertises, or exposes for sale or has in his possession any animal or plant to which this article applies, is guilty of an offense.

It is unclear as to whether this section of the bill might directly or indirectly affect falconers, particularly where a falconer may possess or hope to possess a non-native species (for example a beginner falconer acquiring a Harris Hawk, or a Bird of Prey Centre possessing a Vulture or Tawny Eagle, for example). Non-native birds of prey, flown at a falconry centre will be flown to a lure and will become 'lure-bound' (habitually flying to the lure to get their food) – and therefore there is a minimal risk of loss or release into the wild. Non-native birds of prey which are hunted should be flown with a transmitter and telemetry and this is something that the Irish Hawking Club encourages, so as to minimise any loss of bird. Some provision should be included in the Wildlife Order to exempt non-native birds of prey from the prohibition on sale – as proposed in (13)(2)(a) - subject to certain conditions, such as being closed ringed captive bred birds, with CITES (Article 10) Certificates, where appropriate.

## **5. Schedule 1**

Schedule 1 (birds which are protected by special penalties) is amended to include a variety of additional birds of prey including the Gyrfalcon, Hobby, Red Kite, and Snowy Owl. This is to be generally welcomed.

## **6. Conclusions**

The Irish Hawking Club hopes that these matters will be given serious attention and looks forward to the opportunity of working through these issues with you. Should you require any further assistance, please do not hesitate to contact me (above details) or our Director, Paul Lamb (details below).

Paul Lamb.  
6 Cumbria Lodge  
Crumlin Co Antrim  
Phone 02894422919  
Lambpaul1@googlemail.com

## **Animal Welfare Federation NI Submission**



## Animal Welfare Federation Northern Ireland

ESTABLISHED JANUARY 2002

*Strength in our unity - animals in our trust*

### **Wildlife and Natural Environment Bill (Draft)**

#### **Response by the Animal Welfare Federation Northern Ireland (AWFNI)**

**17 February 2010**

In response to the consultation on the above Bill, the AWFNI wishes to comment on the following aspects:

#### **SNARES**

We urge you to take action to introduce a **complete ban on the manufacture, sale and use of snares, for the following reasons:**

1. Snares cause extreme suffering to animals and, frequently, a painful, lingering death from starvation, strangulation or dehydration.
2. Snared animals suffer massive stress and horrific injuries. In their efforts to escape, they can be disembowelled, dislocate bones from their sockets and even chew through their own limbs.
3. Snaring is ineffective in trapping the target species and is indiscriminate – pet animals, badgers, otters, hares, deer and livestock and other non-target animals have suffered terrible injuries or been killed by snares.
4. Snaring is outlawed in most of Europe but remains legal in the UK and Ireland.

#### **THE IRISH HARE**

The AWFNI shares concerns about the decline in the population of the Irish hare, which has become locally extinct in many areas.

We are equally concerned that the draft Bill does not appear to address the need for greater protection for this species.



We believe that the Irish hare should be given full protection via its inclusion in Schedule 5.

Furthermore we believe this Bill is an opportunity for the Northern Ireland Assembly to exact exemplary legislation to indicate its commitment to real environmental protection for the 21<sup>st</sup> century and for future generations.

On behalf of the Animal Welfare Federation Northern Ireland

Jean Dykes - Chairperson

Mrs Jean Dykes  
Animal Welfare Federation Northern Ireland  
11 Glen Crescent  
Jordanstown  
Co. Antrim  
BT37 0RZ

## **Katie Rutledge e-mail re Wildlife and Natural Environment Bill**

From: Katie Rutledge [katierutledge@o2.co.uk]  
Sent: 18 February 2010 21:33  
To: +Comm. Environment Public Email  
Subject: Wildlife and Natural Environment Bill

Dear Sir or Madam

I wish to respond to the proposed Wildlife and Natural Environment Bill as follows:

Snares - clause 10: There can be no justification for any use of snares. They should be outlawed with punitive punishments for offenders, given the inhumane suffering that an animal caught in a snare suffers.

Penalties - Clause 22: As above - wildlife crimes are just that and should be enforced with punitive punishments.

Schedule 5 - Irish Hare: a priority species and yet there seems to be little evidence of protection or support for this species. The Irish Hare needs protection at all times and should therefore be placed on Schedule 5.

Thank you.

Yours faithfully

Katie Rutledge  
Tel: 075 9021 0180

## **Email from Lecale Conservation re Wildlife and Natural Environment Bill**

From: Doris Noe [travel@murphys.dnet.co.uk]  
Sent: 21 February 2010 23:08  
To: +Comm. Environment Public Email  
Subject: Wildlife and Natural Environment Bill

Dear Committee Clerk,

Lecale Conservation wishes the following points to be considered and calls for a change to made to the Bill accordingly:

### **SNARES:**

We support a complete ban on the use of snares and clause 10 falls short of that

### **IRISH HARE:**

The Irish Hare must be included in Schedule 5, i.e. it needs to be afforded protection at all times.

### **ASSIs:**

The Environment Minister has stated that this Bill brings Northern Ireland in line with provisions in Great Britain. In discussions we have had with NIEA officials regarding the designation of an ASSI two years ago, we were told that no protection is afforded to an ASSI in N.I. during the six months consultation period following notification of landowners whereas in GB protected status is immediate.

The wording of the Bill is complicated to follow. Can you please clarify with us if this loophole in the process of the designation of ASSIs has been closed? If it is still the case that during

consultation period there is no protection for the ASSI then we conclude that the Bill does not bring Northern Ireland in line with provisions in Great Britain.

We look forward to receiving clarification from you regarding our ASSI query.

We hope that you will accept our late submission in view that Lecale Conservation is a local group of volunteers in South Down and the process of this consultation only came to our attention last week.

Yours sincerely,

Doris Noe  
Chairman, Lecale Conservation

## **Email from Tisha Lynn - Save the Irish Hares**

From: pat c. [calcool8@yahoo.co.uk]  
Sent: 15 February 2010 12:50  
To: +Comm. Environment Public Email  
Subject: Save the Irish Hares

I call for a ban on the use and possession of snares as well as more robust powers and sentencing in respect of wildlife crime.

Provide better protection for Irish hares, which are under threat and in decline. Although listed as a priority species, the Irish hare remains on the quarry list and may be hunted and coursed. I wish to call for the Irish hare to be added to Schedule 5 (animals that are protected at all times) of the NI Wildlife Order.

Sincerely,  
Trisha Lynn

## **Email from Barbara Haig re Wildlife and Natural Environment Bill**

From: Alison [alison.vaughan4@btinternet.com]  
Sent: 15 February 2010 14:21  
To: +Comm. Environment Public Email  
Subject: WILDLIFE AND NATURAL ENVIRONMENT BILL. PUBLIC CONSULTATION.  
from Barbara Haig, 136 Clea Lough Road, Crossgar Co Down BT30 9LX

Dear Sirs

I write to you as a member of the public, and also as a member of Lecale Conservation and the Green Party, with regard to the Wildlife and Natural Environment Bill.

I would ask for a ban on the use and possession of snares, as well as more robust powers and sentencing in respect of wildlife crime.

The draft bill fails to provide better protection for Irish hares, which are under threat and in decline. Although listed as a priority species, the Irish hare remains on the quarry list and may

be hunted and coursed. I therefore wish that the Irish hare be added to Schedule 5 (animals that are protected at all times) of the NI Wildlife Order.

It is of extreme importance that these methods of trapping be banned, that heavier sentencing is carried out to those guilty of wildlife crime, and that the Irish hare, a declining species, is given total protection.

Yours faithfully  
Barbara Haig

## **Email from Elizabeth Close re Wildlife and Natural Environment Bill**

From: Close, Elizabeth [Elizabeth.Close@dardni.gov.uk]  
Sent: 16 February 2010 10:34  
To: +Comm. Environment Public Email  
Subject: Wildlife and Natural Environment Bill

Dear Sir/Madam

As this is only at a draft stage I would like to ask members concerned to consider the plight of the badger v bTB:vaccination [less costly] as opposed to any cull strategy which has proven itself more times than enough at huge expense to be ineffective.

Also I would ask that the iconic Irish Hare be given full protection [Schedule 5]-recent surveys carried out by independent bodies show that this unique to Ireland animal is in decline and very vulnerable.

That the raven, *Corvus corax*, continue to receive full protection along with all raptors: as with the eagle the raven reuses its nest every year if not disturbed or persecuted.

Finally regarding snares-many feel that these should be abolished altogether as in country areas they are set indiscriminately and often deployed to catch badgers whose market value for fighting purposes is considerable. The fox is often used as an excuse to set snares and will naturally use badger trails or access points.

Thank you for any consideration and I wish the new assembly every success.

Yours faithfully  
Elizabeth Close

## **Premier Woodlands Limited Submission**

Mrs Sean McCann  
Assistant Clerk  
Committee for the Environment  
N. I. Assembly  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

19 February 2010

Dear Sir

## **Wildlife and Environment Bill**

I represent myself as one of the few registered Deer Farmers in Northern Ireland and as Managing Director of Premier Woodlands Limited.

I was invited to a "Deer Stakeholders" meeting in Hillsborough old Courthouse on Monday 15 February 2010. This was the first meeting to specifically discuss the new proposed 'Bills' effect on deer in Northern Ireland.

Due to insufficient time a full response cannot be given to you now in response to the new Bill.

I would like to have the opportunity to give a full considered response and request, if it is possible, to give a verbal submission to the Environment Committee.

Please confirm if this is possible.

Thank you in anticipation.

Yours faithfully

John Hetherington  
Managing Director

## **Paul Lamb Submission**

Submission to the  
COMMITTEE FOR THE ENVIRONMENT  
WILDLIFE AND NATURAL ENVIRONMENT BILL  
PUBLIC CONSULTATION

To: The Committee Clerk, Room 247 Parliament Buildings, Belfast, BT4 3XX  
doecommittee@niassembly.gov.uk  
From Paul Lamb, lambpaul1@googlemail.com  
Date: 17th February, 2009.

## **Introduction**

Personal submission from Northern Ireland falconer.

Falconry is the art and practice of training a bird of prey to hunt quarry in a natural environment – we do not encourage the keeping of birds of prey for the sake of it. Birds of prey are not pets and should be flown and hunted for their physical and mental well being.

The aim of this presentation is:-

1. To persuade you that falconry is not a threat to wildlife

2. To bring to your attention that European case law has ruled that the Birds directive is not applicable to specimens of birds born and reared in captivity and have stated

"To extend the protective regime beyond bird populations present in their natural environment would not serve the environmental objective underlying the Directive"

3. To ask you to change the definition of a wild bird as defined in the wildlife order to "Wild bird means, subject to paragraph (4), any bird of a [F2 species] which is ordinarily resident in or is a visitor to [F2 the European territory of any Member State] in a wild state but does not include poultry or any bird which has been captive bred and close ringed provided its parents were lawfully in captivity when the egg was laid.

4. Provide equality of opportunity to falconers in Northern Ireland as in the remainder of the UK.

The emotion that takes a person into falconry is combined with a love of raptors and the natural world. Falconry is a privileged window that allows you to witness the spectacle of birds of prey in countryside. Every falconer that I am aware of has at some time rehabilitated a sick or injured wild bird and returned it to the wild often with large vet's bills and a huge commitment of time. It is very important to us that we can witness a healthy wild population of the birds that bring so much pleasure into our lives. With Falconry anyone can experience these majestic birds and come to understand and respect their place in the environment, without interfering with the natural wild population.

Conservation and respect for nature is part and parcel of falconry.

As a club we have supported both financially and with expertise the golden eagle reintroduction project. The breeding success of these birds has been enhanced by the skills of a falconers handling and assisting in this programme, Lately in taking the weaker chick away from the nest and rearing it under a pair of harris hawks while it would have been vulnerable to sibling rivalry, when strong enough to survive it was returned to the parents nest.

Falconry has been part of our heritage since the 12th century when many Anglo Normans and Welsh arrived bringing with them their knowledge and skills of hunting with birds of prey.

Today through falconry people can get an experience with birds of prey without disturbing or causing any harm to the wild natural population of hawks and falcons.

Falconry is a hunting sport but it depends on a large population of quarry so that the bird may fly at its eight or ten items in a day's hunting only to be successful with one or two. There are no injured casualties, it either escapes uninjured or is taken and dispatched. It is the greenest of all hunting sports. Falconry will never be a threat to any of its quarry species. Although a falconer may fly his birds 3, 4 or 5 days a week at the end of the season he will have taken less than what some other methods of hunting would take in one weekend.

Falconry (in Belgium) has recently received recognition from UNESCO as an intangible cultural heritage .

I ask that through this wildlife legislation you give support and respect for the practise of falconry.

Since the wildlife order was enacted in 1985 there have been huge steps in the captive breeding capability of birds of prey. This came about by the need to regenerate the peregrine falcon which was almost completely wiped out in the USA by the chemical DDT. The peregrine fund

was founded by falconers who pioneered the modern captive breeding successes. In the UK these skills have been developed so that now almost all raptors are bred in sufficient numbers to be sustainable for falconry. They are also a conservation resource that could be used to establish a population of birds once the environment is corrected to remove any threat to species sustainability.

As falconers we support the protection of and the licensing required for wild birds for prey in the wildlife legislation.

Falconry in Northern Ireland, as in most of Europe, is carried out using captive bred birds that are regulated and documented by Article 10 certificates under CITES (control of international trade of endangered species). This task is carried out by DEFRA and has been designed to control and regulate the commercial use of these birds. These regulations have been effective throughout the European territories.

We ask that the captive bred birds, which are mainly bred for falconry and have no effect on the population in the wild, be considered outside the wildlife order/ bill and their welfare be cared for under animal welfare legislation.

Case Law has been established in relation to this practise by a ruling of the European Court on the bird's directive, (the parent document to the wildlife order). The Birds directive by case law does not apply to captive bred birds. An extract of the ruling is as follows:--

The first part of the question

12 As regards specimens born and reared in captivity, the Commission, the French Government and Mr Vergy essentially argue that the aim of the Directive is to protect bird populations present in their natural environment and that the extension of the protective regime to specimens of wild birds born and reared in captivity is not consonant with that environmental objective.

13 Those arguments must be upheld. As the Advocate General has pointed out in paragraph 31 of his Opinion, to extend the protective regime in that way would serve neither the need for the conservation of the natural environment, as described in the second recital in the preamble to the Directive, nor the objective of long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe, referred to in the eighth recital.

THE COURT (Third Chamber)

in answer to the questions referred to it by the Tribunal de Grande Instance, Caen, by decision of 22 March 1994, hereby rules:

2. Directive 79/409/EEC is not applicable to specimens of birds born and reared in captivity.

The Sale of Captive Bred Birds of Prey for the purposes of Falconry

Article 7 of the Wildlife (Northern Ireland) Order (relates to the sale of birds, eggs, etc.) and makes it an offence for anyone to sell 'any live wild bird' or 'any live bird one of whose parents was such a wild bird'. Because of the current definition of wild bird, any closed ringed captive bred bird cannot legally be sold. Throughout the UK and Europe, birds of prey can be sold and passed between falconers. Falconers in Northern Ireland are denied this opportunity of fair trade. Falconry in the UK sustains large businesses and is a major player in the tourist industry. It is therefore imperative that the definition of wild bird – as outlined above – exclude closed ringed captive bred birds, specifically closed ringed captive bred birds of prey.

I would ask that the following be added to the definition of a wild bird -

"or any bird which has been captive bred and closed ringed and whose parents were in legal captivity when the eggs were laid "

Proposed definition to read:-

"wild bird" means, subject to paragraph (4), any bird of a [F2 species] which is ordinarily resident in or is a visitor to [F2 the European territory of any Member State] in a wild state but does not include poultry or any bird which has been captive bred and close ringed provided its parents were lawfully in captivity when the egg was laid.

To do this will :-

1. Release wildlife officers from licensing captive bred birds and enable them to focus on wildlife crime.
2. Bring falconry into line with the rest of the UK, giving equal opportunity to falconers in Northern Ireland
3. Bring the legislation into line with the European parent directive.
4. Enable falconry to be practised without any conflict with wildlife legislation.
5. As these birds are already effectively controlled with article 10 licences issued and controlled by DEFRA, this will prevent wasteful duplication.

I would welcome the opportunity to put the case for falconry to the committee and to answer any questions you may have.

Paul Lamb,  
6 Cumbria Lodge, Crumlin, Co Antrim , BT29 4GE  
Phone 028 94422919  
Lambpaul1@googlemail.com

## **Hare Preservation Turst Submission**

From: RODNEY HALE [halerodney@btinternet.com]  
Sent: 18 February 2010 11:01  
To: +Comm. Environment Public Email  
Subject: Wildlife and Natural Environment Bill

We fully endorse the call by the Irish Hare Initiative for the Irish hare to be added to Schedule 5 (protected at all times) and for a total ban on the manufacture, sale and use of all types of snare.

Rodney Hale  
Chairman - Hare Preservation Trust.

## **British Deer Society NI Submission**



# *The British Deer Society*

Patron HRH The Prince of Wales, KG, KT, GCB, PC

**President:**  
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## *In Northern Ireland*

24<sup>th</sup> February 2010

Mr Sean McCann  
Assistant Clerk  
Committee for the Environment  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
BELFAST  
BT3 3XX

[doecommtee@niassembly.gov.uk](mailto:doecommtee@niassembly.gov.uk)

Dear Sir

### **WILDLIFE AND NATURAL ENVIRONMENT BILL**

The British Deer Society, Northern Ireland Branch (BDS-NI), has studied the draft Wildlife and Natural Environment Bill and associated Explanatory and Financial Memorandum brought forward by the Department of the Environment relation to proposals to amend the Wildlife (Northern Ireland) Order 1985. BDS-NI now offers comments in relation to those proposals which it considers fall within its remit and authority to provide a response.

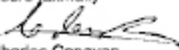
The context for this is that The British Deer Society was established in 1963 as a charity registered in Great Britain. As a national organisation, the Society's role is to work to ensure that deer can exist and flourish in the modern United Kingdom environment and that their future and wellbeing is secure for generations to come. In this, the Society is unique within the UK in its ability to represent the interests of the naturally-occurring deer population, particularly where this may be vulnerable to external influences and actions.

BDS-NI was established in 2000 as a regional Branch of the national organisation. Its aim is to work to increase the public's awareness and understanding of deer in Northern Ireland, the importance of maintaining and conserving their position and role within the local fauna through ethically sound management practice, and the need to ensure their welfare is respected by all those who come into contact with them.

It is against this backdrop that BDS-NI has offered comments for consideration by the Environment Committee. These are included in the attached Annex. Should the Committee feel that further information would be useful, the Branch will be happy to provide this, either by way of further written material or by attendance to offer verbal evidence.

Please acknowledge receipt of this document.

Yours faithfully

  
Charles Canavan  
Chairman

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### **ANNEX**

#### **DRAFT WILDLIFE AND NATURAL ENVIRONMENT BILL: BDS-NI INPUT**

##### **Clause 1 – Duty to conserve biodiversity**

BDS-NI notes the intention to establish a new statutory duty upon government departments and public bodies to take action to further the conservation of biodiversity, to supplement the commitment to protecting and enhancing biodiversity contained in the Northern Ireland Sustainable Development Strategy.

We welcome this provision which should play a key role in conserving the three existing and long established species of deer – Red, Fallow and Sika – which are naturally occurring in the woodland owned and managed by the Northern Ireland Forest Service.

##### **Clause 15 – Discharging firearms, etc, from a vehicle**

BDS-NI notes that this clause seeks to relax considerably the provisions of Article 19(3)(b) of the 1985 Wildlife Order which prohibits any firearm being discharged at deer from a mechanically propelled vehicle.

We acknowledge that there may be occasions on which an authorised person might find it an advantage to shoot from the cover of a vehicle. However, BDS-NI is not persuaded that facilitating what should be relatively infrequent occurrences should outweigh the potential disadvantages arising from persons who are not authorised making full use of such an easement to pursue practices which are unacceptable and, in all probability, illegal.

That such practices may already be addressed by legislation is no reason to facilitate them in this way, given the seriousness of the implications. For example the poaching of deer is a serious problem in Northern Ireland and raises fundamental and significant welfare issues as animals are often shot and wounded. Unsurprisingly, poachers have no interest in ethical and humane practices and where this happens the deer are invariably abandoned rather than being followed-up and dispatched humanely. While legalising the shooting of deer from vehicles may be well intentioned, an unintended consequence of this provision is likely to result in aiding and abetting wildlife crime.

**BDS-NI does not support this proposal, which it considers unnecessary.**

##### **Clause 16 – Licences relating to deer**

###### **Shooting during the close season**

From a deer welfare perspective, BDS-NI considers the close season to be of utmost importance to ensure that deer are adequately protected during the breeding season. The Society also acknowledges that the deliberate inflexibility of a close season may, in exceptional circumstances, create a tension in relation to addressing issues referred to in the proposed replacement for Article 19, paragraph (2), namely:

- (i) Preserving public health or public safety;
- (ii) Conserving the natural heritage; or
- (iii) Preventing serious damage to property.

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### ***In Northern Ireland***

We note that the proposals include a list of requirements which must be met by an applicant for the Department to consider granting a licence to cull deer during the close season and that the licence itself would be specific in stating precisely:

- (a) The purpose for which it is granted;
- (b) The land to which it relates;
- (c) The species and descriptions of deer to which it relates;
- (d) The period, not exceeding two years, for which it is valid; and
- (e) In the case of a licence under paragraph (2), the method by which the licensee may take or kill deer.

We welcome the effort which the Department appears to be making to ensure that such licences are not granted lightly. However, there is nothing to suggest that this includes any consideration of whether an applicant is suitably qualified to undertake the humane culling of deer at any time, and particularly during the close season.

The British Deer Society may be considered the leading body responsible for delivering training in deer management matters, including the culling of deer to the highest ethical and humane standards, where this needs to be undertaken. The qualifications gained through this training are nationally recognised throughout the UK.

BDS-NI would therefore propose that the draft Article be amended to make provision for an applicant for a licence to be 'suitably qualified'. In effect, this should be set at Deer Management Qualification Level 1 as an absolute minimum. In addition to being nationally recognised, this also has the advantage of being accepted by the PSNI as a requirement for a Firearms Certificate Holder to hold and use the type and calibre of firearm legally required for the culling of deer.

While it is likely to be inappropriate to seek to specify the nature of such qualifications in primary legislation, making provision for an applicant to be 'suitably qualified' would enable the matter to be addressed in guidelines to the operation of the legislation, once enacted.

#### **Clause 26 – reduction in close seasons for female deer**

We note the intention to substitute 30 September for 31 October where it appears in Schedule 10 of the Wildlife Order. BDS-NI asked for this change when making our original submission in response to the consultation process in 2008.

However, we have subsequently obtained updated veterinary advice on this matter and this reflects evolving thinking in relation to the circumstances in which there is no option but to cull a number of female deer within the currently defined close season. There is now a significant body of opinion which supports an extension of the open season for female deer from 28 February to 31 March, from a currently unchanged start date of 31 October.

While BDS-NI had previously expressed reservations on this matter, we respect the views now provided by veterinary professionals and should a case be made to revert to the revised extension as indicated above, we would offer no objection.

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#### **Clause 32**

BDS-NI notes the deregulatory intention of this clause, which seeks to remove existing restrictions to reflect modern refrigeration facilities and food handling standards. However, as already indicated, deer poaching is a growing problem, and increasingly associated with the issue of venison of questionable origin and, by association, subject to significantly sub-standard food handling standards, entering the food chain. We understand that such venison can find its way into food products offered by a variety of pubs, hotels and restaurants which are not averse to procuring such meat at modest cost from informal and irregular sources.

This is a matter which is capable of being addressed through the introduction of a traceability scheme equivalent to that which is already in place in respect of other meats. While this may not be within the direct authority of the Wildlife and Natural Environment Bill, consideration should be given to this matter to determine whether provision could be made in principle. Such an approach would be aimed at facilitating the appropriate amendment of other legislation to ensure that the handling of venison is accorded equivalent status to high volume everyday meats, in the interests of addressing food standards and associated public health issues.

The British Deer Society is a Charity registered in England & Wales number 1069663, registered in Scotland number SC037817.

## **British Association for Shooting and Conservation (BASC) Submission**



33 Castle Street  
Lisburn

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Mrs Alex McGarel  
Committee Clerk  
Committee for the Environment  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
BELFAST  
BT3 3XX  
Environment Committee

Dear Mrs McGarel

## **Response to the Wildlife and Natural Environment Bill**

BASC is grateful for the opportunity to respond to the Environment Committee in respect of the Wildlife and Natural Environment Bill on the occasion of the second reading that the Bill received in the Chamber. In making this response BASC is voicing the views of its membership.

In giving evidence to the Environment Committee, various references were made by other witnesses to the British Association for Shooting and Conservation, so we would welcome the opportunity to address the Committee to expand upon some of the issues addressed by the Bill, in particular on snares and the shooting community's input to conservation measures for quarry species.

## **ABOUT BASC**

BASC was founded in 1908 as the Wildfowlers Association of Great Britain and Ireland and is the UK's largest shooting association. BASC is constituted as an Industrial and Provident Society and has a membership in excess of 130,000. BASC is the representative body for sporting shooting in the UK. It aims to promote and protect sporting shooting and the wellbeing of the countryside throughout the UK and overseas. It actively promotes good firearms licensing practice, training, education, scientific research and practical habitat conservation. BASC believes that all who shoot should conduct themselves according to the highest standards of safety, sportsmanship and courtesy, with full respect for their quarry and a practical interest in wildlife conservation. As such, working dogs play a key part in sporting shooting, both in flushing quarry from cover and in recovering shot quarry.

BASC's expertise in shooting matters is widely recognised and its staff members are routinely consulted by a variety of government departments and agencies, and other statutory and non-statutory bodies.

The shooting community makes a vast input to habitat management and conservation, through the truly massive area of land over which it has control and influence. Independent evaluation shows that sporting shooting in Northern Ireland alone spends £10 million per year, equivalent to 640 fulltime jobs, on habitat improvement and wildlife management, across more than 990,000 hectares around the Province.

In making this response, BASC has consulted with members of its NI Advisory Committee and other members. Please find our response detailed below.

Yours sincerely

Sent unsigned by email

Roger Pollen.  
Director, BASC NI

## **Wildlife and Natural Environment Bill**

### **BASC Response**

BASC broadly welcomes the Wildlife and Natural Environment Bill as delivered at its second reading by Minister Edwin Poots, subject to some reservations.

The Bill is a good piece of draft legislation and the Minister and his team undertook a thorough process of consultation in its development. It is measured and reasonable in its scope and it brings a number of welcome strengthening measures to the Province's wildlife law. It reflects input from across the spectrum of interested parties and organisations, and it has achieved a significant degree of support from all parts of that spectrum. It seeks to amend the Wildlife Order and game laws in ways that are either helpful to sporting shooting or at least do not pose further restrictions.

However, although it is a good Bill, when it got its 2nd reading in Stormont, it was clear that some MLA's had concerns about certain aspects of the Bill, and that the animal rights and anti-shooting lobby had been active in briefings. In making this response, we also make reference to some of the reservations expressed by some MLA's, and hope that this input will allay their concerns.

This response is restricted to those key points of relevance to BASC's members, specifically that the Bill:-

- Plans to leave the quarry species schedules intact, with curlew remaining on the quarry schedules, relying for its protection on the widely promoted voluntary moratorium.
- Did not propose changes to the status of Irish hare nor the red grouse.
- Proposes to scrap the game licence, the game dealer's licence and the restrictions on selling lawfully taken game out of season.
- Proposed clarification and refinement of the laws on use of snares.
- Would address deer management concerns by extending the season for hinds and does.
- Proposed a requirement for the Dept of the Environment to maintain a register of occupiers of ASSI's.
- Proposed the creation of Wildlife Inspectors with special powers.

### **Quarry schedules**

BASC welcomes the proposal to leave the quarry schedules unaltered, and specifically welcomes the retention of curlew, Irish hare and red grouse on the schedules. We are aware that many people wish to see these three species in particular flourish, and the sporting shooting community is at the forefront, not only in this desire but in the ability to deliver positively on that desire.

In respect of curlew, it is clear that there is a dearth of scientific data about the over-wintering habits of Northern Ireland's breeding curlew population. There is clearly a need to understand more about this important bird. In that spirit, BASC worked closely with the EHS/NIEA and the RSPB in a six year programme to establish the value of predator control in enhancing the success of ground nesting birds.

The shooting community has management influence over a huge area of Northern Ireland, through which it can undertake effective predator control work and habitat management. These are the two main factors that need to be addressed in respect of each of curlew, Irish hare and red grouse, if populations are to be stabilised and enhanced.

The shooting community has had a widespread moratorium on the shooting of Irish hare for many years, and more recently has introduced its own moratorium on the shooting of curlew throughout most of the Province. It has also invested huge sums on the restoration of grouse moors to help re-establish this iconic species. In short, we believe that it is very much better to engage effectively with the shooting community and harness its capacity to deliver real conservation benefits than to alienate it by putting in place statutory bans where voluntary self-regulation had already been adopted and been effective. This is the very essence of modern governance and we welcome the fact that the Bill embraces that spirit.

## **Revision of the game laws**

The Bill proposes sensible revision of the game laws. Specifically, it proposes alignment with England and Wales, with the scrapping of the Game Licence, which costs more to administer than it raises and which is a throw-back to historic restrictions on the shooting of game by the general population.

The Bill also proposes scrapping the requirement for game dealer's licences, which is a reflection of the increased role of other legislation and controls. This is a welcome deregulation and will assist with the increasing popularity of game as food in mainstream restaurants and households.

The Bill also recognises changed storage and processing capabilities, and proposes removing the restrictions on selling lawfully taken game out of season. This recognises use of freezing, smoking and other forms of preserving to extend the period during which game can be offered up for sale.

## **Clarification on the use of snares**

BASC Northern Ireland is concerned that the debate about snares is developing without full understanding of how and why they are used, and the new technology being developed. BASC is conscious of the welfare issues around snaring and has prepared a briefing paper (attached) to inform policy makers.

Snares are an essential tool used both by the Province's farmers as well as wildlife and conservation managers to manage certain predators and pests in the countryside.

Foxes not only kill livestock and game birds, but threaten a range of ground-nesting bird species, some of which are identified within the NI Biodiversity Action Plan, as well as mammals such as Irish hares. A well-designed snare, set correctly, is a highly effective method of restraining foxes and rabbits until they can be humanely dispatched, and where other techniques such as trapping or shooting are neither suitable nor effective.

BASC chairs the Red Grouse Species Action Plan Delivery Group. It is clear from discussing the issue in the Group that fox control is the single most important measure that can be undertaken for the benefit of the grouse. It is essential that snares continue to be available as a management tool, to be used properly and humanely, and BASC is committed to working to ensure that those who use them act in a responsible and a professional manner.

Forest Service, which owns 150,000 acres of forest in Northern Ireland, much of it of key importance to endangered wildlife. The Service does not allow bullet-firing weapons to be used in its estate, which leaves snaring as one of very few remaining options for fox control. To remove its ability to snare would be to condemn a great many threatened birds and animals to predation by foxes. In addition to foxes, the snaring of rabbits is another major requirement in effective land management.

BASC was pleased to note that the RSPB, in both its written submission to the consultation and in oral evidence to the Environment Committee, recognised the continued need for snares within the options available for effective land management. Snaring is a complex matter and we would welcome the opportunity to discuss it directly with the Environment Committee.

## **Deer legislation**

The proposals on deer are sensible and measured. There is widespread anecdotal evidence that deer numbers are increasing throughout the Province and, with a DARD objective to double woodland and forest cover from the current 6% of land mass to 12%, it is reasonable to expect that deer numbers will significantly increase.

This is welcome but it will require greater deer management effort to ensure a healthy, sustainable population in which numbers do not rise to such an extent that the current level of road traffic accidents and forest damage caused by deer increases to an unacceptable level.

There are few variables in achieving an increased cull and the proposal to extend the open season for doe and hind culling is the most appropriate. Of the other measures which have been suggested, BASC is strongly opposed to any proposals to introduce night shooting or out of season shooting.

The current open season for female deer in Northern Ireland is 1 November to 28/9 February. All of the deer stakeholders in Northern Ireland agree that an extension to the season is the most appropriate way of extending deer management opportunity, but there is some debate as to whether the open season should be brought forward to start at the beginning of October, or be extended to run until the end of March.

BASC believes that a sensible balance could be struck in which the open season commences on 21 October and runs until 31 March. This would mirror the commencement of the open season in Scotland and the end of the season in England and Wales and would allow some flexibility for the Province's deer managers to act as they feel is appropriate in their particular conditions.

It is worth noting that this is not an issue dominated by financial imperatives – it does not impact on the letting of stag shooting to paying stalkers; it is simply focused on the females for the purposes of managing the herd.

## **Notification of change of occupier in an Area of Special Scientific Interest**

The Bill proposes making it a requirement to notify the Department of Environment of changes in the occupier of ASSI's.



The term "occupier" is not defined, yet land use is so diverse that a single piece of land can have many occupiers. For example, a single piece of land may have the following "occupiers":-

- The land owner
- A lease holder
- Tenant farmer
- User under conacre
- Sporting rights lessee
- Fishing rights lessee
- Shoot manager
- Event organiser (eg BASC when we lease an estate for the purposes of staging a Game Fair)

The term "occupier" is relied upon in other legislation in ways that can mean that it can define whether a statutory offence has been created or not. For example, under the Firearms NI Order 2004, a person is within the law if they borrow a shotgun and use with the permission and under the supervision of the "occupier". The provision also means that someone shooting on land "without the permission of the occupier" would be committing an offence of armed trespass.

If the Wildlife and Natural Environment Bill were to progress the idea of establishing a register of occupiers, it would assume responsibility for defining "occupiers" and maintaining an up to date register that might be relied upon as a factor in determining whether a statutory offence had been committed.

We believe that the bureaucracy and the costs of establishing such a register would be massive, whilst the benefits will be minimal. The legal owner should be able to be held to account in respect of the protections required for ASSI's and so better engagement with Land Registry should provide a more effective solution than the proposed measure.

## **Wildlife Inspectors**

BASC has significant concerns about the terms of reference of "wildlife inspectors". The Bill makes provision for Wildlife Inspectors to enter premises, to take other people with them into those premises, and makes obstruction of those Inspectors an offence.

Given these powers, it is essential that they are used with great care, and BASC has concerns about the provisions in the Bill that could allow anyone to be deemed an Inspector and have these powers conferred upon them, simply through a letter of authorisation by the Department.

It raises the prospect of inconsistency of approach, and it has implications for resources and management, such as creating a need for training in evidence collection and preservation techniques etc.

As presently couched, the Bill does not require such people to be permanent staff of the NI Environment Agency or the Dept of the Environment. The powers could be used to appoint anyone as a Wildlife Inspector, whether that might be a local authority Biodiversity Officer, a staff member of the RSPB, BASC or the National Trust, or even a member of an animal rights lobby.

BASC is supportive of the proposal to establish wildlife inspectors to assist with enforcement but we do not believe that such powers should be created to allow anyone other than permanent staff of the Department of the Environment to be appointed.

## **Omissions**

The Bill was silent on some proposals and representations made by BASC throughout the consultation process. Key amongst these were:-

- A change to the regulations to allow foreshore shooting until 20 February, to bring the Province into line with the rest of the UK.
- Shooting of wildfowl at night by moonlight, to fall in line with the rest of the UK.
- Legalisation of the sale of dead Mallard. Unlike in the rest of the UK, there is an anomaly in Northern Ireland which prevents this. BASC believes that law should be revised to enable the sale of estate-reared Mallard into the food chain.
- We believe that the lack of detailed knowledge of deer in Northern Ireland means that legislation is being created and administered by various Departments without a real understanding of the drivers and impacts of that legislation. It would be helpful to have a quinquennial deer survey and census, in tandem with the review of the schedules, to establish accurate data on herd numbers, population trends, and other impacts, such as venison put into the food chain and road traffic accidents.

## **Other considerations**

The RSPB, in their oral evidence, raised the issue of "Stop Notices" which could be issued in respect of alleged damage to ASSI's. Whilst sympathetic to the spirit behind their wishes, with the example of the ploughing of part of Strangford Lough illustrating the point, we have reservations about the implications of Stop Notices which could impede lawful activities.

In particular, when taken in conjunction with the RSPB's desire to see the Glens of Antrim designated as an ASSI, Stop Notices could be used to interrupt heather burning that is being carried out as part of habitat management for red grouse conservation. If powers are to be created, detailed consideration would need to be given to how they could be misused, either intentionally or accidentally, to frustrate lawful activity.

RSPB in their oral presentation argued for restrictions on General Licences, suggesting that individuals ought to have a duty to demonstrate that no other measures would work before shooting of pest birds is adopted. We believe this would be unworkable and would achieve little. The current system is effective and there is no evidence of any problem arising from its continued use, and we would advocate continuation of a good and well-run system of licensing.

## **British Association for Shooting and Conservation NI (BASC) – Snaring in Northern Ireland**

### **Executive Summary**

BASC Northern Ireland on behalf of its members is concerned that the debate about snares is developing without full understanding of how and why they are used, and the new technology being developed. BASC is conscious of the welfare issues around snaring and has prepared a briefing to inform policy makers.

Northern Ireland's professional gamekeepers and good countryside managers operate to high standards, demonstrating best practice and working to industry codes of practice. Snares are an essential tool used both by the Province's farmers as well as wildlife and conservation managers to manage certain predators and pests in the countryside.

Foxes not only kill livestock and game birds, but threaten a range of ground-nesting bird species, some of which are identified within the NI Biodiversity Action Plan, as well as mammals such as Irish hares. A well-designed snare, set correctly, is a highly effective method of restraining foxes and rabbits until they can be humanely dispatched, and where other techniques such as trapping or shooting are neither suitable nor effective.

The shooting community in Northern Ireland makes a significant contribution to conservation, with active management influence over a million hectares. Ten million pounds is spent on habitat improvement and wildlife management each year, which provides the equivalent of 640 full-time conservation jobs. The sporting shooting industry is worth £45 million per annum to the Northern Ireland economy and sustains 2,100 FTE posts.

Snaring plays an important role in shoot management and ultimately in sustainable economic and social development of rural communities. Without snares, foxes and rabbits could inflict significantly greater damage on economic activities as diverse as agriculture, forestry and eco-tourism, all of which rely on a managed countryside.

BASC wants snares to continue to be available as a management tool, to be used properly and humanely, and to ensure that those who use them act in a responsible and a professional manner.

Figure 1  
Fox held in snare



Snaring is a skilful, selective and humane method of restraining an animal until it can be either released unharmed or humanely dispatched, as appropriate. Fox snares are made from wire and are designed not to cause damage to a restrained animal.

In Northern Ireland the snare is used exclusively for the targeted control of foxes, rabbits and occasionally rats, all of which can cause serious economic and environmental damage. The UK's fox population has been estimated to be around 250,000 (Webb et al, 2004) and that there has been an increase in UK fox densities and numbers over the past 40 years (Reynolds and Tapper, 1993).

As long ago as 1995, the UK's breeding rabbit population was estimated to be about 37.5 million (Harris et al, 1995). These key points are confirmed by the Report on the Independent Working Group on Snares (DEFRA, 2005):

"Snares involve the use of flexible materials to capture and restrain, and in this regard they have similarities to gill nets used for capture of sea fish and mist nets used in the capture of wild birds for ringing"

"In contrast to the situation in other countries (e.g. USA & Canada) snares are widely used in the UK to restrain animals for despatch rather than as killing devices".

Snaring is often the most effective and efficient method of managing fox and rabbit populations; it is sometimes the only practical method. In a UK survey of over 1,000 gamekeepers, 96% reported the presence of foxes that needed to be controlled and reported that, after night shooting, snaring was the most effective method of control, used by 86% of keepers (BASC, 1995). Snaring accounts for 30% of all foxes controlled by gamekeepers each year (BASC, 1995.) on some land. Operator skills strongly influence capture rate. Foxes use the same routes on a regular basis therefore snares can be sited with a degree of precision (sometimes for a specific, individual animal).

By law, snares have to be checked at least once within every 24 hour period to ensure captured animals are not restrained longer than necessary. Most animals are caught at night and best practice requires snares to be checked first thing in the morning (BASC Code of Practice) at which time non-target species can be released, target species despatched and any damaged snares removed.

Why is snaring so important to NI?

## **Conservation**

Two recent reports, "The Singing Fields"(Tapper, 2007), and the RSPB's "The predation of wild birds in the UK" (Gibbons et al, 2007) clearly demonstrate the advantages of predator control to a wide variety of ground nesting bird species including merlin, red grouse, golden plover, lapwing and curlew.

### **The Singing Fields report concludes:**

"On grouse moors, red grouse, black grouse, lapwing and curlew, are faring better than elsewhere but are in national decline". At the report's launch, Dr Mark Avery - RSPB's Director of Conservation, said: "We are increasingly recognising that predators are having a greater impact on ground-nesting birds and waders and on more and more of our nature reserves are carrying out predator control."

The RSPB's predation review concludes that

"...generalist ground predators, such as foxes, can sometimes reduce the population levels of their prey, and that this is a growing worry if we are to conserve populations of threatened ground-nesting birds, for example, lapwings"

## **Snaring and red grouse**

There is a Northern Ireland Species Action plan for each of red grouse and curlew. In a study by the RSPB (Murray Grant) and a subsequent six year study undertaken by EHS/NIEA, RSPB and BASC in north Antrim, foxes were identified as a key predator on curlew. The red grouse species action plan delivery group has also established that the biggest single threat to re-establishing grouse is effective fox control.

The red grouse - a bird reliant on heather moorland - is included on the Red List of Birds of Conservation Concern in Ireland and as a Priority Species under the Northern Ireland Biodiversity Strategy. The red grouse population in Northern Ireland is estimated (Allen et al., 2004) at between 202 and 221 pairs with densities of between one and three pairs per square kilometre and sometimes lower.

Northern Ireland's heath land is host to habitats and wildlife of European importance and through improved management can be an increasingly rich resource. However, loss and fragmentation of upland heath and blanket bog habitat as a result of overgrazing, agricultural improvement and afforestation have reduced the areas in which grouse can occur (Tomlinson, 1997; Cooper et al., 2002). Breeding birds are concentrated into smaller areas and, as a consequence, they become more vulnerable to predators such as foxes. The planting of forests in upland areas, increased stocking levels of sheep and a reduction in game-keeping activity have all contributed to an increase in predator numbers.

As can be seen from the above, snaring can have a key role to play in the conservation of the red grouse and other ground nesting bird species in Northern Ireland. Fox control is also important to protect lambs in hill farming areas, whilst rabbits must be controlled to protect agricultural crops as well as sensitive flora. Rabbits can damage sensitive flora, crops and young trees and undermine grassy banks (including burrowing under railway lines). Snaring is one of the most widely used methods of rabbit control.

## **Other methods of control available**

In parts of Northern Ireland there is no access for vehicles and many areas are covered in forestry plantations, standing crops or thick scrub making it impractical to shoot foxes. Difficulty with access particularly applies when trying to control foxes on large areas of heath land. "Lamping can generally only be undertaken in terrain that permits free movement of vehicles and it is not practicable for some hilly areas or where there is a lot of cover" (Reynolds, 2000). Over exposure to lamps severely reduces the effectiveness of this technique. Given their nocturnal habits, fox and rabbit shooting at night may in some situations cause problems relating to working hours and health and safety concerns.

As a further impediment, Forest Service does not allow bullet-firing guns to be used in its estate, so snares are used by its staff and lease holders as part of effective fox control.

Live-capture traps depend on the fox entering a box or cage and triggering a door release mechanism. Innate or learned wariness in the fox makes this an impractical solution in rural areas as they are typically cautious of novel, man-made objects, which severely limits the efficacy of these traps. Only 9% of gamekeepers report having caught foxes using such traps (BASC, 1995). These traps may, however, be effective in urban environments, where foxes are more confident about entering small spaces.

Drop Traps for rabbits must be sited on a rabbit-proof fence line and dug into the ground. They can be an effective method of rabbit control but are expensive to install and maintain. Each trap costs about £100 plus the cost of installation; one trap is needed for every 50 yards of fence.

Such fencing, as required for these traps, may restrict the freedom of movement of many species such as badgers, hares, otters and pheasants.

Foot packs consist of a small team of dogs and beaters to flush foxes from cover to waiting guns. They are often used in dense woodland adjoining moorland or farmland and require a great deal of manpower and expense. This method is deployed at the end of the shooting season to avoid disturbance to game birds and before the lambing and ground-nesting bird breeding season starts.

Fox hunts, where traditional packs of hounds flush foxes to waiting guns, can be an effective method of fox control in the areas in which they operate. Such control is only really suitable in lowland situations.

Terriers are used to flush foxes from underground to a waiting gun, a technique used mainly in the spring. This is a very time consuming but effective method for dealing with known dens.

Physical barriers such as wire netting can be valuable in reducing loss of poultry, game birds or livestock held in small areas. Wire netting is widely used in an attempt to exclude rabbits from vulnerable forestry and crops. Electric fencing has partial success in protecting ground-nesting birds on nature reserves but experience has shown it must be backed up by lethal control methods that may not be practical in a moorland situation and it is very expensive.

Fertility control for wild mammals has been the subject of several years' intensive research by Australian and French scientists. Despite enormous expenditure, many practical problems stand in the way of a workable methodology.

## **So what is the way ahead?**

### **BASC proposes that:**

Legislation should ensure that snaring remains legal as a valued tool for farmers, gamekeepers and wildlife managers. The committee for Agriculture and Rural Development in its pre legislative scrutiny of the Animal Welfare Bill published on the 13th October 2009 gave assurances that there are no proposals in the legislation to ban snares and clarified that Under the Wildlife (Northern Ireland) Order 1985, the Department of the Environment takes the lead on legislation about snares. BASC supports this view; the right place for legislation relating to snaring is within the Wildlife Order.

BASC believes that the proposals within the Wildlife and Natural Environment Bill offer clarification and refinement of the laws on use of snares and these seem to be a sensible revision to improve regulation without disadvantaging responsible gamekeepers and land managers. As a safeguard, further consideration should be given to restricting the offence to being the setting of such devices, rather than possession without reasonable excuse. However, if the Department intends to make the possession of a self-locking snare an offence, then a commitment must be made to ensure widespread education to foster understanding of the changed law so that offences are not committed inadvertently.

Snaring is already subject to industry codes of practice, containing best practice recommendations and legislation, with penalties available for illegal activity/practice. BASC would be happy to lead a joint industry working group to develop a new Code of Practice for Northern Ireland to take into account all legal and best practice provisions.

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Comhaltas, Oidhreacht agus Meitheas Áitiúil  
Environment, Heritage and Local Government

**NATIONAL PARKS AND WILDLIFE**

**WILDLIFE ACT, 1976 (AS AMENDED) – SECTION 32**

**LICENCE TO ATTACH A TAG OR OTHER MARKING DEVICE TO A WILD  
ANIMAL**

The Minister for the Environment, Heritage and Local Government (hereinafter referred to as "the Minister"), in exercise of the powers conferred on him by Sections 9 and 32 of the Wildlife Act, 1976 (No. 39 of 1976), as adapted, authorises the **IRISH COURSING CLUB**, Davis Road, Clonmel, Co. Tipperary to attach a tag or other marking device as specified in Column 1 of the Schedule hereunder to the species of wild animal specified in Column 2 and for that purpose to take the said species in the area specified in Column 3 by the means specified in Column 4 during the period beginning on the 15<sup>th</sup> day of September, 2009 and ending on the 28<sup>th</sup> day of February, 2010 subject to the attached conditions. The authority given by the Licence shall be exercisable by the Licensee and by the Coursing Clubs listed in schedule attached hereto.

**SCHEDULE**

(1) TYPE OF OTHER MARKING DEVICE	(2) SPECIES	(3) AREA	(4) MEANS OF TAKING
1. (Tattoo – Earmark) 2. (Spray - Dye)	Hare	Where landowner permission has been granted	Netting

Dated this <sup>15<sup>th</sup></sup> day of September, 2009

For the Minister for the Environment, Heritage and Local Government

An officer Authorised on that behalf by the said Minister





**CONDITIONS:**

1. The Licence shall be produced for inspection on a request being made on that behalf by a member of the Garda Síochána or any person appointed by the Minister under Section 72 of the Wildlife Act, 1976 (as amended), to be an authorised person for the purpose of the said Act.
2. The Minister may revoke the Licence at any time.
3. A return giving particulars of hares tagged or marked shall be made to National Parks and Wildlife, 7 Ely Place, Dublin 2, on expiry of the period of validity of the Licence or on a request being made in that behalf by the Minister.

**Note:** The Licence does not authorise any person to enter on any land without the permission of the owner or occupier of the land.





Comhaltas, Oidhreacht agus Rannas Aitiúil  
Environment, Heritage and Local Government

**NATIONAL PARKS AND WILDLIFE SERVICE**


**WILDLIFE ACT, 1976 (AS AMENDED) – SECTION 34**

**LICENCE TO CAPTURE LIVE HARES**

The Minister for the Environment, Heritage and Local Government (hereinafter referred to as "the Minister"), in exercise of the powers conferred on him by Sections 9 and 34 of the Wildlife Act, 1976 (No. 39 of 1976), as adapted, hereby grants to the **IRISH COURSING CLUB**, ("the Licensee"), Davis Road, Clonmel, Co. Tipperary a licence to capture alive hares by means of nets subject to the conditions specified hereunder. The authority given by the Licence shall be exercisable by the Licensee and by the Coursing Clubs listed in the schedule attached hereto.

Dated this <sup>6<sup>th</sup></sup> 5<sup>th</sup> day of September, 2009

For the Minister for the Environment, Heritage and Local Government

  
An officer authorised in that behalf by the said Minister.



**CONDITIONS:**

1. The Licence shall remain in force for the period beginning on the 16<sup>th</sup> day of September, 2009 and ending on the 28<sup>th</sup> day of February, 2010 and may be revoked or amended by the Minister.
2. The Licence is issued pursuant to and in accordance with the Wildlife Act, 1976 (Approved Traps, Snare and Nets) Regulations, 2003 (S.I. No. 620 of 2003).
3. A return giving particulars of all of the captures and the locations of the captures made on foot of this licence shall be made to the Minister, within 4 weeks of the expiry of the period of validity of the Licence or on a request made in that behalf by the Minister.

4. A return giving particulars of the numbers and locations of the releases of hares made by the licensee and by the coursing clubs listed in the schedule attached hereto shall be made to the Minister, within 4 weeks of the expiry of the period of validity of the Licence or on a request made in that behalf by the Minister.
5. Details of the numbers and locations of the capture of all hares made by the coursing clubs listed in the schedule attached hereto shall be made to the relevant conservation ranger, on or before the weekend of the meeting for which the hares were captured for.
6. The nets shall not be placed or operated in a place or in such a way as to endanger farm or domestic animals or other species for which they are not intended.
7. The Licence shall be produced for inspection on a request being made in that behalf by a member of the Garda Síochána or any person appointed by the Minister under Section 72 of the Wildlife Act, 1976 (as amended), to be an authorised person for the purposes of the said Act.
8. The licensee and each of the coursing clubs listed in the schedule attached hereto shall arrange for a qualified veterinary surgeon to be in attendance during all of their coursing meetings, and that he/she shall prepare a signed report on the general health of the hares and on any injuries or deaths of hares that occur during the meeting. Each club shall ensure that the signed veterinary report in respect of its meetings is submitted to the Department within three weeks of the date on which the meeting finished.
9. Any hare captured pursuant to the Licence may not be coursed more than once on the same day and all necessary arrangements shall be made to ensure that hares that have been coursed can be readily identified to ensure that this condition is rigidly observed.
10. Sick, injured or pregnant hares shall not be taken under the Licence
11. Hares that become sick or injured or that appear to be pregnant while in captivity may not be coursed.
12. Adequate escapes must be provided while coursing hares captured pursuant to the Licence.
13. All hares must be released back into the wild during daylight hours the day after the coursing meeting has concluded, unless otherwise agreed with the relevant National Parks and Wildlife staff beforehand.
14. All hares must be released back into the wild in the same area from which they were captured, unless otherwise agreed beforehand with the relevant National Parks and Wildlife staff.



15. The Licence does not cover the following townlands in Co. Wexford: North East Slob, North West Slob, Big Island, Beggering Island and The Raven.
16. All National Parks and Statutory Nature Reserves within the State are excluded from the provisions of the Licence.
17. This licence covers the capturing of hares in the Republic of Ireland. Any club capturing hares outside of this jurisdiction for the purposes of hare coursing inside the jurisdiction must be able to produce the relevant licenses/authorisation from the appropriate state authorities concerned.
18. The licensee and the coursing clubs listed in the schedule attached hereto shall co-operate fully with any officer of the Minister and shall comply with any request made by such an officer in the course of his/her duties.
19. The removal from this jurisdiction of hares captured in this jurisdiction under the terms of this licence is strictly prohibited.
20. It shall be a breach of the terms of this licence, for hares captured under its provisions to be transferred to the licensee or to a coursing club that is not one of the coursing clubs listed in the schedule attached hereto.
21. It is an additional condition of this licence that, in all matters relating to the capture, keeping in captivity, tagging, marking, coursing and release of hares, and the muzzling of greyhounds, there shall be full compliance with the Directives, Instructions and Guidance Notes issued by the Executive Committee of the Irish Coursing Club.
22. Any person involved in the capturing of hares must have a written certificate, signed by the Club Secretary or the Secretary of the Irish Coursing Club, certifying that the named bearer is a member of a Club affiliated to the Irish Coursing Club and that certificate must be produced on request to a member of the Garda Síochána or an Authorised Person.

**Note:** The Licence does not authorise any person to enter on any land without the permission of the owner or occupier of the land.



Public release date: 24-Feb-2010

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Queen's University Belfast

## Hares more numerous in Irish Coursing Club Preserves than wider countryside

Irish hares are eighteen times more abundant in areas managed by the Irish Coursing Club (ICC) than at similar sites in the wider countryside a recent study by Queen's University Belfast has shown.

There are approximately 76 local coursing clubs distributed throughout Ireland and each is associated with a number of discrete localities, known colloquially as 'hare preserves'. These are managed favourably for hares including predator control, prohibition of other forms of hunting such as shooting and poaching and the maintenance and enhancement of suitable hare habitat.

Anti-field sports organisations, in addition to animal welfare objections, dispute the efficacy of ICC hare population management practices claiming that annual harvesting of hares causes local population declines and extinction.

The research team, lead by Dr. Neil Reid, Quercus Centre Manager at Queen's, indirectly tested the efficacy of management practices by comparing hare numbers within preserves to that in the wider countryside.

Dr Reid said: "While we cannot rule out the role of habitat, our results suggest that hare numbers are maintained at high levels in ICC preserves either because clubs select areas of high hare density and subsequently have a negligible effect on numbers, or that active population management positively increases hare abundance."

The research, published in the peer-reviewed international journal *Acta Theriologica*, suggests that field sports such as shooting, hunting and hare coursing promote the multifunctional use of farmland in which wildlife provides a resource for non-agricultural activities supporting sustainable development. Also, field sports may offer financial and recreational incentives to farmers and private landowners who are frequently willing to accept conservation costs over a wider area than Government can afford to subsidize.

Co-author Professor Ian Montgomery, Head of the School of Biological Sciences at Queen's said "The Irish hare is one of the highest priority species in Ireland and its conservation is a fine balance between the management of suitable habitat within agricultural systems, population management by coursing clubs and associated animal welfare concerns. Without legal, well organised and regulated coursing much of the costs of conservation will fall exclusively on Government."

This latest research follows on from a previous study published by the same group in the journal *Animal Welfare* during 2007, which showed that survival of hares at coursing events significantly improved with the introduction of compulsory muzzling of greyhounds in 1993, while improved levels of captive animal husbandry reduced mortality yet further. It is estimated that about four per cent of the 6,000 or so hares netted by the ICC each year are killed with the rest being released back into the wild.

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Further information on the study is available on the Quercus website at [www.quercus.ac.uk](http://www.quercus.ac.uk).

Media inquiries to Lisa McElroy, Press and PR Unit. Tel: +44 (0)28 90 97 5384 or email [lisa.mcelroy@qub.ac.uk](mailto:lisa.mcelroy@qub.ac.uk)

Notes for editors

1. Dr Neil Reid is available for interview. Please telephone 00 44 (0) 28 90 97 3091 to arrange.

## QUB Press release - Hares - 24.02.10

2. Quercus is Northern Ireland's research centre for biodiversity and conservation science and is part of the School of Biological Sciences, Queen's University Belfast.

3. The Irish hare (*Lepus timidus hibernicus*) is listed on Appendix III of the Bern Convention (Anon 1979) and Annex V(b) of the EC Habitats Directive (92/43/EEC), and is listed as an internationally important species in the Irish Red Data Book (Whilde 1993). It is also subject to an Northern Ireland and All-Ireland Species Action it is one of the highest priority species for conservation action in Ireland.

4. Irish hares have undergone a substantial population decline since the early 20th century due to agricultural intensification and loss of suitable habitat.

5. Irish hares have been shown to be associated a habitat matrix of improved farmland providing good quality grassland for grazing at night interspersed with areas of tall vegetation providing cover and shelter for lying-up during the day, for example, patches of rushes.

## **Appendix 4**

### **List of Witnesses who gave Oral Evidence to the Committee**

#### **List of Witnesses who gave Oral Evidence to the Committee**

**1. Department of the Environment - 7 January 2010**

- Mr Ken Bradley
- Mr Chris Savage
- Mr Mike Meharg

**2. Royal Society for the Protection of Birds - 18 February 2010**

- Mr Colum Delaney
- Ms Claire Ferry
- Ms Anne-Marie McDevitt

**3. Countryside Alliance Ireland - 18 February 2010**

- Mr D J Histon
- Mr Lyall Plant
- Professor Ian Montgomery

**4. Ulster Farmers' Union - 25 February 2010**

- Mr Wesley Aston
- Ms Kate Cairns
- Mr Gregg Shannon

**5. Ulster Wildlife Trust - 25 February 2010**

- Dr John Faulkner
- Dr Hilary Kirkpatrick
- Mrs Heather Thompson
- Mr Andrew Upton

**6. NI Environment Link - 25 February 2010**

- Dr Peter Christie
- Prof Sue Christie
- Mr Sean Kelly

**7. Northern Ireland Local Government Association - 4 March 2010**

- Alderman Arnold Hatch
- Ms Rosemary Mulholland
- Ms Ruth Wilson

**8. Northern Ireland Biodiversity Group - 4 March 2010**

- Ms Judith Annett

- Dr Bob Brown
- Ms Orla Maguire

## 9. Talnorty Avian Care Trust - 4 March 2010

- Mr Peter Baillie
- Mrs Patricia Nevinnes

# Appendix 5

## Research Papers

### Research Papers

Research Paper – How the NI Wildlife Bill proposals compare with the Wildlife Orders in England, Scotland and Wales.

Research Paper – New Snare Technology

Research Paper – Fox Snaring Guidelines

Research Paper – Use of Snares and Pest Control in Europe

## Assembly Research Paper on How the NI Wildlife Bill proposals compare with Wildlife Orders in England, Scotland and Wales.

### Background

The original legislation covering the protection of wildlife and the environment in England, Wales and Scotland is the Wildlife and Countryside Act which came into force in 1981. Since then, amendments have been made to the Act to bring the legislation up to date. Scotland has introduced amendments through the use of their own acts to make the legislation more specific to Scotland.

Many of the proposals in the Northern Ireland Wildlife and Natural Environment Bill can be linked to changes that have been made to legislation in England/Wales and Scotland over recent years, some of which can be seen in the following matrix.

(To see a more detailed description of each of the clauses in the NI Wildlife and Natural Environment Bill, refer to the 'Explanatory and Financial Memorandum'[\[1\]](#))

### Comparisons with Other UK Legislation[\[2\]](#)[\[3\]](#)[\[4\]](#)[\[5\]](#)

Proposals in NI Wildlife Bill	England and Wales	Scotland
Clause 1: introduces a new statutory duty upon government departments and public bodies to	Similar to section 40 of the Natural Environment and Rural Communities Act 2006 <sup>1</sup> .	A similar duty has been introduced in the Nature Conservation



Proposals in NI Wildlife Bill	England and Wales	Scotland
take action to further the conservation of biodiversity.		Act 20042 Part 1 section 1.
Clause 2: places a statutory duty upon Government to ensure the achievement of the conservation of biodiversity and to underpin the key mechanisms established.	Similar to legislative changes in England/Wales (i.e. provisions within the Countryside and Rights of Way Act 20003 and the Natural Environment and Rural Communities Act 20064).	Similar to provisions made in the Nature Conservation Act 2004 section 2.
Clause 3: requires the DOE to publish lists of animal and plant species, and habitats for conservation attention in Northern Ireland.	Similar to section 41 and 42 of the Natural Environment and Rural Communities Act 2006.	Similar to provisions made under section 2 of the Nature Conservation Act 2004.
Proposals in NI Wildlife Bill	England and Wales	Scotland
Clause 4: introduces protection for the nests of particular birds all year round e.g. the golden eagle; making it is an offence to damage or destroy their nests anytime of the year.	The Natural Environment and Rural Communities Act 20066 amends the Wildlife and Countryside Act 1981 as it has been recognised that certain species (the Golden Eagle and Osprey) return to their nests year after year, and in order to help their long-term breeding success, legislative changes have been made to provide statutory protection against damage and destruction to their nests all year round.	Schedule 6 of the Nature Conservation Act 2004 amends the Wildlife and Countryside Act 1981; offering similar protection as England to species returning year after year e.g. the White Tailed Eagle.
Clause 5: ensures that action which, when carried out recklessly, causes harm to wildlife, will be treated in the same way as action carried out intentionally to cause harm.	'Recklessly' has also been inserted using schedule 12 of the Countryside and Rights of Way Act 2000.	Same as the introduction of 'Recklessly' added by schedule 6 of the Nature Conservation Act 2004
Clause 6: enables action to be taken against someone who knowingly causes or allows someone else to cause damage (to animals, birds and plants) before that damage occurs  Clause 17: makes it an offence for anyone to be in possession of any article that is to be used for committing an offence	The 1981 Wildlife and Countryside Act7 in GB contains a provision (Article 18) which makes it an offence for anyone to attempt to commit an offence under its forgoing provisions, or have possession of anything that is capable of being used to commit the offence.	
Clause 7: 'authorised people' (owners/occupiers) must show there was no satisfactory alternative to their action (causing harm to wildlife) or, when it is known in advance that they must perform such an activity then they	The 1995 Statutory Instrument amends the Wildlife and Countryside Act 1981 to include the need to show there was no other satisfactory solution.	Refer to point 3 under 'Differences' at the end of this matrix

must apply to the DOE for a licence		
Clause 8: disqualifies anyone who is convicted of an offence regarding the protection of species, from applying for registration with the DOE for the purposes of taxidermy etc, within 5 years of their conviction.		Refer to point 4 of the 'Differences 'section at the end of this matrix.

[6][7]

Proposals in NI Wildlife Bill	England and Wales	Scotland
Clause 9: proposes to make it an offence to intentionally or recklessly disturb or harass basking sharks	Protection has been offered to basking sharks up to 12 nautical miles offshore since 1998 in the 2nd review of the Wildlife and Countryside Act (1981) <sup>8</sup> . Also protected from harassment and disturbance under the Countryside Rights of Way Act 2000.	Similar protection to England and Wales under the Wildlife and Countryside Act 1981 as amended by the Nature Conservation (Scotland) Act 2004.
Clause 10: strengthens controls over snares making the use and possession of self locking snares illegal. It will also be illegal to set or use any other form of snare to cause unnecessary suffering to any wild animal.	Similar provisions fall under the Wildlife and Countryside Act 1981.  Under the Deer Act 1991 <sup>9</sup> it is an offence to use snares to kill deer.	Nature Conservation Act 2004 provides similar provisions on the use of snares. The new Wildlife and Natural Environment Bill consultation document <sup>10</sup> will also allow Scottish Ministers to make further rules on types of snares or the manner of their use.
Clause 11: clarifies that the offence of intentionally picking, removing, uprooting or destroying a protected wild plant also applies to its seeds or spores	Similar to provisions made in Section 13 part 1 of the Wildlife and Countryside Act 1981	Similar to an amendment made by the Nature Conservation Act 2006 schedule 6 paragraph 11
Clause 12: controls the introduction of non-native invasive species, which now applies to hybrids of such species.		Similar to Schedule 6 section 12 of the Nature Conservation Act 2004.
Clause 13: gives the DOE power to prohibit anyone from selling any animal or plant species specified in the original Wildlife Order.	This applies to the amendment made by section 50 of the Natural Environment and Rural Communities Act 2006.	Similar to Schedule 6 section 13 of the Nature Conservation Act 2004.
Clause 14: permits activities, that would otherwise constitute an offence, to be carried out for specified purposes (such as research, re-population, conservation etc) under a licence.	Similar to section 3 of the Wildlife and Countryside Act 1981 (Amendment) Regulations 1995 <sup>11</sup>	

[8][9][10][11]

Proposals in NI Wildlife Bill	England and Wales	Scotland
<p>Clause 15: removes restrictions on any person from shooting a deer from a vehicle, provided the vehicle is not moving and its engine is turned off.</p> <p>Clause 16: gives the DOE broader powers to issue licences to kill, injure or take any (fallow, red or sika) deer during the close season.</p>	<p>In England and Wales, the Regulatory Reform (Deer) (England and Wales) Order 2007 (S.I. 2007 No 2183)<sup>12</sup> made a number of changes to the Deer Act 1991 governing the management and welfare of deer populations.</p>	<p>In Scotland, legislation for the management of deer falls under the Deer (Scotland) Act 1996<sup>13</sup>. It succeeds the original Deer (Scotland) Act 1959. Similar provisions to the NI Bill can be found in the 1996 Act under Article 19.</p>
<p>Clause 18: enhances the stop and search powers available to police officers to obtain evidence of an offence.</p> <p>There is provision for entry to premises under the authority of warrant issued by a lay magistrate to investigate an offence.</p> <p>Provision also permits a police officer to be accompanied by others; to bring with them any equipment/material; and to take samples of anything found on that land and remove them.</p> <p>A police officer must produce his authority and to leave land in the same secure manner as when it was entered.</p>	<p>Similar powers can be found in Schedule 12 of the Countryside and rights of way Act, which gives greater powers to police and wildlife inspectors for entering premises and obtaining wildlife tissue samples for DNA analysis.</p>	<p>Similar provisions are found in the Nature Conservation Act 2004 Chapter 4 Article 43.</p>
<p>Clause 19: gives police officers powers to obtain samples from specimens found by them should they suspect that an offence may have been committed. Only a veterinary surgeon can take a sample from a live bird or animal</p>	<p>Similar provisions are found in Schedule 12 of the Countryside and Rights of Way Act, which enhances the powers of police and wildlife inspectors for obtaining wildlife tissue samples for DNA analysis.</p> <p>Also falls under the Natural Environment and Rural Communities Act 2006 schedule 5</p>	<p>The power for police and wildlife inspectors to take samples falls under the Nature Conservation Act 2004 schedule 6</p>
<p>Clause 20: gives similar powers mentioned in Clauses 18 and 19 to the DOE Wildlife Inspectors.</p>	<p>As above</p>	<p>As above</p>

[12][13]

Proposals in NI Wildlife Bill	England and Wales	Scotland
<p>Clause 21: makes the time limit for bringing</p>	<p>Similar to schedule 6 of the Natural Environment and Rural Communities Act</p>	<p>Similar provision is made in the Nature Conservation</p>

Proposals in NI Wildlife Bill	England and Wales	Scotland
court proceedings for all offences under the Wildlife Order to 6 months.	2006 which amends the Wildlife and Countryside Act 1981	Act 2004 Article 46 and schedule 6
<p>Clause 22: The maximum level of penalty for offences under the Wildlife Order is made the same. Courts are given the power to impose custodial sentences up to a maximum of 6 months.</p> <p>Greater penalties apply to offences of the release, spread or sale of non-native invasive species.</p>	<p>Amendments have been made to the Wildlife and Countryside Act 1981 by the Natural Environment and Rural Communities Act 2006, which introduces similar provisions, bringing sentences up to a maximum of 6 months and making the maximum penalty the same. Offences include withholding information/samples from a wildlife inspector. Also separate fines will have to be paid by each individual for every bird, nest, egg, animal, or plant harmed.</p>	<p>Similar amendments to England and Wales have been made in schedule 6 of the Nature Conservation Act 2006.</p> <p>Although, Scotland has stated a maximum level of penalty as £40,000 in Article 19 (b)(ii)</p> <p>According to Article 46 of the Nature Conservation Act 2006, when the Court is determining the amount of a fine, it must consider the financial benefit the individual has obtained/will be likely to obtain from committing the offence.</p> <p>Amendments to penalties in relation to the release, spread or sale of non-native invasive species are found in the Criminal Justice Act 2003 schedule 314.</p>
Clause 23: Application to the Crown – means that any contravention of provisions, regulations, or Orders made under Parts 1 and 2 of the original 1985 Order, may be declared unlawful by a court.		<p>A similar clause can be found in the Nature Conservation Act 2004 Part 5 section 55.</p>
Clause 24: places duty on DOE to review the schedules of species of bird, animal and plant to receive protection, every 5 years.	This has been introduced by schedule 9 of the Natural Environment and Rural Communities Act 2006.	
Clause 25: amends the lists of bird, animal and plant species contained in		

Proposals in NI Wildlife Bill	England and Wales	Scotland
Schedules 1 and 2, and 4 to 9 of the Wildlife Order.		

[14]

Proposals in NI Wildlife Bill	England and Wales	Scotland
Clause 26: The close season for female deer, which gives protection from taking and killing, is shortened and changed to end on 30th September each year.	Protection of deer comes under the Deer Act 1991 and has been amended by the Regulatory Reform (Deer) Order 2007 <sup>15</sup> which brings about changes to the close seasons for deer. For female deer, the close season ends on the 31st October (a month later than the NI proposal)	<p>In the 1959 Deer Act the close season for female Red Deer runs from 16th February to the 20th October.</p> <p>The 1996 Deer Act has provisions allowing the Secretary of State to fix a close period each year; specific dates are not stipulated.</p> <p>The consultation document on a new Wildlife and Natural Environment Bill, proposes to reduce the female close season to cover the period of greatest risk to dependent juveniles<sup>16</sup>.</p>
<p>Clause 27: Public bodies, when authorising or permitting anyone to undertake an operation which may damage an Area of Special Scientific Interest (ASSI), are under an obligation to inform and gain consent from the Department of the Environment.</p> <p>Another element of this clause introduces that it is no longer a defence to claim that the person committing damage to an ASSI did not know it was occurring within an ASSI.</p>	<p>Similar changes were made to the Wildlife and Countryside Act 1981 by the Countryside and Rights of Way Act 2004 schedule 6:</p> <ul style="list-style-type: none"> <li>- Increased powers to Refuse consent for damaging activities (and to withdraw consents already given); and</li> <li>- introduced the right to appeal against refusals of consent to the Secretary of State.</li> </ul> <p>Point 2 under Clause 27 of the NI Bill is similar to a change introduced in the Countryside and Rights of Way Act 2000, which improves powers to act against cases of third party damage.</p>	<p>Scotland has similar provisions for SSSIs (Sites of Special Scientific Interest) to England and Wales under the Nature and Conservation Act 2004<sup>17</sup>.</p> <p>Provisions in the 2004 Act means that if consent to damage an SSSI has been given by specified regulatory authorities<sup>18</sup>; consent is not required from the Scottish Natural Heritage (SNH).</p>
Clause 28: places a requirement on the owners of land within an ASSI to notify the Department of change of ownership or occupation of the land.	Similar provisions are made under the Countryside and Rights of Way Act 2000 schedule 6.	Under the Nature and Conservation Act 2004 if there is a change in ownership or occupier, SNH must be notified. The new owner or occupier must be

Proposals in NI Wildlife Bill	England and Wales	Scotland
		told the land is an SSSI (s 3-22).

[15][16][17][18]

Proposals in NI Wildlife Bill	England and Wales	Scotland
Clause 29: Provision gives the Department power to erect notices and signs on land within ASSIs for informational purposes.	Similar provisions made under section 4 of the Natural Environment and Rural Communities Act 2006	Section 41 of the Nature and Conservation Act 2004 gives the SNH power to erect signs providing information to the public.
Clause 30: ensures that when designating ASSIs or issuing other notifications affecting ASSIs, the Department will make every effort to inform all owners of land within the ASSI. In cases where an owner is unidentifiable, the declaration and notices will not be invalidated.	Similar provisions are made under section 4 of the Natural Environment and Rural Communities Act 2006	
Clause 31: removes the need to hold a license to hunt game species or deal in game species	From August 2007 the Regulatory Reform (Game) Order <sup>19</sup> abolished the existing licensing systems for killing game or dealing in game in England and Wales.	It is understood that Scotland is considering a similar approach according to their consultation document <sup>20</sup> .
Clause 32: removes existing provisions that restrict the trade of game, including deer, to certain times of the year. The need to mark game packaging when in transit is removed; and the selling of game which is known or believed to have been taken unlawfully (during open season) is an offence.	The Regulatory Reform (Game) Order 2007 removes the restriction on dealing in game birds and venison during the close season. This means that any person will be allowed to sell game and venison all year round provided the animals in question were only killed in the open season.	There has not been any similar de-regulation of game laws in previous legislation, but Scotland is considering allowing the trade of game during closed season in its Consultation on a new Wildlife and Natural Environment Bill.

## The Scottish Wildlife and Natural Environment Bill[19][20]

Consultation for the Bill finished September 2009. The purpose of the consultation document was to inform the development of a Wildlife and Natural Environment Bill, with the aim of introducing it to the Scottish Assembly in spring 2010.

Proposals made in the Northern Ireland Wildlife and Natural Environment Bill fall closely in line with those made in the Scottish Consultation Document "Wildlife and Natural Environment Bill"[<sup>21</sup>]

Examples of Similarities between the Scottish Bill and the NI Bill

Some of the proposals made in the Scottish consultation document are similar to the NI Bill, for example:

## **Deer**

- These include proposals on collaborative deer management; shooting; use of vehicles; and close seasons (including the reduction of female deer close season).

## **Game laws**

- Abolition of licences to take/kill game
- Removal of the need to hold a licence to deal in game and the removal of the restriction on dealing in game birds during close season

## **Invasive Non-Native Species**

- Strengthening the current legislation aiming to prevent release of invasive non-native species and providing powers to control invasive non-native species
- Additional powers relating to causing and permitting an offence

## **Licenses**

- These include the issue of licences to carry out certain activities (for the purposes of development, research and science etc) which may cause harm to or disturb wildlife.

## **Snares**

- Proposals are introduced to eliminate bad practice and criminally bad practice in the use of all types of snares.

## **Sites of Special Scientific Interest (SSSIs)**

- To amend the Nature and Conservation Act 2004 to issue a restoration notice requiring the guilty party to restore damaged natural features of an SSSI.
- Extending powers of entry to investigate offences on an SSSI
- States the process by which Scottish National Heritage (SNH) may denotify the whole of or part of an SSSI, or an extension to an SSSI.

## **Examples of Differences**

1. In addition to the provisions mentioned above, views are sought on a number of potential changes to other specific areas of statute not considered in the NI Bill. These include the modification of penalties which apply to offences under the Badgers (Scotland) Act 1992, and the implementation of Ministerial commitments in relation to the operation of muirburn.

2. The NI Bill introduces the provision which places a statutory duty on government departments and public bodies to take action to further the conservation of biodiversity. In doing so NI has gone a step further than Scotland by having a reporting mechanism which will aim to keep track of progress. There is no indication in the Scottish consultation document of a similar mechanism.

3. Like the NI Bill, the Scottish Consultation discusses the idea of licence implementation for the harm and disturbance of wildlife for specific activities (such as development). However, clause 7 of the NI Bill expands upon this subject by stipulating that 'authorised people'

(owners/occupiers) must show there was no satisfactory<sup>[22][23]</sup> alternative to their action or, when it is known in advance that they must perform such an activity, they must apply to the DOE for a licence.

4. Clause 8 of the NI Bill disqualifies anyone who is convicted of an offence (under the acts listed in the Explanatory Memorandum) regarding the protection of species, from applying for registration from the DOE for the purposes of taxidermy etc, within 5 years of their conviction. There does not appear to be any equivalent to this provision in the Scottish consultation document.

[1] NI Wildlife and Natural Environment Bill Explanatory and Financial Memorandum

[2] Natural Environment and Rural Communities Act 2006

[3] Nature Conservation Act 2004

[4] Countryside and Rights of Way Act 2000

[5] Natural Environment and Rural Communities Act 2006

[6] Natural Environment and Rural Communities Act 2006

[7] Wildlife and Countryside Act 1981

[8] Wildlife and Countryside Act 1981(Variation of schedule 5 and 8) Order 1998

[9] Deer Act 1991

[10] Scottish Wildlife and Natural Environment Bill Consultation Document

[11] Wildlife and Countryside Act 1981 (Amendment) Regulations 1995

[12] Regulatory Reform (Deer) (England and Wales) Order 2007

[13] Deer (Scotland) Act 1996

[14] Criminal Justice (Scotland) Act 2003

[15] Regulatory Reform (Deer) (England and Wales) Order 2007

[16] Scottish Wildlife and Natural Environment Bill Consultation Document (p. 15/16)

[17] <http://www.snh.org.uk/pdfs/protect/NCASSSIleaflet.pdf>

[18] The specified regulatory authorities (November 2004) are: Scottish Ministers; local authorities; Crofters Commission; Deer Commission for Scotland; District Salmon Fisheries Boards; Forestry Commissioners; and Scottish Environment Protection Agency. (see SNH SSSI Booklet)

[19]19 Regulatory Reform (Game) Order 2007

[20]20 Scottish Wildlife and Natural Environment Bill Consultation Document



[21] <http://www.scotland.gov.uk/Resource/Doc/1221/0082607.pdf>

[22] Muirburn is the act of prescribed burning of vegetation on open semi-natural habitats such as heath or moor.

[23] Scottish Wildlife and Natural Environment Bill Consultation Document (p. 58)

## **Research Paper - New Snare Technology**

12/03/10

### **Background**

In the past, the improvement of snares was primarily focused on developing the snare's efficiency at catching. The Code of Practice Report 2005[1] by the Independent Working Group on Snares (IWG) has highlighted that when assessing the performance of the snare the target catch rate is not the only function of importance, others include:

- The non-target involvement (i.e. the unintended catching of non-target species such as deer and badgers etc); and
- The welfare of captured animals.

According to the IWG Report the total performance of the snare greatly depends on the skills and practices of the operator, who is also held responsible for the welfare of the captured animal.

With this in mind, one recommendation of the IWG Report was to investigate alterations to the snare that might reduce non-target captures and lessen the risk and severity of injuries for captured animals.

There is clearly a need to update snare designs to ensure that their use and operation fall in line with the more humane practices stipulated in current legislation under the Nature Conservation Act 2004[2], and the more recent Snare Order[3], which came into force on the 11th of March 2010.

### **The Game and Wildlife Conservation Trust (G&WCT) "new" snare (The break-away snare)**

G&WCT have been developing and testing a new design of snare over the last few years. The main features of the new snare are as follows (these can be viewed in Figure 1):

#### **1. Break-away devices**

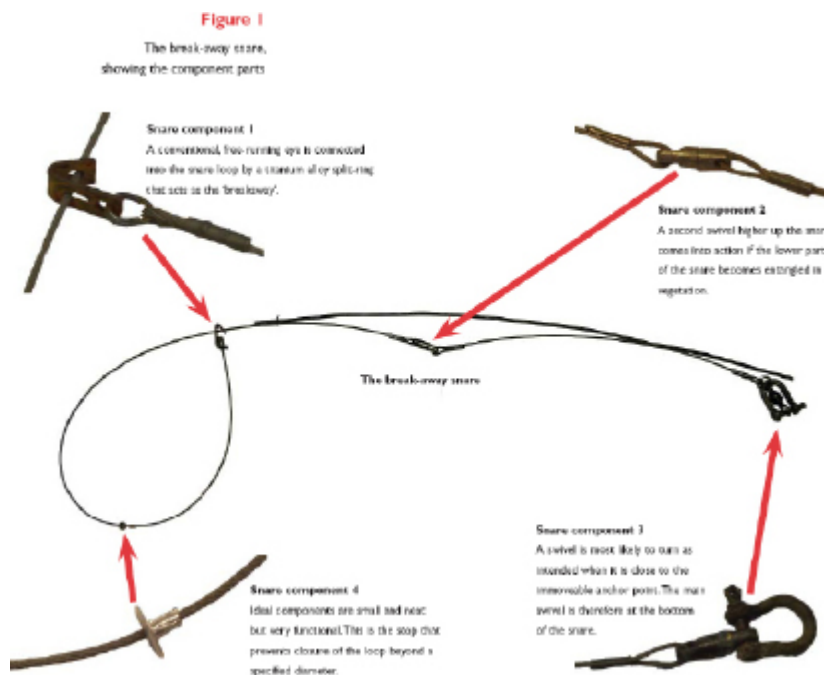
The aim is to release non-target species such as badgers and deer easily (hence the name "break-away snare"), and to retain foxes reliably.

The problem is that the distinction between target and non-target species may not be that clear cut (for example, badgers can be a similar size to foxes due to variations of size within each of the species). Also, there can be variation within a species on the force exerted on the snare as this does not just depend on size and build, but the motivation of the individual caught.

## 2. Cushioning springs

These help to ease the physical pressure and strain experienced by captured animals when struggling against the force of the snare.

The problem is that foxes can vary greatly in size and strength, therefore a spring may be too weak or too strong depending on the individual caught, and may be inoperable most of the time. According to the G&WCT the best way to overcome this problem would be the use of a spring that is progressive in action. This adds to the complex nature of the device as spring strength must be chosen so that it does not kick into action under the strong pulls exerted by larger non-target animals.



Source: G&WCT website

According to G&WCT; the achievements of their research and development to date are:

- the development of the design for effective break-away snares to allow non-target animals to break free;
- the development of the design for a cushioning spring to avoid injuring the caught animal; and
- the achievement of high capture rates, compared with averages from gamekeepers (see figures below)

On the website of the G&WCT<sup>[4]</sup> it states that the development of the new snare took patience and time as each prototype was handmade. They began producing prototypes at the "weak" end of the spectrum (in relation to spring strength) to investigate which species broke free and which were restrained. This meant developing a mechanism that would retain the animal even though it had broken free from the restraints of the snare. This was considered to be a handicap, as one of the main qualities of any snare is its simplistic and minimalist design. Therefore the components had to be small and discrete but also strong.

Despite this, the new design achieved high capture rates of 27.5 foxes per thousand snare-days compared with average figures from two previous gamekeeper studies (1.1 and 3.5 foxes per thousand snare-days).

Jonathon Reynolds (one of the researchers on the development of the snare, and the co-author of the information published on the G&WCT website<sup>[5]</sup>) supplied information explaining that:

- the new design of snare will be available for sale later this summer;
- the sale is a commercial venture in which G&WCT will have no part in;
- the results of the field trials are currently being written up, and are intended to be submitted to a scientific journal during March or April for possible publication in the next 12-18 months; and<sup>[6]</sup>
- Mr. Reynolds is not aware of any other new design of snare available from UK suppliers

According to Mr. Reynolds, G&WCT are currently involved with FERA (The Food and Environment Research Agency) in a research contract for Defra looking at the extent of use and humaneness of snares in England and Wales. This will be reporting later in the year, and details of the contract can be found at:

<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=14689> .

[1] <http://www.defra.gov.uk/wildlife-pets/wildlife/management/documents/snares-cop.pdf>

[2] The Nature Conservation Act 2004

[3] The Snare (Scotland) Order 2010

[4] [http://www.gct.org.uk/research\\_\\_surveys/predation/predation\\_control/fox/1342.asp](http://www.gct.org.uk/research__surveys/predation/predation_control/fox/1342.asp)

[5] [http://www.gct.org.uk/research\\_\\_surveys/predation/predation\\_control/fox/1342.asp](http://www.gct.org.uk/research__surveys/predation/predation_control/fox/1342.asp)

[6] Mr Reynolds will send notification as soon as the results are published

# Fox snares: guidance for the user

*Revised March 2010*

## Why you should read this leaflet

Although snares are an ancient hunting tool, their use to catch canids (dog-like animals) wasn't really possible until the first widespread availability early in the 20th century of small diameter flexible steel cable, manufactured for bicycles, aeroplanes, etc. Earlier materials, such as cordage or brass wire, were easily shredded by the teeth of any canid. So it is a mistake to imagine that snaring foxes is a traditional practice perfected over centuries. Furthermore, the use of snares is subject to human legislation as well as natural laws. That legislation reflects the values of society for both conservation and animal welfare. Our experience shows that from both perspectives – efficient practice and the wider interests of society – both the snare itself (the hardware) and the way it is used (operator practice) leave room for improvement. By all means learn from the way others have used snares previously, but remember that you are using them in the 21st century.

Fox-snares are an imperfect tool. They have the potential to catch non-target species, and to cause tremendous suffering in captured and escaping animals. This does not make them bad. Motor cars have a comparable capacity to cause suffering and damage, and harmful side effects, but can nevertheless be used to an acceptable standard. The key is responsible, careful use. This leaflet is primarily intended to help you use snares in a focused and effective way and to point out working practices that are likely to result in poor outcomes. Our advice draws on two sources: first-hand experience of the authors from the mid-1980s to the present day and extensive studies involving scores of gamekeepers

who volunteered their help for 12 months at a time during the last 15 years.

Increasingly, legislation regulates what you may and may not do with snares. Some of this regulation is logical and straightforward, some is difficult to interpret or illogical. Nevertheless, it's crucial for all snare users to know and follow the law, because if the regulation is widely perceived to be flouted there will be a strong argument to outlaw snares altogether. In Scotland, snare users

will need to become accredited, and the implication is that sanctions can be imposed on those who break the legal conditions, just as they are with driving licences. In this leaflet we explain the legal requirements, but our real aim is to give you practical advice that will improve your use of snares from all points of view. We want fox snares to be used with professional care and responsibility.



[www.gwct.org.uk](http://www.gwct.org.uk)

  
**Game & Wildlife  
CONSERVATION TRUST**  
*Advisory Service*

## Fox Snaring Guidelines

## How snares work

Snares are unique, in that they catch only when the animal is completely unaware of their presence. Foxes are highly 'neophobic' - they have a tendency to avoid anything new. A fox which detects a snare will avoid it. It may not be unduly alarmed, but it is unlikely ever to be caught in that particular snare set. This is because it will trot round it, probably examining it by sniffing. It may well scent-mark it, which draws it to the attention of other foxes. They don't know what it is, but it's an odd item in their landscape. There's nothing particularly crafty about this - dogs behave much the same way, they're usually just a lot less acute.

Foxes that have 'spotted' a snare can still be caught in another snare which has not been detected. Indeed it's possible to catch foxes in snares several times over, as we have found when catching foxes for radio-tagging. In one study we caught the same dog fox on five occasions while trying to catch an untagged fox known to share the same territory; we had to abandon this to avoid catching him again. The action of a snare is not as alien to a fox as one might imagine: being snagged by brambles is probably an everyday experience. The fox just backs off, then carries on. We have watched a fox do exactly this when a snare drew up round its nose. It was clearly not alarmed, and was properly caught the next day after

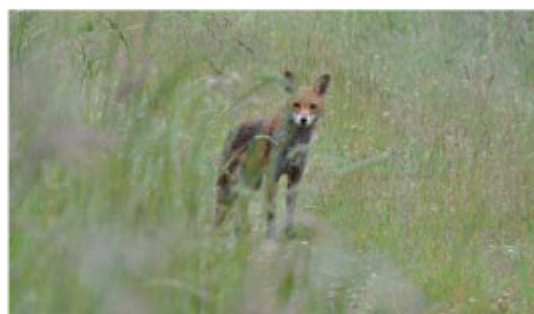
the snare was re-set a metre further along the run.

So you don't want your snares to have an obvious presence. Physically all snares are minimalist devices. Some more than others: as with bicycles, if you pay more money, your snare can have better components which are smaller and neater for the same strength. You can colour the snare so that it is almost impossible to see, even when set in an open field. But a central message of this leaflet is that minimising scent cues is also crucial to success. Foxes have an acute sense of smell, so snares must

also have an insignificant scent profile to escape detection. Bear in mind that a dog can trail a man wearing clean boots by following the scent of bruised vegetation, hours after the trail was made. Dogs are amateurs. Foxes are professionals - their lives depend on it.

If you catch your fox quickly you should end up using your snares less, and will therefore catch fewer non-targets. Most non-target species at risk of capture in snares are much less perceptive of scent cues than foxes are. Therefore if you ignore scent you are likely to catch more non-targets for every fox caught.

*Foxes have an acute sense of smell, so snares must also have an insignificant scent profile to escape detection.*



## Why snares are considered important

Snares are particularly a tool of spring and summer when other methods of fox control become impractical because of the growth of vegetation cover, especially among arable crops. The breeding season of foxes coincides, naturally enough, with that of their prey. The food demands of growing cubs are far greater than the maintenance requirements of adults. So to protect prey species that are especially vulnerable to fox predation, like ground-

nesting birds, fox control in spring and summer is crucial.

In the UK, the only other legal methods for fox control involve processes of which the fox is fully aware (eg. drives to standing guns, lamping, attraction to a scent lure, flushing/digging-out at the cubbing earth). With these methods we can expect there to be a selection pressure against the naive or bold fox and in favour of the wary fox. The naive

members of the population are the young ones. By the time a fox has survived its first winter and reached breeding age, it has learned a thing or two and is harder to catch or shoot. To control numbers in spring and summer you need to catch the animals of breeding age. So snares are considered not to have any functional replacement, but they have their problems, which makes them controversial.

## Legalities: legitimate use of snares, statutes restricting snare use, and statutory obligations

### Responsibility:

Under all legislation relating to wild animals and snares, the responsibility rests with you - the snare operator - not with your employer, your supplier, the snare manufacturer or any advisor. As a snare user it is you that is open to prosecution for malpractice.

### Legitimate use:

In all parts of the UK, snares may be set to catch foxes, rabbits and hares, provided you are the landowner or have the landowner's permission. (You can also legally snare a few other species such as rats and mink, though we would generally advocate other methods for controlling these species.)

### Statutes affecting snare use:

The Wildlife & Countryside Act (1981) and Wildlife (Northern Ireland) Order 1985 impose certain conditions (described later) on the use of snares for conservation reasons, and prohibit their use to catch species of conservation concern that are listed in Schedules 5 and 6 of the Act. These schedules are not fixed; they can be altered by the Secretary of State. As they stand at present, protected animals at risk of capture in fox snares include badger, wild cat, pine marten, otter and just conceivably polecat and hedgehog. The Deer Act 1991 and the Deer (Scotland) Act 1996 prohibit the use of snares to take deer.

In Scotland, extra restrictions and conditions on the use of snares were introduced by the Nature Conservation (Scotland) Act 2004, the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007, and the Snares (Scotland) Order 2010. These statutes dictate certain working practices as well as restricting use, and reflect a

mixture of conservation and humanitarian concerns. The anticipated Wildlife and Natural Environment Bill may make accreditation and training of all snare users a legal requirement in Scotland. (The legal framework in which snare operators in Scotland must operate is described in *Snares in Scotland – a practitioners' guide* – see References. Scottish law has some subtle but important differences, eg. in the phrase 'heedlessly or recklessly' to cause injury or death of protected species like otter, wild cat, pine marten or red squirrel. It may be an offence to deliberately snare mountain (blue) hares if this disturbs or significantly reduces the local population.

The Animal Welfare Act (2006) and Animal Health and Welfare (Scotland) Act (2006) affect all use of traps and snares. This Act makes the operator responsible to avoid the unnecessary suffering of any captured animal. The Act was not intended to obstruct accepted management practices, responsibly carried out. The best way to demonstrate that you are taking responsible measures to avoid unnecessary suffering is to follow an official Code of Practice.

### Codes of Practice:

We urge you to read, understand and follow the relevant Code of Practice (CoP). In England and Wales this is the Defra Code of Practice on the Use of Snares (see References). The Defra CoP published in 2005, is based on the Report of the Independent Working Group on Snares (IWGS), a multi-interest group convened at the request of Defra specifically to construct a CoP. The IWGS included representatives from the Game & Wildlife Conservation Trust (GWCT; formerly The Game Conservancy Trust), the British Association for Shooting and Conservation

(BASC) and the National Gamekeepers' Organisation (NGO), alongside vets and animal welfare specialists. The IWGS Report (also available as a download from the Defra website – see References) brought together all the evidence available at that time concerning the use of snares in the UK.

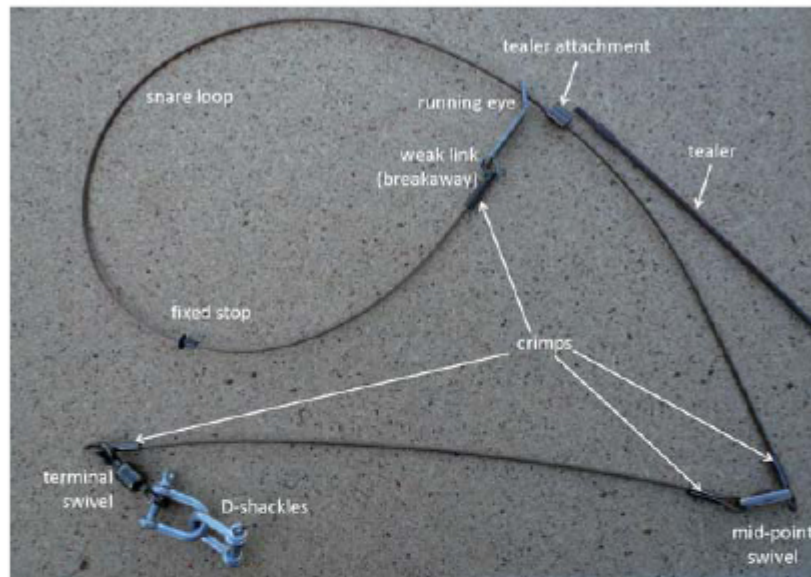
In Scotland, operators should follow the guidelines described in *Snares in Scotland: A Practitioners' Guide* (which we refer to in this leaflet as the Scottish CoP). This guide was produced by a consortium of bodies including the GWCT, BASC (Scotland) and the Scottish Gamekeepers' Association (SGA) at the request of the Scottish Government.

The CoPs are equivalent to the Highway Code in motoring. It is not mandatory to follow a CoP, nor does it provide indemnity against prosecution - but it will make your position simpler for the police to investigate if they need to, and makes a strong defence should the matter nevertheless come to court. If you deviate from the relevant CoP, you should have a strong justification for doing so because it may well be tested in court.

Besides urging you to follow the relevant CoP we also recommend that you keep detailed records of your snaring effort (eg. a map of where your snares are set and a diary of how many snares are set each day) and also records of what you catch. Also keep records of any training courses you have attended. These records would be helpful if you were ever faced with an investigation or prosecution.



## Parts of the snare, and related equipment:



Because snares are such minimalist devices, crucial features are very small details with interrelated functions. Here we describe each component in turn.

**Wire cable:** A cable that is too flexible will form a floppy snare loop that requires a lot of support. Such a soft wire will also abraid easily when fretted against other objects. Cable that is too stiff may cause the snare loop to spring open again (releasing the fox), and will not be durable under repeated flexing by a captured animal. The ideal is a compromise between these two extremes. There are many cable constructions to choose from. Cable thickness is also a compromise: thin cable is less visible but thick cable is stronger and less damaging to the captured animal. The length of cable in a

snare should be kept to a minimum: slack allows a captured animal to run, risking nasty injuries and escapes, and increases the risk of the snare becoming entangled. According to both the Defra CoP and the Scottish CoP snare cable must have a breaking strain of at least 460lbs (208kgs). As far as we know, this is the case for all steel cable of 2mm diameter as normally used for fox snares. If it's less than 2mm you should check the specs from the cable manufacturer.

**Crimps:** Cable is joined to other components using a crimp of softer or harder metal applied with a press. Crimping can be done effectively using hand tools, but components must be well matched in dimensions with each other and with the dies of the tool. Experience also affects crimp strength.

If a crimp were to give way in use, or if the cable broke, a captured animal might escape with the snare fast around part of its body. Given effective swivels (see below), such breakages are rare in practice, but can lead to prolonged suffering and a slow death in the escaping animal. To avoid this rare but nasty event, the crimp at the noose eye (or the eye itself) can be designed to break at a specified lower force than other crimps on the snare, ensuring that no escaping animal can make off with the noose attached. This is a requirement under the Defra CoP. An extension of this idea is to fit a weak link or 'breakaway' at the eye, designed to open at a predetermined strain.

**Swivel:** If a captured animal repeatedly rolls in the same direction, the snare cable will either unravel or become over-wound. If the wire unravels, the separated strands of wire are easily snapped or chewed through. If the cable is over-wound, it is weakened by torque and it may snap. To prevent either from occurring, snares should be fitted with swivels. We recommend that snares are fitted with two swivels. The main swivel should be located at the tail-end of the snare where it can be attached to the anchor point (which helps make it turn) using a 'D' shackle. In case this swivel should become fouled with soil or entangled in vegetation, we recommend that another 'in-line' swivel is fitted midway along the snare, thus ensuring the snare always includes at least one functional swivel.

We like neat, small swivels; a bulky mid-point swivel spoils the natural line of the snare and makes an obvious and ugly visual distraction. However, experience



A quality mid-point swivel: small, strong and rotates easily under strain.

tells us that very simple devices made of bent metal plates do not function very well. Small, well engineered 'in-line' swivels,

perfectly designed for this job, are available from a number of retail outlets selling snare components.

**Eye:** This is the part that slides along the wire to form the running noose. By law it must not be 'self-locking', as explained under 'What snares to use', but to hold the captured animal the eye must have

enough friction to prevent the snare loop springing open again after closing. This is why definition of the terms 'self-locking' and 'free-running' is so difficult. Pulling by hand on the eye or on the cable near

the eye does not adequately simulate the expanding movement of a breathing animal, which will tilt the eye over at a different angle.

From all points of view, it is important that the section of snare cable over which the eye slides does not become rusty as this will impair the movement of the eye. If rust prevents the noose closing swiftly, a fox might easily withdraw its head from the noose and escape. If rust prevents the eye sliding open easily, it may render an otherwise legal snare 'self-locking' and therefore illegal. We would expect this to happen progressively, rather than overnight, but exactly where the point lies at which the snare should be considered self-locking is not clear. It's something that only the courts can decide. Our advice is to assume that someone will trip you up if they can, and err on the side of caution: replace the snare before it's too late.

One kind of running eye. This one, the Relax-A-Lock, is specifically designed to hold the captive animal without strangling it.





**Stop:** The stop is a very small crimp that prevents the noose closing beyond a predetermined diameter to prevent injury or death by strangulation, and also to prevent the capture of deer by the foot. Some snares are still sold with a stop that is not fixed allowing operators to choose their own minimum loop size. In practice most operators in the past chose to ignore it, or didn't know what it was for. In England and Wales there is no legal requirement to use a stop, but it is recommended in the CoR which suggests that the stop should be fixed 'approximately' 23cm (9") from the snare eye. In Scotland a stop must be used (Snares (Scotland) Order 2010), and in a sensible clarification the wording says that the stop must be fitted 'at least' 23cm (9") from the eye.

So 23 cm should be regarded as the minimum throughout the UK. However, it turns out that a stop set even further from the eye has other benefits. In a recent field-trial by professional gamekeepers, we compared capture rates of 'off-the-shelf' fox snares against snares with stops fixed at 26cms. In the south of England, where foxes are as small as anywhere in the UK, we measured the



One kind of fixed stop, which prevents the noose closing too far

head circumferences of a sample of 58 culled vixens of various weights. The smallest noose we could pull over the head of the smallest (4.0kg) adult vixen was 25cm in circumference, but the average was 29cm (for an average vixen weight of 5.2kg). In practice, it seems that live foxes do not pull as hard as we did, perhaps because their ears get in the way. Fox escapes were equally rare whether the stop was set at 23cm or 26cm. But brown hares which ran into the snare

were much more likely to pull their heads out again given the 26cm stop position. Additionally, the longer stop position made it much easier to release any badgers caught, because the wire was drawn less tightly against the neck of the animal.

The ideal stop position will clearly be a compromise between achieving all these benefits and retaining captured foxes. We don't yet know exactly where that is, but we have begun to use snares with even longer stops on a trial basis. Watch this space!

**Tealer:** The snare needs some kind of support. It is usually supported by a rigid stick or wire 'tealer' at one side of the run on which it is placed. The 'old school' approach uses a short stick of hazel or similar wood as a tealer, split at the top to hold the cable. This is a local natural

material, after all. The downside is that in cutting, sharpening and planting the stick you can't avoid leaving human scent on the tealer, which has plenty of surface area to hold it. Our infra-red camera studies of fox behaviour have verified that foxes avoid sticks that have been

rubbed with human scent, so we favour a wire tealer, 2-3mm thick, which can be boiled with the snares to remove scent and is easily pushed into the ground and bent to the required shape. Our ideal is copper wire. Copper acquires an oxidised surface colour that blends in magically almost anywhere. It is more easily bent to shape than steel wire. Although initially expensive, copper teasers last a lifetime.

Various materials have been used to hold the snare to a wire tealer. These include spiral plastic cable-wrap ('Spirawrap', available in several colours), or a simple twist of gardener's wire. Ideally, though, the snare can be lifted off the tealer easily. This makes it easy to set the snare, or to 'un-set' it for a night off, leaving tealer and anchor in position. It also means that the captured animal cannot get the snare cable entangled with the tealer. Tealer-clip components that attach the snare to the tealer, but still 'pivot' freely, also allow the snare to 'reset' itself if something brushes underneath.

Copper wire tealer (top) and (below) the snare cable showing one style of tealer-clip. Note the collar on the tealer which prevents the clip sliding down.



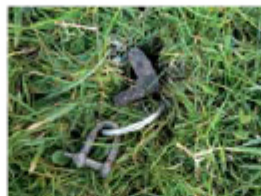


Two types of anchor: angle iron stake (below) and corkscrew (above). The man-hole cover lifter (centre) makes an excellent extraction tool for both anchors.

**Anchor:** The snare anchor must be effective at holding not only a fox, but any non-target animal that might be caught. There is no single anchor type that will suit all ground conditions. For the majority of conditions, we recommend a 450mm x 25mm length (18" x 1") of 5mm thick angle-iron, driven into the ground. An 8mm hole should be drilled 50mm from the top, in the middle of one side of the angle iron. Connect a 50mm diameter welded ring to a D-shackle, and fix the shackle to the stake via the drilled hole. The snare should be attached to the ring, with another D-shackle. This arrangement acts almost like a universal joint and is unlikely to foul the anchor. Whenever you use D-shackles, make sure they are tightened using pliers.

Corkscrew and spiral ground anchors are also effective, but expensive. The length needs to be chosen to suit local ground conditions. Some operators report single-use earth anchors (eg. Duke-Bills) as useful in certain ground conditions, such

as on moorland. We do not recommend the use of smooth metal rods – these can easily be pulled out, especially when the ground is wet. Whatever type of anchor you use, the top of it should be more or less flush with ground level, to prevent



Angle iron anchor stake in position.

the captive winding the snare around it. Do not attach snares to posts or natural objects such as trees or saplings – this encourages entanglement which may result in injury or death.



Corkscrew anchor in position.

**Stake puller:** This can be a purpose-made lever to extract stakes from the ground, or some other device that can be used to the same effect. In light soil you can get stakes out after a few knocks with a lump hammer, and this is neater in grass or in a standing crop. But carrying a stake puller ensures you never have to leave a stubborn one behind. We have found that a single, long-handled man-hole cover lifter works brilliantly for this purpose. The lifter we use has a J-shaped hook on one end, and a D-shaped handle on the other. The hook-end is used to tap and loosen the stake. Then hook through the

welded ring, and pull vertically upwards using the handle. For particularly stubborn stakes, pass the hook-end through the welded ring, and lever upwards, pressing the D-shaped handle into the ground. The man-hole cover lifting tool is also very effective at inserting and extracting corkscrew-type anchor stakes.

**Terminal loop:** Ideally the snare terminates in a crimped loop which can be attached to the anchor using a D-shackle. Some snares are sold with unfinished cable ends, intended to be pushed through the anchor point and

it has formerly been common practice to fasten a snare to a 'drag': a heavy weight such as a log which allows the captured animal to move away from the capture site until it becomes arrested by entanglement. The main arguments proposed in favour of the drag were that it allowed the animal to find cover where it will feel less stressed; that it causes less physical injury than the dead resistance of a ground anchor does; and that it preserves the capture site undisturbed for re-use. The use of drags has now been prohibited in Scotland. In England and Wales, we recommend you do not use a drag, chiefly because you cannot fulfil your obligations under the Animal Welfare Act towards a captured animal if you don't know for certain where it is. There is no guarantee that the captive animal on a drag will ever be found. Also, even if the animal is reassured by gaining cover, entanglement greatly increases the risk of physical suffering before dispatch. A drag which can be moved by a fox may allow a stronger non-target species to travel a considerable distance. NB – The 2009 edition of the Scottish CoP recommended that an anchor weight should weigh more than 45lb (20kg). We believe this is too light to form an immovable anchor for the whole range of species that might be caught, while heavier weights would really be unmanageable. Drags have now been prohibited in Scotland by the Snare (Scotland) Order 2010. New editions of the Scottish CoP will reflect this and will recommend only the use of immovable ground anchors such as metal stakes.

fastened back to the snare using a special fastening plate with two slots. If these are used, the two parts of the cable in each slot MUST be fed through in opposite directions, as shown on the packaging. The cable should also be deliberately kinked where it passes through the plate to prevent any risk of slippage. Even when properly fitted in this way we think the risk of slippage is too high, and we see far too many cases of incorrect fitting. Also, a snare with unfinished ends has no terminal swivel, which we regard as essential. So we strongly favour a crimped loop and a D-shackle.

## What snares to use

It is your responsibility, as the operator, to ensure that each and every snare you use complies with the law. Do not rely on the shop that sold it to you, or the manufacturer, or your headkeeper. The following table lists the requirements for snares used, depending where you are. Note that the CoP recommendations are more demanding than the minimum legal requirement. Our own recommendations, given after the Table, are more demanding still.

Table 1				
Possession	England and Wales		Scotland	
	Statutory requirements	Code of Practice	Statutory requirements	Code of Practice
Possession	Not restricted	Not restricted	Only if not self-locking. On land only if have owner's permission	Only if not self-locking. On land only if have owner's permission
Eye	Not self-locking	Not self-locking	Not self-locking	Not self-locking
Stop position (measured from eye)	–	Approximately 23cm	At least 23cm	At least 23cm
Inspection regime	At least once every day	At least once every day before 09:00, and preferably again in late afternoon	At least once a day, at intervals of not more than 24 hours	At least once a day, at intervals of not more than 24 hours
Cable strength	–	At least 460lb (208kg)	–	At least 460lb (208kg)
Swivels	–	Two good swivels, one at tail of snare, one near mid-point	–	Include a strong swivel
Weak point	–	At eye	–	–
Anchor	–	Stake, not drag	Fixed to stake or other immovable anchor	Fixed to stake or other immovable anchor
Accreditation/training	–	Training recommended	Accreditation likely to become obligatory	Accreditation likely to become obligatory; prior training recommended
ID Tags	–	–	Likely to become obligatory	Likely to become obligatory
Record keeping	–	Recommended	–	Recommended

**Self-locking versus free-running snares**  
You must not use a 'self-locking' snare. The term 'self-locking' is not defined in the Wildlife & Countryside Act (WCA), and there has been no successful prosecution in a Court high enough to clarify the law by legal precedent. So 'self-locking' remains a vague term. Broadly, it means

that the snare tightens progressively as the animal struggles, through a kind of ratchet effect of the eye on the snare cable. The opposite concept, 'free-running', did not appear in the WCA, but is in common use and has been introduced onto the statutes by the Snare (Scotland) Order 2010. Unfortunately 'free-running', too, is

undefined, and one must use common sense. The Scottish Order obliges the operator to check that each snare is free-running at each daily inspection (see below). There is no authority that can certify a particular snare as self-locking or free-running. For spring traps, Diefra has the responsibility to test and approve

designs as appropriate for use in the UK; this is not the case for snares.

The intention of the legislators in outlawing self-locking snares in 1981 was apparently to eliminate the death by strangulation of accidentally captured non-target species. If so, they were probably misguided in addressing the 'eye' of the snare rather than the 'stop' (see above), but we have to live with the law as it stands. By implication, the legislators intended snares to be used in the UK as a 'restraining device' rather than a 'killing device' (these are terms recognised by the International Standards Organisation). This differs totally from their current use (where allowed) in the USA and Canada, where the objective is to kill the captured animal quickly and humanely, and where extra devices (springs and winches) are used to ensure a rapid death by strangulation. DO NOT use snares or ancillary devices designed for the North American market unless you are certain they comply with our legislation.

#### **Snare length**

Mistakenly, some people choose to use a long length of snare cable, reasoning that

because the anchor can be fixed further from the run, the fox will be less likely to detect the anchor, and therefore the snare. But so long as the anchor has been fully knocked into the ground, and the snare and site are free of foreign odour, there should be little chance of the fox detecting and avoiding the snare. On the other hand, the longer a snare is, the greater the risk of the captive injuring itself. An animal that is allowed a longer 'hunt' in the snare will build up greater momentum, thereby increasing the risk of an impact injury when brought up short, besides increasing the risk of a break-out. Also, long snares increase the risk of the captive becoming entangled, either in the snare, or around some obstacle. Entanglement greatly increases the risk of captive injury so snares should be kept as short as possible. We recommend that snares should be approximately one metre in length, from the outer edge of a fully closed snare noose, to the end of the anchor swivel.

#### **Inspection**

In England and Wales, the law requires that snares must be 'inspected at least

once every day'. Although the intention of this is clear, a literal interpretation could leave the captive animal for almost 48 hours before the next inspection. The Defra CoP goes a little further in recommending you to check every snare at least once every day 'while the snare remains in position'. In Scotland, the law requires you to check every snare at least once a day at intervals of no more than 24 hours. Since most fox captures are made at night, we recommend that you make your check early in the day ensuring that the fox is dispatched promptly and that you don't risk losing it. We recommend that you also make a second check in the late afternoon. This second check further reduces the risk of poor welfare in any captured animal, and gives an opportunity to reset snares that have been knocked during the day. Do not set more snares than you are able to check and remove those that are unset. In Scotland, it is an offence to fail to release or remove an animal, whether alive or dead while carrying out such an inspection of snares.

## Preparing snares for use

**Weathering:** Wire manufacturers add a 'shelf-life lubricant' to their product to prevent rusting. To eliminate the eye-catching shine of the wire and to remove the smell of the lubricant, you need to remove this before use. Coil the snares and place them in a large pan with plenty of water. Add a small cupful of automatic (low froth) washing powder or washing soda crystals. Boil for at least an hour. The lubricant will collect on the water surface as globules. Do not pour off the water or lift the snares out until you have first removed these surface globules with a spoon.

Once degreased, the snares can be coloured to reduce the shine. The wire will darken and dull by oxidation if the snares are left outside in the weather or buried, but it takes a long time, and rust formation will interfere with the free-running properties of the snare. It's quicker and better to boil snares again in water containing plenty of chips of oak bark, oak leaves or tea (save old tea bags/leaves). Bring to the boil, simmer for five minutes

and leave to stand in the liquid for 24 hours if they need darkening. When dark enough, hang up to drain and dry. The resulting brown colour blends beautifully with natural vegetation, and the boiling process serves to remove human scent. Plastic or rubber components will probably not survive boiling, one reason why we don't favour them.

We advise that you regularly repeat the boiling and colouring process for snares in use. Snares that you regularly handle to reset them are easily detected by foxes, and snares detected for this reason or because they are visible are often marked by them with urine, making them still more obvious. When catching foxes for radio-tagging in our research work we re-boil snares every 10-14 days. After colouring, it's a good idea to bundle snares in fives or 10s, using a twist of gardening wire, to prevent tangles. After this handle the snares as little as possible, and keep them away from sources of scent from humans, dogs, dead animals, petrol, cigarettes, scented soap and aftershave.

**Lubrication:** Some types of snare run best when lubricated. We think this step is unnecessary in a well-designed snare, but if you wish to re-wax your snares after boiling, we suggest you use paraffin wax which has very little odour. Waxing also helps to allow raindrops and condensation to run off. Do not use any mineral oil or aerosol lubricant.

**Teasers:** As discussed earlier, we think the best teasers are made of copper wire of 2 to 3mm thickness. Copper rods can be bought from some snare suppliers, from metal distributors or, sometimes found at scrap dealers in the form of powerline cable. Copper oxidises to a very unobtrusive brown colour. If you buy from scrap dealers, make sure they haven't burned off the insulating material, as heat weakens the wire. Boil teasers periodically, in the same way that snares are prepared.



## Where to set snares

### Location

In setting a snare, you are trying to outline with the cable the exact space in the landscape through which a fox's head is going to pass. That's a pretty extraordinary skill to acquire. Of course, sometimes a passing fox has its head down, and sometimes it has it up - you can't accommodate all these chance variations. But you can choose places where foxes are likely to travel through quite fast, and conversely avoid places where foxes hesitate or loiter to sniff things. So if a run crosses a woodland edge or the edge of a thick hedge, don't put your snare right at the edge: it's here that the fox pauses to sniff or look about. Put the snare several yards back into the wood (avoiding clutter - see below), or if you are confident which way the trail goes, several yards out in the open.

Avoid snare sites cluttered by obstacles where there's a strong risk of a captured animal getting the snare entangled. This often leads to considerable suffering and/or death. Alternatively, the snare swivels may become inoperative, leading to cable breakage and loss of the captured animal, often with the snare noose fixed around its body. Fences and gates carry a special risk of fatal entanglement and an increased risk of non-target captures. Do not set snares around the edges of release pens if there is a risk of entanglement occurring, for example with electric fencing equipment. In Scotland, the Snares (Scotland) Order

2010 made it an offence to set a snare in a place where a captured animal caught by the snare is likely to become fully or partially suspended, or drown. This prohibits the setting of snares on, over or very near to watercourses, ditches, fences or scrub 'clutter'.

The humaneness and non-target issues associated with entanglement are completely avoidable without loss of efficiency because open sites are equally good or even better for catching - provided you have chosen and prepared your snares as described in this leaflet. Snares coloured as above and mounted on wire trailers will catch successfully even when set in open places without any vegetation cover. Foxes unthinkingly follow existing tracks if they offer easier walking. So try vehicle tracks even when they are just a pale stripe on the grass. You can even make your own track deliberately. If you have a fussy-footed dog that dislikes getting its feet wet or walking on stones (collies, whippets, and terriers are useful for this), watch where it trots: often it will indicate the nearly invisible route that foxes too will instinctively follow. Once you gain an appreciation of the kind of routes all foxes will instinctively take, there needn't even be a run visible. We have caught foxes on a newly drilled field by judging where a fox would trot to go around a projecting brambles.

We try to leave the snare standing in a natural-looking arc, and we have the impression that the snares that best mimic

a natural curve like a grass stem are the ones that are most likely to catch - but we have no objective measure of this.

### Public access

Do not set snares close to a public right-of-way. Even though you check snares daily, there's a chance that a member of the public will find a captured animal before you, or that their dog will get caught. Though you would be within your legal rights, there is no need to inflame public sensitivities like this and there will typically be plenty of locations where you are just as likely to snare a fox. In Scotland, given open access, the placement of snares relative to public use requires some careful judgement by the operator.

### Near misses

If you have a near miss with a fox (snare knocked or drawn up, but fox fur left behind), don't give up. Although the fox may have spotted the snare, you know you are on the right trail. Remove the snare and put a fresh, scent-free one two or three yards along the trail. This often results in a capture within a few days.

### Expectations

Bear in mind that foxes do not walk every track every night. Give a new snare every chance to catch for a week or so. After that, begin to consider whether the snare might have been 'spotted' and should be re-baited and set in a new site.

## When and how many

### When to snare?

Every snare in operation will increase your chance of catching foxes, but it will also increase the risk of accidental capture of non-targets. For this reason we recommend you concentrate your use of snares to periods when gamebirds are vulnerable (eg. pheasant release time, wild bird nesting season) and when snaring will best contribute to your fox control effort (eg. when vegetation cover prevents use of a rifle). From an efficiency

point-of-view, we do not recommend using snares as semi-permanent devices because they are more efficient if regularly cleaned and reset (see above).

### How many snares?

If you set snares when there isn't a fox to catch, you will catch only non-targets. For this reason, we do not recommend that you use snares as your first means of detecting an incoming fox. Rather, we recommend you spend time looking for

fresh fox signs (small tracks, fur, droppings, prey remains) and set snares where you find them. This strategy increases your chances of catching a fox quickly, reduces the amount of time spent checking otherwise 'redundant' snares and decreases the likelihood of catching non-targets. This approach requires intensive fieldwork, but will involve you in far fewer snare checks per fox caught. From our experience, on a lowland estate you may need only 20 snares and five nights per fox.

We recognise that many gamekeepers use snares as their first means of detecting an incoming fox. Sometimes you can't find fresh fox sign, but experience tells you that there is bound to be one

somewhere. This approach may be defensible where the risk of non-target captures is low, but in the majority of circumstances this is not the case. Experience will give you a 'feel' for good

snares sites and you should concentrate on these. But again, don't leave your snares there permanently - move them around, especially to locations where you detect fresh fox activity.

## How to set a snare

### Preparation:

Ideally your snares should be prepared in such a way that they require minimal handling to set them up, just prick in the tealer, attach the snare to the anchor, make final adjustments and leave. We colour our snares in bundles temporarily fastened with wire, which avoids them tangling during transport. The more you handle snares between boiling and setting them, the greater the risk of the fox detecting the snare.

### Height and dimensions:

A snare loop measuring 9" across by 6" deep (23 x 15cm) is about right for most circumstances - a larger loop requires less accuracy in placement but is heavy and floppy and is more likely to catch non-targets. On level ground, the bottom of a loop this size needs to be about 7-7½" (18-19cm) above the ground. On banks this height should be increased because the fox will usually hold its head up to look ahead, not at its feet. You could also increase the loop size slightly in these circumstances to make up for the loss of accuracy. Where badgers are common, the risk of catching them can be reduced by increasing the height of the loop to 8" (20cm) or more above the ground (BASC recommend 9" (23cm)). This will have a small negative impact on your fox capture rate.

Plant your wire tealer at a slight incline, to one side of the run. Now anchor the swivel end of the snare before you forget, and before making final adjustments. If necessary bend the tealer slightly to allow the snare loop to form a natural-looking curve at the right height.

If the loop is floppy you may usefully add a second tealer of fine florists' 'stem' wire (the uncoated, very malleable stuff) on the opposite side of the run. Prick this lightly into the ground, but only just enough to support the loop, or it will interfere with loop closure. Finally adjust surrounding vegetation to look undisturbed and to disguise the outline of the snare loop. We often like to set the snare beside a long grass stalk, which we use to disguise the snare outline.

Some operators prefer to hang the noose from a longer tealer which arches slightly over the run, so that the eye is quite high (about 11 o'clock or 1 o'clock, taking the snare loop as a clock face). This makes the snare 'go off' like a trap, the noose closing at a light touch under the weight of the cable and running eye. This sensitivity can be a nuisance though: a passing deer or even a breeze may cause the noose to drop and hang there, partially closed and appreciably lower than originally set. In this state it will not catch the fox, but it may catch a badger. The other approach is to have the noose emerge from the top of the tealer, so that the eye is at one side of the noose (i.e. 3 o'clock or 9 o'clock-ish; the precise position will depend on how soft or self-supporting the cable is). The top of the tealer will require a slight bend to make it grade naturally into the curve of the noose. A snare set like this needs a more prolonged tug to make it draw up.

### Footwork:

While you are setting the snare, stand or crouch in the run itself, but try not to broaden it. Do not stand to one side of

the run, as a fox will also diverge from the run to see what you did there, thereby missing the snare. You can put a snare on a track even if you must walk there daily. If you do this, place your feet along the track but close up to the snare on both sides. This keeps the track trodden. If you regularly take a wide step over the snare, foxes too will leap over it. On no account walk round the snare, even when setting it. Foxes have a tendency to follow the easiest path, so if the run is particularly wide, such as along a field edge, use small stones and twigs to subtly guide the fox towards the noose.

### Scent:

Attention to scent helps enormously. We recommend that you set snares in the morning so that any human scent left on the snare, or at the snare set, has the greatest chance of dissipating before nightfall. Keep water and scent-free soap in your vehicle and wash your hands thoroughly when you first arrive at your snaring site. Before handling or setting snares, but well away from your first snare site, rub your hands with freshly exposed soil (but not from somewhere a fox may have peed, such as a molehill!). This will help to prevent your scent getting onto the snare or surrounding vegetation. To minimise scent, wear rubber boots when setting snares, and keep them clean. Do not kneel in the run when setting the snare - crouch only. Your scent is readily transferred from your trouser knees to the ground, but not from rubber boots. You may find all this concern about scent tedious. We regard it as essential.

## Checking snares and avoiding non-target species

### Equipment:

Always carry wire cutters (capable of cutting snare cable in single-handed use), a garden fork, shotgun or rifle, hook stick. The use of the garden fork and hook stick are described below. If you do a lot of walking on hill ground, the garden fork may seem an encumbrance - before you reject it, be sure you understand why we recommend its use in handling non-target captures (below). To save your time later, it's also sensible to carry spare snares and anchors, and some means of getting anchors out of the ground.

### Avoiding non-target species

The Wildlife & Countryside Act 1981 didn't address the questions posed by accidental non-target captures, so your position in law is rather uncertain. If you follow the guidelines in this leaflet, we believe you will have taken reasonable precautions to avoid the capture of non-targets.

As already stated, the use of snares fitted with a stop to prevent the noose closing tightly should be regarded as mandatory. It allows any animal that steps into a snare to pull its foot straight out again, and prevents the capture of small protected mammals like polecats and pine martens. It also helps prevent strangulation. If placed relatively far from the running eye, it can also allow the escape of brown hares, which may legally be caught by snares, but when caught are usually an unintended victim of fox snares.

Roe, fallow and red deer carry their heads far higher than a fox - except where they creep under obstacles. So avoid setting snares where runs pass under obstacles like fences and all animals must squeeze through with their heads at the same height. The use of wire teasers and coloured snares frees you from the need to use such places to disguise the snare. If there are muntjac in your area, either select prime 'foxy' sites away from dense cover, or avoid the use of snares entirely. We do not recommend you place poles or branches over snares to encourage deer to jump over snares. Foxes are likely to walk around obstacles, rather than underneath them. By creating a deer 'jump' you provide the perfect obstacle in which a captive might become entangled and injure itself.

Badgers are now abundant in most parts of Britain, so avoiding their capture is a necessary consideration for most gamekeepers. Badgers are far more habitual trail-users than foxes, so avoid snaring on obvious well-used badger runs, and avoid setting snares close to a badger sett. Badgers are usually caught only in low snares, so do not set snares lower than recommended above.

The Defra CoP states that snares must be set only at sites likely to be used by foxes, and not at sites where there is evidence of regular usage by non-target species. There is no indication of the geographical scale at which 'site' should

be judged. Our understanding is that 'site' really equates to 'run' (after all, there can hardly be a land-holding in Britain without evidence of regular usage by badgers or deer or hares). The recommendation simply seems to require that you are careful to select runs where you have a strong chance of catching a fox rather than a badger or deer. If there is evidence of recent use by badgers (e.g. latrines, or badger hairs where the run passes under barbed wire) then you should not set snares on that run.

This will still leave you plenty of places to set snares. If you find fresh fox sign, but also fresh non-target evidence nearby, you need to find snare sites in the vicinity that give you a much stronger chance of catching the fox rather than the non-target. Look for faint runs leading between food-rich parts of the estate that are of interest to foxes, or alongside more regular runs but avoiding minor obstacles like low branches or puddles. You can even create your own new runs as described above.

Do not set snares close to rivers where otters are found. Do not set snares in capercaillie woods.

Keep farm workers and residents informed when you are running snares, so that they keep their dogs under control. It's possible that signage may be required in Scotland under future legislation, reflecting the more open access by the public.

## Dispatching foxes. Handling non-target captures

### Dispatching foxes:

A captured fox should be killed swiftly without alarming it unduly. This is not purely a compassionate recommendation: a desperately struggling fox may manage to break free at the last moment. Where it is possible to get a long view of a captured fox, a rifle can be used at a distance without the fox being aware of the operator's presence. The Scottish CoP recommends approaching the fox from downwind, presumably thinking of an approach on foot in an open landscape. In the lowlands, a long view is rarely

possible and we think the more important consideration is to do the job quickly and efficiently. So in general, we favour a shotgun at a distance of no more than 20m, and aimed deliberately at the head or chest. Always load two cartridges, in case a follow-up shot is necessary. In thick cover, it may be necessary to get rather closer to see the fox at all, but still aim deliberately at the head or chest. Bear in mind that after dispatching and removing a fox from a snare, you will be covered in fox smell. Make sure you clean your hands and boots thoroughly before you walk up

to or touch any other snares that need checking, otherwise you will contaminate them all with fox odour. It's not that fox smells are deterrent, just that you want the next fox to run through the snare, not stop and sniff.

### Non-target species:

If you accidentally catch a protected species, you could be liable to prosecution on the matter, even if it is released alive. In court, the prosecution would need to show that you wilfully set a snare with the intention of catching a protected species.

It would be a convincing defence if you could demonstrate that you followed best practice guidelines (i.e. CoP) and advice from other responsible organisations such as ourselves. Likewise, evidence of training courses you have attended and detailed records of your snaring activities should be helpful in such circumstances.

#### **Releasing non-targets:**

If, despite following the guidelines above, you catch a non-target animal, you have no guidance from the law and should choose the most humane solution. Unless the animal is injured and unlikely to survive, you should probably release it immediately. You remain open to prosecution for catching it in the first place, but you have a good defence and have demonstrated your intentions.

Releasing non-target animals from snares can be difficult. The basic principle is to use the snare wire itself to restrict the animal's movements, then if possible to open the noose with a hook stick, or else to snip the wire at the noose with wire cutters. A hook stick is simply a length of broom handle or other pole with an offset hook fastened into the end. You can form the offset hook out of a twisted nail, after fixing it in the stick, or by distorting a stout screw eye sideways in a vice. If you do need to release an animal, and you have other snares set in the area, try and direct the captive away from the remainder of your snares. You don't want to have to repeat the release procedure!

#### **Badgers:**

A badger caught by the neck is relatively easy to handle. Starting somewhere near the snare anchor point, drop the tines of your garden fork over the snare wire and run it out along the wire until you come up close to the animal, then push the fork down into the ground. (Don't use your foot to stamp it in, as that will bring your foot too close to the badger's teeth!) Also be careful to avoid the badger's feet with the fork tines.) Use the fork to pin the snare stick but avoid tightening it, which will cause the cable to tighten and be lost from sight in the animal's fur. The badger

is now pinned down by the neck and will usually keep its head down. It's often possible to slip the hook between the noose and the badger's neck and pull the running eye back towards you, thereby opening the noose. As the noose is being opened, the badger will typically shake its head, aiding release. This is obviously easier if the snare is properly free-running and the stop position has been set such that the noose is not tight. If the hook stick cannot be used, snip the NOOSE of the snare with wire cutters. NEVER cut the snare anywhere else in the hope that 'the noose will fall off later'. Do not underestimate a badger's power or the damage it can do to your hands.

The same principle holds with all other similar sized non-target species caught by the neck. A badger, dog, or cat caught by the middle is harder to handle, because the distressed animal may be able and eager to bite you. Offering the animal a stick to bite will often keep it occupied long enough to release it. Again, restrict the movement of the snare, then pull the loop open, or cut the cable of the loop itself.

#### **Hares**

Using snares with longer stop positions (25cm or greater) will allow more hares to escape from snares by allowing them to 'back out'. Although snares are a legal method of catching brown hares, most snare operators regard brown hares as a non-target species, would prefer not to catch them at all, and want to release them unharmed if caught. The deliberate or accidental capture of mountain hares in snares is a grey area of legislation because of European protection for this species; the intention of the legislation is clearly to protect the conservation status of the mountain hare, but precisely how this affects the use of fox snares is unclear in advance of case law. In the spirit of the legislation, we suggest that fox snares should never be used in such numbers that they could significantly impact the local abundance of mountain hares.

Both species of hare are highly athletic animals with massive leverage in their hind legs. If you choose to release a hare you

must accomplish it quickly because once alarmed by your close presence the hare can do itself a lot of damage by jumping around. Shorten the snare cable using a fork as described above, or by treading along the cable with your foot. Now restrain the hare, by pinning it down (not by picking it up), to prevent it from kicking out with its back legs. Quickly decide whether the hare is fit for release. If it is obviously injured in some way you may decide to dispatch it now, by dislocating its neck. If the hare appears fit and well, snip the noose, release the hare and watch it away, guiding it away from other snares in the vicinity.

#### **Injured non-target animals:**

If you follow our guidelines for siting and setting snares, there should be no risk of serious injury to non-target species. However, if the worst happens, the Wildlife & Countryside Act, Badgers Act and other statutes face you with a legal dilemma: to release or humanely dispatch? You may feel that rapid dispatch of the animal is the more humane option, but this may expose you to prosecution for illegally killing (as well as catching) a protected species. Arguably reporting the incident to the police yourself should remove any doubt as to your intentions, but equally it might provoke an uncomfortable investigation. You must judge for yourself.



## Contact us

This leaflet is based on the combined experience of research and advisory staff at the Game & Wildlife Conservation Trust. We welcome feedback from snare users about the advice given - please contact the GWCT Advisory Service (phone 01425 651013; email [advisory@gwct.org.uk](mailto:advisory@gwct.org.uk)).

The Game & Wildlife Conservation Trust's Advisory Service has a professional team of regional advisors specifically to assist with technical advice on predator control, including the proper use of snares, and on all other aspects of shoot management and game conservation. We also run training courses on

snaring and other aspects of predation control, plus general training courses covering a wider range of topics, suitable for all levels of ability. Please contact our Advisory team on 01425 651013 for further details, or visit our website [www.gwct.org.uk](http://www.gwct.org.uk)

## References

Legislation governing the use of snares can be read or downloaded at [www.copis.gov.uk/legislation](http://www.copis.gov.uk/legislation)

Defra Code of Practice on the Use of Snares in Fox and Rabbit Control – [www.defra.gov.uk/wildlife-pets/wildlife/management/documents/snares-copp.pdf](http://www.defra.gov.uk/wildlife-pets/wildlife/management/documents/snares-copp.pdf)

Report of the Independent Working Group on Snares (2005) – [www.defra.gov.uk/wildlife-pets/wildlife/management/documents/snares-iwgs-report.pdf](http://www.defra.gov.uk/wildlife-pets/wildlife/management/documents/snares-iwgs-report.pdf)

Snaring in Scotland – a Practitioner's Guide – [www.gwct.org.uk/documents/2009\\_snaring\\_guide.pdf](http://www.gwct.org.uk/documents/2009_snaring_guide.pdf)

### Contacts

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## Research Paper - Use of Snares and Pest Control in Europe

Research and Library Services



## **Research Paper 16th March 2010**

This Paper Details The Use of Snares in EU Countries Outside The EU. The Countries Where Snaring Include Republic of Ireland, France, Spain, and Belgium. In Certain Circumstances, They Have Been Known To Be Used in Poland and Czech Republic. The European Union, Along With Canada and Russia are Attempting to Harmonise Trapping Methods To Be More Humane. Alternative Pest Control Methods to Snaring Include: Ferreting, Live Trapping, Shooting, Gassing, Rabbit Proof Fencing.

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

### **1. Countries in Europe using Snares:**

#### **United Kingdom:**

The United Kingdom is one of only five countries within the European Union which permits the use of snares, the others being Republic of Ireland, France, Spain and Belgium.

#### **Spain<sup>[1]</sup>:**

According to the Euro Group for Animals, permission for the use of snares can be granted although very few applications actually take place.

The EU accepted the wolf management plan of Castilla-Leon in January 2007 which allows wolves to be hunted south of the River Duerto to protect livestock, breaking a 20 year protection of the species in this area.

Some 200 wolves are hunted legally every year in Spain, and many more illegally, not just in Castilla-Leon but also in Asturias where 25 wolves were killed between January 2006 and March 2007 by officials after reports of sheep deaths.

#### **France:**

Hunting in France is broadly divided into three sectors:

Ordinary hunting on foot or horseback perhaps with the use of dogs: The trend is towards belonging to and using the dogs of a co-operative association (societe de chasse)

Deterrage – the hunting on foot or horseback of game that swells underground, principally fox or badger.

Venerie – the pursuit of game by large packs of dogs followed by mounted hunters who use no firearms. Game includes boar, hare, rabbit, red deer and roe deer.

## **Republic of Ireland<sup>[2]</sup>:**

Wildlife in Ireland is protected by the Wildlife Act, 1976 as amended.

Section 34 of the Wildlife Act prohibits the use of traps or snares to hunt or capture protected wild animals. However, rabbits are not a protected species.

## **2 Snaring in Certain Circumstances:**

### **Poland<sup>[3]</sup>:**

Poland passed the Nature Protection Act which bans the use of snares for 'animals under the partial species protection' and 'game animals'. The minister of environment does have the authority to allow the use of snares, but does so in most cases only for the capture of protected animals for scientific research.

### **Czech Republic<sup>[4]</sup>:**

Czech government passed the AP Act which stipulates that the use of wire snares is prohibited. However, there is no law against any other type of snares.

## **3 Humane Trapping Standards – EU Proposals:**

The objective of the proposal for a directive is to implement in the EU the environmental part of the Agreement on International Humane Trapping Standards concluded by the European Community with Canada and the Russian Federation.

The proposal establishes humane trapping standards, requirements for trapping methods, technical provisions for testing trapping methods and certification of traps for capturing certain species of mammals.

It concerns the traps used to catch these animals for the purposes of wildlife management, pest control, capture of mammals for conservation and obtaining fur, skin or meat.

The proposal applies to 19 species of animal. In the UK this would apply to badgers, pine martens and otters. Rabbits are not included.

The traps and trapping methods used to capture the species listed must meet the standards laid down by the directive and be certified as being in conformity by the competent authorities designated by the Member States. The Member States are obliged to ensure that, as from 1st January 2009, these traps and trapping methods are in accordance with the Humane Trapping Standards and that as from 1st January 2012 no other trapping methods are used for the 19 species concerned.

There is to be derogations granted for traps and trapping methods that do not conform to the standards on a case-by-case basis for certain purposes such as the interests of public health and safety; protection of public and private property; research, repopulation or the protection of fauna and flora.

The standards laid down in the directive are aimed at ensuring that traps or trapping methods are effective in catching only animals of the targeted species (in order to minimise the capture of non-targeted animals). They are also aimed at providing for the welfare of animals caught in

restraining traps and minimising the time elapsing before unconsciousness and insensibility for those caught in killing traps.

#### **Prohibition of leghold traps:**

Legislation laying down stricter rules on traps and trapping methods will continue to apply, in particular Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the European Union.

#### **Use of certified traps and methods:**

Trappers (persons authorised by the competent authorities of the Member States to use traps to catch listed animal species) must be qualified and have the necessary knowledge or have received appropriate training.

Trap manufacturers must identify certified traps and provide instructions to ensure safe and correct use and maintenance.

#### **4 DEFRA's Suggested Alternatives to Snares<sup>[5]</sup>:**

**Ferreting:** Ferrets are used to bolt rabbits from their warrens into nets. Ferreting at large rabbit warrens is considered to be a less cost effective method of control than fumigation but may be more cost effective for the management of rabbit populations occupying a high proportion of small warrens, for instance those on light soils such as sand dune systems.

The rabbits can be quickly and humanely dispatched once caught. Ferreting is most successful outside of the breeding season and, having the advantage of capturing more females than males, may serve as a valuable technique for dealing with intransigent populations.

**Live trapping:** There are two types of live-capture traps for rabbits and both can be cost effective control methods. Cage traps are positioned above ground and are baited with food (usually carrot, apple or parsnip). Drop traps, which are multi-capture traps, are dug into the ground within a gap in a wall or fence, so that rabbits moving through the gap fall into the holding box.

The rate of capture during the first few days of trapping can be used as a practical indicator of likely overall success.

**Shooting:** can be a very humane killing method when appropriate firearms are used and when shots are on target causing immediate loss of consciousness and death.

**Gassing:** The fumigation of rabbit warrens can be a very effective method of rabbit control. Gassing can reduce rabbit populations by up to 80%.

**Rabbit proof fencing:** Fencing can be an effective method of protecting crops from rabbits but it can also be expensive to install. Fences are erected along the boundary between the field to be protected and the infested harbourage. Both traditional wire-mesh netting and electric fencing can be used to exclude rabbits.

[1] <http://www.iberianature.com/spainblog/category/hunting/>

[2] <http://www.irishstatutebook.ie/1976/en/act/pub/0039/index.html>

[3] [http://www.antisnaring.org.uk/campaign\\_news/snares\\_in\\_europe.html](http://www.antisnaring.org.uk/campaign_news/snares_in_europe.html)

[4] [http://www.antisnaring.org.uk/campaign\\_news/snares\\_in\\_europe.html](http://www.antisnaring.org.uk/campaign_news/snares_in_europe.html)

[5] <http://www.defra.gov.uk/wildlife-pets/wildlife/management/documents/snares-iwgs-report.pdf>

## **Appendix 6**

### **Other Papers Submitted**

#### **List of other papers submitted to the Committee**

Supplementary information from the Countryside Alliance Ireland

COSLA email on Scottish Biodiversity Duty

Supplementary information from the RSPB

BASC email in relation to briefing the Committee

Supplementary information from League against Cruel Sports.

Supplementary information from T.A.C.T

Departmental reply in relation to the definition of occupier

Keady Hunt Club petition

Departmental information on the Irish Hare population

PNSI information

Aide Memoire – NIBG Presentation to Environment Committee

Departmental email re zoo licensing

Amendments to be moved at consideration stage

Note of Chairpersons meeting with minister

Proposals for amendments or additional clauses by RSPB

Schedule 1 Amendments

Information from the Department in relation to the population of birds

A response from DARD in relation to Committee queries on deer farming exemptions

Letter from Ulster Wildlife Trust

Letter from Dr Donald in relation to the Irish Hare

Wednesday 24 February 2010



Dear Environment Committee Member

Further to our presentation last Thursday, I am writing to reply to the queries posed at the meeting and to present supplementary information, received this afternoon from Queen's University Belfast and the Irish Coursing Club.

**Jonathan Bell:**

**Query:** Substantiation of data in relation to curlew survey.

**Response:**

The key report used was:

*'Breeding success and causes of breeding failure of curlew Numenius arquata in Northern Ireland'* Murray C. Grant, Chris Orsman, Jon. Easton, Chris Lodge, Malcolm Smith, Guy Thompson, Stephen Rodwell and Niall Moore – Royal Society for the Protection of Birds, Dunedin House, 25 Ravelston Terrace, Edinburgh EH4 3TP, UK. **Abstract report – attached.**

**David Ford:**

**Query:** The number of CountrySide Alliance Ireland members in the townland of Barnish, County Antrim?

**Response:**

Four.

**Query:**

The land area in Northern Ireland used for country sports?

**Response:**

Country sports activities tend to inter-mingle in relation to the land used eg land used for shooting may also be used for hunting and coursing and the PACEC Report 2006 states 'Shooting is already making a significant contribution to conservation, and influences the management of a million hectares.

(NB: Northern Ireland has 1,354,200 ha of land, of which 1,028,500 is utilised agricultural area – statistics from DAHD NI 2009.)

**Other – general:**

The Committee asked the Irish Coursing Club (ICC) for a list of the conditions which had to be adhered to, by coursing clubs in R of I, in respect of being granted a licence to net hares – **see attached, together with a sample licence.**

Queen's University, Belfast – Press Release issued 24 February 2010 – *'Hares more numerous in Irish Coursing Club Preserves than wider countryside'* – **copy attached, together with the report to which the press release refers.**

The ICC has submitted a document for consideration and to request that the Committee reconsider park coursing in Northern Ireland – **see attached.**

I hope this answers the outstanding queries and the additional data is beneficial. However, please do not hesitate to contact me if you require any further information – lyall@caireland.org or 028 9263 9911.

Yours sincerely

LYALL PLANT  
Chief Executive

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**CountrySide Alliance -  
Supplementary information - 24.02.10**

# ***Irish Coursing Club***

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**Chief Executive/Secretary: D.J. Histon**

Email [administration@sportingpress.ie](mailto:administration@sportingpress.ie)

## **The Fate of the Irish Hare in Northern Ireland:**

### ***A Brief Proposal to Reconsider Park Coursing***

**February 2010**

#### **Background**

In the first decade of the twenty-first century, several studies on the Irish hare were undertaken in Northern Ireland (NI) and the Republic of Ireland (RoI), and several of them by Quercus, Queen's University's ecological research programme at their School for Biological Sciences. Providing "expert advice to Government in the field of Biodiversity and Conservation Sciences directly linked to statutory responsibilities for nature conservation"<sup>1</sup>, they were well qualified to produce reports which were scientifically transparent, credible, reliable, and verifiable.<sup>2</sup> Among the most important and consistently repeated observations made within these documents were:

- 1) the enormous impact the introduction of muzzling had on Irish Hare mortality rates during coursing events;*
- 2) the steadily falling mortality rate of Irish Hare even well after muzzling had been introduced;*
- 3) the coursing-related mortality rate of Irish Hare was negligible in terms of impact on the total estimated Irish Hare population.*

Very recent statistics will further verify the second observation above as well, with the RoI's release statistics for the 2008-2009 coursing year that 97.5% of the Irish Hare

<sup>1</sup> From the Quercus website: <http://www.qub.ac.uk/sites/Quercus/>

<sup>2</sup> See Neil Reid, Ciarán Magee, W. Ian Montgomery, "Integrating field sports, hare population management and conservation", *Acta Theriologica* 55 (1): 61-71, 2010; see also Neil Reid, Karina Dingerkus, W. Ian Montgomery, Ferdia Marnell, Rebecca Jeffrey, Deirdre Lynn, Naomi Kingston & Robbie A. McDonald, *Status of hares in Ireland, Hare Survey of Ireland 2006/07*, Irish Wildlife Manual No. 30, Department of the Environment, Heritage and Local Government, 1-60; Reid, N., Montgomery, W.I. & McDonald, R.A. (2007) *Temporal trends in the Irish hare population*, Quercus for the Environment and Heritage Service (DOE, N.I.), UK; N. Reid, R.A McDonald, W.I Montgomery, "Factors associated with hare mortality during coursing", *Animal Welfare* 2007, 16: 427-434.

captured for coursing were returned in a robust state to proliferate in the wider countryside. Even more recently, during the 2010 National Meeting in Clonmel, which was held over 3 days and comprised more than 200 courses, there was not one hare fatality.

In spite of this, in recent years the sport of coursing has been misrepresented and sensationalised through the efforts of several animal rights movements. One of the most significant misrepresentations is that Irish hare populations have suffered due to coursing activity, and this has repeatedly been proven to be an inaccurate assumption. Moreover, the most recently published research observes that

*"...the mean density of hares within Irish Coursing Club preserves (99.9 hares/km<sup>2</sup>) was 18 times greater than mean density throughout the wider countryside (5.6 hares/km<sup>2</sup>)."*<sup>3</sup>

The same report concludes

*"...our results suggest that hare numbers are maintained at high levels on Irish Coursing Club preserves either because clubs select areas of high hare density and subsequently have a negligible impact on hare numbers or actively manage hare populations and have a positive effect on numbers."*<sup>4</sup>

In view of the enormous work involved in our hare husbandry efforts and the continued decline in hare mortality during coursing, it does not seem unreasonable to suggest that hare numbers continue to be found at high levels directly due to such efforts. This is also supported by the above document, as follows:

Tapper and Stoate (1994) suggest that predator control by landowners and gamekeepers is an important factor in helping to maintain local hare populations. Predation by foxes may limit hare numbers principally impacting juvenile recruitment (Lindström *et al.* 1994, Reynolds and Tapper 1995). Vaughan *et al.* (2003) suggested that hares were less abundant on farms where foxes were seen frequently whilst a fox sarcoptic mange epidemic demonstrated that fox removal can increase hare abundance (Lindström *et al.* 1994). It seems likely, therefore, that active fox control by coursing club members and associated landowners may positively affect local hare abundance. In Ireland, where hares are held in captivity for up to 2 months prior to coursing, there may be less obvious benefits of coursing. Periods of captivity, veterinary attention, treatment with anthelmintics and artificial feeding during captivity (Anonymous 2008) may actually improve pre-breeding condition and subsequent reproductive fitness of hares released back into the wild (Murray *et al.* 1998, Dyroz *et al.* 2005, Molony *et al.* 2006). Over winter survival of Scottish mountain hares *Lepus timidus scoticus* can be significantly improved by supplementary feeding, increasing male body mass and allowing females to breed earlier while treatment with Ivermectin (a broad spectrum anti-parasite medication) can significantly improve female fecundity (Newey *et al.* 2007). Moreover

<sup>3</sup> Reid, *et al.* 2010...p.66.

<sup>4</sup> *Ibid.*, p. 69.



translocation of animals among subpopulations may increase genetic heterosis and combat the problems associated with habitat fragmentation. Burns *et al.* (2000) suggested that in the absence of hare coursing there may be reduced tolerance by farmers of damage to agricultural crops, less interest in encouraging and sustaining suitable habitats, greater propensity to allow shooting, an increase in illegal coursing and deliberate culling of hares to prevent illegal poaching.<sup>5</sup>

Another misconception advanced by our critics is that hare netted for coursing events are injured during netting and that pregnant and nursing does as well as injured or ill hare are also kept when netted. *This is simply not the case, as such practices are detrimental to the very hare population upon which our sport depends.* The hare which are caught are kept in spacious hare parks where they are looked after by practicing veterinarians who worm and vaccinate them, and where a diet is provided to ensure the hare for coursing meetings are robust and strong.

It must be stressed here that, in spite of the claims of coursing's critics, the aim of organised coursing is not to kill or injure the hare, and it is imperative that ICC coursing per se should not ever be confused with the illegal hunting of hare with groups of unmuzzled dogs. It is in fact the latter which are most likely to be a contributing factor – along with urbanisation and intensive farming – towards the depletion of the Irish hare in the Northern Ireland.

#### Proposal

In view of the overview presented above, the Irish Coursing Club submits the following proposal to the Environment Committee, all of which is further negotiable:

- the ICC, which has responsibility for coursing in NI, would like a temporary reconsideration of the ban on netting hares; duration to be decided;
- the netting of hares can be limited to a specific period sufficient to prepare appropriately.
- the netting of hares can be further restricted to specified rules or regulations on the hares which are actually caught;
- the two current NI coursing clubs must submit a minimum of 3 members to attend the ICC's annual hare husbandry seminar;
- the two current NI clubs' hare parks must meet certain space and welfare standards, and be offered for inspection by an agreed-upon source;

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<sup>5</sup> *ibid.*, p.67-8.

*-the results of the meetings held by the clubs during this temporary period are directly reportable to the Minister for The Environment, Mr. Edwin Poots.*

*- the two current NI clubs might be temporarily restricted to holding shared meetings;*

*- the mortality results of the meetings held by the clubs during this temporary period are directly reportable to the Minister for the Environment and for the Environment Committee.*

The ICC remains open to discuss these and any other conditions in order to allow coursing to begin once again in Northern Ireland and make its contribution to the establishment of a healthy and thriving Irish hare population. We stand behind the demonstrated efficacy of our latest hare husbandry efforts, anticipate a continued drop in mortality rates, and are anxious to apply our most recent hare husbandry initiatives to Northern Ireland.

Signed



Chief Executive/Secretary  
Irish Coursing Club

**Countryside Alliance - Breeding success and causes of  
breeding failure of curlew *Numenius arquata* in Northern  
Ireland - 22.02.10**

## Breeding success and causes of breeding failure of curlew *Numenius arquata* in Northern Ireland

Murray C. Grant, Chris Orsman, Jon. Easton, Chris Lodge, Malcolm Smith, Guy Thompson, Stephen Rodwell and Niall Moore  
Royal Society for the Protection of Birds, Dunedin House, 25 Ravelston Terrace, Edinburgh EH4 3TP, UK

### ABSTRACT

1. The present study investigated breeding success and causes of breeding failure of curlew, a species for which the UK holds internationally important breeding numbers. Studies were undertaken between 1983 and 1995 in two areas of Northern Ireland, where the species' breeding range has recently contracted and breeding numbers are declining. Avian nest predators were abundant in both areas, whereas foxes were abundant on the Antrim study area but generally were absent from the Lough Erne study area, which was mainly islands.

2. Productivity was estimated to be 0.14–0.26 fledglings per pair in Antrim and 0.20–0.47 fledglings per pair on Lough Erne. These figures are lower than most estimates of productivity from other studies of breeding curlew. The differences between the recorded productivity levels and those estimated to be required to maintain a stable population are sufficient to account for the observed decline in Northern Ireland's breeding curlew population.

3. Predation was the main proximate cause of breeding failure, with nest predation being of most importance in reducing productivity. Only 3.6–19.0% of all nests hatched on each study area in each year, with nest predation accounting for 85–97% of failures. Survival of chicks from hatching to 31 days of age was 38.5% in Antrim and 19.1–29.2% on Lough Erne. Predation accounted for 74% of chick mortality.

4. Nest failure rates were not related to the vegetation height around nests nor to clutch laying date on either study area. They differed among the islands and one shoreside site on Lough Erne. Almost all nest predation on Lough Erne was attributable to avian predators, but in Antrim foxes probably accounted for most nest predation. The likelihood of predation on chicks was not related to their hatching date, hatching weight or body condition.

5. The results from this study suggest that predation rates on curlew nests in Northern Ireland may have increased in recent decades. Levels of predator control in Northern Ireland have declined but there have also been considerable changes in land-use that could benefit generalist predator species or increase the vulnerability of curlew nests to predation. It is recommended that large-scale trials of legalized predator control and land-use manipulation should be undertaken to identify appropriate conservation management methods.

**Countryside Alliance - Integrating field sports,  
hare population management - 2010**

## Integrating field sports, hare population management and conservation

Neil REID, Ciarán MAGEE and W. Ian MONTGOMERY

Reid N., Magee C. and Montgomery W. I. 2010. Integrating field sports, hare population management and conservation. *Acta Theriologica* 55: 61–71.

Conflicts between field sports, animal welfare and species conservation are frequently contentious. In Ireland, the Irish Coursing Club (ICC) competitively tests the speed and agility of two greyhounds by using a live hare as a lure. Each coursing club is associated with a number of discrete localities, known as preserves, which are managed favourably for hares including predator control, prohibition of other forms of hunting such as shooting and poaching and the maintenance and enhancement of suitable hare habitat. We indirectly tested the efficacy of such management by comparing hare abundance within preserves to that in the wider countryside. In real terms, mean hare density was 18 times higher, and after controlling for variance in habitat remained 3 times higher, within ICC preserves than the wider countryside. Whilst we cannot rule out the role of habitat, our results suggest that hare numbers are maintained at high levels in ICC preserves either because clubs select areas of high hare density and subsequently have a negligible effect on numbers or that active population management positively increases hare abundance. The Irish hare *Lepus timidus hibernicus* Bell, 1837 is one of the highest priority species for conservation action in Ireland and without concessions for its role in conservation, any change in the legal status of hare coursing under animal welfare grounds, may necessitate an increase in Government subsidies for conservation on private land together with a strengthened capacity for legislation enforcement.

Quercus, School of Biological Sciences, Queen's University Belfast, Belfast, BT9 7BL, Northern Ireland, UK, e-mail: neil.reid@qub.ac.uk (NR, WIM); Somerton Lodge, Coleraine, Northern Ireland, UK (CM)

**Key words:** coursing, conservation, driven counts, hunting with dogs, *Lepus timidus*, mountain hare, population density

### Introduction

Overexploitation of populations by hunting is widely accepted as one of the main causes of biodiversity loss and species population declines

(Bucher 1992, Milnergulland *et al.* 1993, Keane *et al.* 2005). Hunting for sport is particularly contentious as it frequently involves animal welfare issues and charismatic species of conservation concern. Nonetheless, field sports, such as hare coursing, fox hunting and game-bird

shooting, may have a conservation utility as participants may voluntarily conserve important habitats required by the quarry species (Tapper 1999, Macdonald and Johnson 2000, Oldfield *et al.* 2003). Farmers, landowners and gamekeepers that support field sports are significantly more likely to maintain established woodlands, restore hedgerows and create new plantations despite equal availability of subsidies to those that do not (Burns *et al.* 2000, Oldfield *et al.* 2003). Consequently, in some cases, field sports may benefit biodiversity in general while playing an important role in species-specific conservation.

Sustainable development goals promote the multifunctional use of farmland. Wildlife provides a resource for non-agricultural activities (including recreational field sports). Whilst widely perceived as negative, due to mortality of gamebirds, Stoate (2002) suggested that pheasant shooting has considerable potential for the conservation of nationally declining farmland birds due to its role in woodland management. The majority of natural habitats exist on privately owned land and few governments can afford to enforce or subsidize biodiversity conservation beyond designated sites (Oldfield *et al.* 2003). Conservation subsidy strategies, such as agri-environment schemes, frequently fail to benefit species of conservation concern (Reid *et al.* 2007a) or biodiversity in general (Kleijn *et al.* 2001, 2006, Kleijn and Sutherland 2003) as they are often poorly targeted (Kleijn *et al.* 2001), receive limited funding (Lovelace *et al.* 2000) and involve no coercion (Oldfield *et al.* 2003). In contrast, field sports may offer financial and recreational incentives to private landowners who are frequently willing to accept management costs over a wider area than Government can subsidize (Oldfield *et al.* 2003).

In many European countries, hares are considered a valuable game species and widely hunted (Marboutin *et al.* 2003). In common with other farmland species, the Irish hare *Lepus timidus hibernicus* Bell, 1837 has undergone a substantial population decline since the early 20th century. In Ireland, hares are rarely taken as game but regulated hare coursing is wide-

spread and common (Reid *et al.* 2007b). Hare coursing is a contest of speed and agility between two dogs (usually greyhounds) using a live hare as a lure. Hares are captured under Government licence from the wild using long-nets and held in captivity prior to a competitive event held within an enclosed field. The aim is not to kill the hare but release it back into the wild at or near the site of capture.

The Irish Coursing Club (the governing body of coursing in Ireland, hereafter, referred to as the 'ICC') is an association of approximately 76 local coursing clubs distributed throughout Ireland (Reid *et al.* 2007b). In accordance with ICC Directives, Instructions and Guidance "hares may only be netted on [a] club's recognised hunting grounds" with the permission and co-operation of local landowners (Anonymous 2008). Consequently, each club is associated with a number of discrete localities which are habitually used for the annual netting of hares. The ICC advocates active hare population management including predator control, prohibition of other forms of hunting such as shooting and poaching and the maintenance and enhancement of suitable hare habitat. Consequently, coursing clubs refer to their annual hunting grounds as "preserves" (Anonymous 2008).

The Irish hare is listed on Appendix III of the Bern Convention (Anonymous 1979) and Annex V(a) of the EC Habitats Directive (92/43/EEC), and is listed as an internationally important species in the Irish Red Data Book (Whilde 1993). Subject to an All-Ireland Species Action Plan (Anonymous 2005) it is one of the highest priority species for conservation action in Ireland. Consequently, the continued legality of hare coursing in Ireland is highly controversial. Anti-field sports organisations, in addition to animal welfare objections, dispute the efficacy of ICC hare population management practices claiming that annual harvesting of hares causes local population declines and extinction (LACS 2006, ICABS 2009). To resolve this dispute, we indirectly tested the efficacy of such management by comparing hare abundance within ICC preserves to that in the wider countryside.

## Methods

### Study sites

The East Donegal Coursing Club is based at Lifford (54°50'44"N, 7°28'18"W), County Donegal, Republic of Ireland. Eight of the club's fifteen preserves were randomly selected and compared to nine sites selected from the wider countryside. The latter were not known to have been previously managed nor used for the capture of hares for coursing but anecdotal reports suggested that hares were present at all sites selected. Sites in the wider countryside were not chosen at random but on the basis of their perceived suitability for hares in the presence of favourable habitat, specifically a heterogeneous mix of improved and unimproved grasslands interspersed by dense rush (*Juncus* spp.) or heather cover.

### Hare abundance estimation

Driven counts were used to estimate hare numbers (Abildgård *et al.* 1972, Pépin 1985). The East Donegal Coursing Club provided the necessary labour to facilitate the enumeration of hares at all sites (under Governmental licence). Netting occurred during autumn (September to December) from 2003 to 2007. However, not all sites were netted each year. Each site was subdivided into discrete areas of manageable size for each survey replicate, referred to hereafter as a 'beat'. Each beat was taken as a repeated measure of the number of hares present. The number of beats varied per site from 2–30. Hares were flushed from their diurnal lie-up sites by a line of beaters (20–30 people). The total number of hares sighted from each beat was recorded. The area of each beat was measured using ArcGIS Map™ 9.3 (ESRI® 1999–2008) and the density of hares was expressed as hares/km<sup>2</sup>.

### Environmental variables

ArcGIS Map™ 9.3 was used to compute landscape and habitat variables using the Corine Land Cover 2000 map (EEA 2000). As beats were relatively small ( $x = 5.5$  ha) variables were extracted at two spatial scales: 'within beats' and 'within beats plus a 310 m buffer' approximating the radius of an average Irish hare home range of 30 ha (Wolfe and Hayden 1996). Patch Analyst 4.0 (Rempel 2008) was used to quantify the proportion of each area in three broad habitat categories: improved farmland (which included pastoral, arable and complex cultivation patterns), unimproved farmland (which included land principally occupied by agriculture with significant areas of natural and semi-natural vegetation including scrub and woodland fragments) and bog, moor, heath and marsh. Habitat structure was described using three metrics: the number of habitat patches, Shannon's Diversity Index and Shannon's Evenness Index. The shortest linear distance to the nearest urban area from the centroid of each beat was taken as a proxy of rural development and human activity.

### Statistical analyses

Descriptive statistics were used to illustrate the sampling regime within and between sites and to report mean values for hare density from the raw data with 95% confidence intervals derived from standard errors.

Landscape and habitat variables were standardised to have a  $\bar{x} = 0$  and a  $\sigma = 1$  prior to analysis (Schmidt *et al.* 2004). Variables not conforming to normality were transformed using a natural logarithm ( $\ln+1$ ) whilst proportional data were Arcsine-square root transformed. To test whether sites differed in the area surveyed and in landscape and habitat metrics each was treated as the dependent variable in a linear mixed model using a REML procedure and assuming unstructured errors with site ID fitted as a random factor, beat fitted as a repeated measure and site status (is preserve or wider countryside) fitted as a fixed factor.

Similarly, variance in hare density with respect to site status was examined using a linear mixed model using a REML procedure and assuming unstructured errors. Again, site ID was fitted as a random factor and beat was fitted as repeated measure. Year was treated as fixed factor while landscape and habitat variables were treated as covariates. The spatial extent at which each variable had most influence on hare density was determined using the Akaike weight ( $w_i$ ) of each variable in a set of two univariate models: one at each spatial scale (McAlpine *et al.* 2006). For each variable, the spatial extent with the highest Akaike weight was selected for inclusion in analysis. All variables were tested for multicollinearity with one variable in each pair of significant correlates (Spearman's Rank correlation coefficient  $> 0.5$ ) being removed so that all tolerance values were  $> 0.2$  and VIF values  $< 5.0$ . The influence of each term was described by the  $F$  statistic generated when the term of interest was fitted last.

To remove any effect of the difference in landscape and habitat between preserve and wider countryside sites, all variables were fitted regardless of significance and estimated marginal means for hare density obtained when site status was fitted last. The difference between the estimated marginal means in preserve and wider countryside sites was taken as a measure of the effect of site management controlling for differences in landscape and habitat.

All statistical tests were performed using GenStat v6 (2002).

## Results

A total of 135 Irish hares were flushed from 17 sites covering a total of 477.5 ha using 87 beats (Table 1). The number of beats and their size varied between sites. The mean density of hares within ICC preserves was 99.9 hares/km<sup>2</sup> compared to 5.6 hares/km<sup>2</sup> throughout the wider countryside; an 18-fold difference (Table 1).

Table 1. Descriptive statistics for each site surveyed in County Donegal from 2003–2007.

Site status	Site ID	Year	No. of beats	Mean beat area ha (range)	Total area (ha)	Total no. of hares sighted	Mean hare density hares/km <sup>2</sup> (95% CI)
ICC preserves (6 managed)	1	2007	10	6.2 (1.0–12.0)	61.9	37	65.8 (47.5–84.1)
	2	2007	6	3.6 (0.6–6.9)	21.4	14	106.7 (69.7–143.8)
	3	2007	5	4.3 (1.6–8.1)	21.5	13	50.0 (34.6–65.3)
	4	2007	4	6.0 (3.5–8.9)	24.1	17	63.5 (42.1–84.8)
	5	2007	5	4.9 (1.1–10.0)	24.4	8	60.4 (35.3–95.5)
	6	2007	5	1.6 (0.5–3.3)	7.9	14	269.2 (182.7–355.8)
	7	2007	5	5.1 (3.7–6.4)	26.6	12	46.5 (29.9–63.1)
	8	2007	2	1.5 (1.3–1.7)	3.1	8	256.7 (226.2–287.2)
Sub-total			42	4.5 (0.5–12.0)	189.9	123	99.9 (82.8–117.1)
Wider countryside (6 unmanaged)	9	2003	7	9.6 (3.3–19.2)	67.3	1	1.2 (0–2.3)
	10	2004	4	3.6 (1.2–8.1)	15.2	2	10.2 (3.4–16.9)
	11	2004	6	3.6 (1.9–5.7)	21.7	2	15.6 (5.6–25.7)
	12	2005	5	5.1 (4.1–5.6)	26.3	1	3.8 (0–7.5)
	13	2006	2	10.1 (6.2–14.0)	20.2	2	7.1 (0–14.3)
	14	2006	7	8.3 (2.9–18.6)	57.9	0	0 (0–0)
	15	2007	5	5.5 (3.1–10.1)	27.4	2	9.1 (0–18.2)
	16	2007	3	6.7 (4.9–9.1)	20.1	1	3.7 (0–7.3)
	17	2007	6	5.4 (3.6–7.5)	32.4	1	3.4 (0–6.7)
Sub-total			45	6.4 (1.2–19.2)	287.5	12	5.6 (3.7–7.5)
Total			87	5.5 (0.5–19.2)	477.5	135	51.1 (41.4–60.9)

Table 2. Comparison of habitat type and structure between ICC preserves and sites within the wider countryside at two spatial scales: (a) within beats and (b) within beats plus a 310 m buffer. Statistical differences ( $p < 0.05$ ) are shown in bold.

Habitat and landscape metrics	Units	$\bar{x} \pm \text{SD}$		$F_{df}$	$p$
		ICC preserves	Wider countryside		
(a) Within beats					
Area	ha	4.52 $\pm$ 3.09	6.39 $\pm$ 4.25	5.43 <sub>1,14</sub>	0.020
Improved farmland	%	87.55 $\pm$ 30.96	50.07 $\pm$ 49.01	18.01 <sub>1,14</sub>	< 0.001
Unimproved farmland	%	5.55 $\pm$ 19.24	16.18 $\pm$ 32.98	3.95 <sub>1,14</sub>	0.047
Bog, moor, heath and marsh	%	6.89 $\pm$ 22.56	33.75 $\pm$ 44.92	12.26 <sub>1,14</sub>	< 0.001
Number of habitat patches	n	1.71 $\pm$ 0.86	1.56 $\pm$ 0.72	0.75 <sub>1,14</sub>	0.385
Shannon's Diversity	Index	0.25 $\pm$ 0.28	0.18 $\pm$ 0.24	1.53 <sub>1,14</sub>	0.216
Shannon's Evenness	Index	0.32 $\pm$ 0.36	0.23 $\pm$ 0.31	1.26 <sub>1,14</sub>	0.261
Distance to urban	km	3.05 $\pm$ 1.33	2.72 $\pm$ 1.83	1.38 <sub>1,14</sub>	0.240
(b) Within beats plus a 310 m buffer					
Area	ha	59.53 $\pm$ 16.29	67.93 $\pm$ 14.15	6.62 <sub>1,14</sub>	0.010
Improved farmland	%	87.64 $\pm$ 22.07	49.62 $\pm$ 46.26	22.32 <sub>1,14</sub>	< 0.001
Unimproved farmland	%	6.39 $\pm$ 12.48	22.01 $\pm$ 27.22	11.05 <sub>1,14</sub>	< 0.001
Bog, moor, heath and marsh	%	5.97 $\pm$ 13.36	28.37 $\pm$ 37.16	11.99 <sub>1,14</sub>	< 0.001
Number of habitat patches	n	3.55 $\pm$ 1.33	3.20 $\pm$ 1.65	1.96 <sub>1,14</sub>	0.160
Shannon's Diversity	Index	0.67 $\pm$ 0.32	0.58 $\pm$ 0.40	1.40 <sub>1,14</sub>	0.237
Shannon's Evenness	Index	0.71 $\pm$ 0.30	0.58 $\pm$ 0.33	3.54 <sub>1,14</sub>	0.060



Mean beat size was significantly greater at sites in the wider countryside than at ICC preserve sites (Table 2). Habitat composition also varied with site status with ICC preserves being characterised by significantly greater coverage of improved farmland and significantly less coverage of unimproved farmland and bog, moor, heath and marsh than sites in wider countryside (Table 2). These differences were significant on both spatial scales tested. However, landscape structure did not differ significantly between ICC preserve and wider countryside sites regardless of the spatial scale examined. Rurality, measured as distance to urban also did not differ with site status.

All landscape and habitat variables had greatest influence on hare density at the larger of the two spatial scales examined (the beat plus a 310 m buffer) with the exception of the number of habitat patches and Shannon's Diversity Index, both of which operated within beats (Fig. 1). The proportion of improved farmland was

removed from further analysis as it was highly negatively correlated with the proportion of unimproved farmland ( $r = -0.806$ ,  $p < 0.001$ ), proportion of bog, moor, heath and marsh ( $r = -0.848$ ,  $p < 0.001$ ), the number of habitat patches ( $r = -0.220$ ,  $p = 0.040$ ) and distance to urban ( $r = -0.372$ ,  $p < 0.001$ ).

After accounting for significant differences in habitat composition and landscape covariate noise only site status significantly affected hare density (Table 3). There was a moderately strong, but not statistically significant, positive trend between hare density and distance to urban. However, distance to urban did not significantly differ between ICC preserve sites and the wider countryside (Table 2). Accounting for variation in all other variables, the estimated marginal mean for hare density was 3 times higher within ICC preserves than the wider countryside (estimated marginal mean = 96.01 and 30.93 hares respectively).

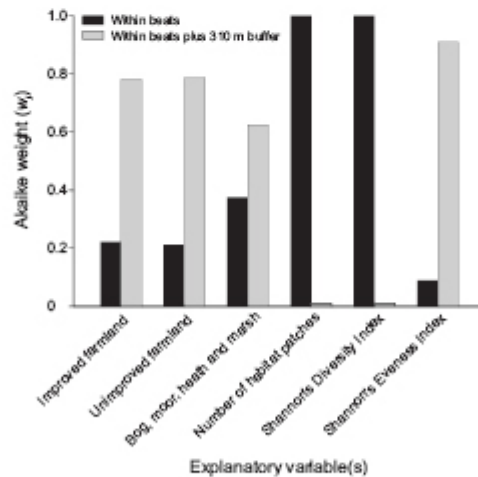


Fig. 1. Selection of the spatial extent at which each habitat and landscape metric had most influence on hare density was based on the Akaike weight of each univariate model within a set of two models; one at each spatial scale is within beats and within beats plus a 310 m buffer.



Table 3. Linear mixed model of hare density. Site status denotes whether a site was an ICC preserve or located within the wider countryside. Statistical differences ( $p \leq 0.05$ ) are shown in bold.

Random effect	Repeated measure	Fixed effects	$F_{df}$	$\beta \pm SE$	$p$
Site (Beat)	Beat	Shannon's Diversity Index (within beats)	0.01 <sub>1,94</sub>	$0.14 \pm 0.12$	0.926
		Number of habitat patches	<0.01 <sub>1,94</sub>	$-0.39 \pm 0.15$	0.944
		Shannon's Evenness Index (within beat plus 310 m buffer)	0.11 <sub>1,94</sub>	$0.61 \pm 0.13$	0.739
		Year	0.42 <sub>1,94</sub>	Factor	0.792
		Unimproved farmland (within beat plus 310 m buffer)	1.20 <sub>1,94</sub>	$-0.12 \pm 0.12$	0.273
		Bog, moor, heath and marsh (within beat plus 310 m buffer)	1.80 <sub>1,94</sub>	$-0.28 \pm 0.15$	0.179
		Distance to urban	3.47 <sub>1,94</sub>	$0.21 \pm 0.11$	0.062
		Site status	6.52 <sub>1,94</sub>	Factor	0.011

## Discussion

Whilst there is substantial anecdotal evidence to suggest that field sports, including hare coursing, impact local quarry abundance there is little consensus whether the effects are detrimental or beneficial (Stoate and Tapper 1993, Hutchings and Harris 1996, Vaughan *et al.* 2003). Here we provide evidence, that in some cases, field sports can be positively associated with high abundance of the quarry species.

In real terms, the mean density of hares within Irish Coursing Club preserves (99.9 hares/km<sup>2</sup>) was 18 times greater than mean density throughout the wider countryside (5.6 hares/km<sup>2</sup>). Irish hare densities have been reported to range from 0.1–138 hares/km<sup>2</sup> (Appendix). Thus, whilst densities within ICC preserves were notably high they were not unprecedented (Jeffery 1996, Dingerkus and Montgomery 2002). Mean hare density from sites in the wider countryside was not significantly different from mean estimates of density throughout the Republic of Ireland and Northern Ireland derived from recent national surveys (Appendix). Moreover, Scottish mountain hare populations have been shown to fluctuate up to 59 times their minimum density (Watson *et al.* 1973); thus large spatio-temporal disparities in density are not unknown in hare populations.

Variance in hare density is generally attributed to variation in habitat type and/or structure. Densities are generally significantly lower

in pastoral than arable landscapes and agricultural intensification is generally assumed to be the main factor involved in population declines (Tapper and Parsons 1984, Hutchings and Harris 1996, Tapper 1999, Smith *et al.* 2004, 2005, Kuiper *et al.* 2008). ICC preserves were significantly more agriculturally intense than sites selected from the wider countryside in terms of the gross coverage of improved farmland (predominately pastoral) compared to unimproved farmland and bog, moor, heath and marsh. Therefore, one might hypothesize that hare densities should have been lower in ICC preserves than in the wider countryside. However, this was not the case. Whilst none of the habitat and landscape metrics measured significantly influenced hare density directly, after accounting for significant differences in habitat coverage, the estimated marginal mean hare density remained 3 times greater in ICC preserves than in the wider countryside. This reduction from a 18-fold to a 3-fold difference supports the assumption that variance in habitat influences hare density and it maybe that more suitable measures of habitat or landscape could account for the remaining differences observed.

Whilst we cannot rule out the influence of naturally occurring habitat factors, neither can we rule out the possible role of active population management. The Game Conservancy Trust found that hares were maintained at high densities on land used for coursing, in part due to the maintenance and promotion of suitable habitat

(Burns *et al.* 2000). Irish hares have been shown to be associated a habitat matrix of improved farmland providing good quality grassland for forage interspersed with areas of tall vegetation providing cover and shelter for diurnal lie-up sites, for example, *Juncus* spp. (Reid *et al.* 2006, 2007a). Anecdotal evidence suggests that landowners associated with ICC preserves maintain areas of suitable cover for hares, in particular patches of *Juncus* within a wider matrix of improved farmland. Without ground-truthed data, such fine-scale structure would have been missed using the relatively crude habitat metrics derived from the low resolution Corine Land Cover map (EEA 2000) used in our analysis. It therefore, remains possible that the differences observed in habitat coverage between ICC preserves and the wider countryside may be associated with active habitat management.

Whilst coursing activity has been shown to be associated with high hare densities, without a before and after survey design, it is impossible to rule an *a priori* difference in hare density between ICC preserves and the wider countryside. It seems highly likely that coursing clubs should preferentially select localities of high hare abundance to ensure sufficient animals are found to support each coursing event (Stoate and Tapper 1993). Logically, coursing activity can have only three possible impacts on local hare abundance; negative, negligible or positive. Consequently, we consider each scenario in turn both assuming and rejecting an *a priori* bias in hare density (Fig. 2a–f).

Anti-field sports organisations (LACS 2006, ICABS 2009) support the hypothesis that localities with high hare density suffer population declines after exploitation by coursing clubs (Fig. 2d). Under this scenario, hare densities would have had to be even higher prior to exploitation. Given that the range of densities recorded on ICC preserves are some of the highest on record for this species (Appendix) it would appear somewhat unlikely that densities could have been substantially higher prior to site use. Such a hypothesis also assumes that the efficacies of any population management practices employed by coursing clubs are either negligible or do not counter any negative effect of coursing.

Alternatively, we might hypothesise that low mortality rates during coursing and high hare productivity may result in netting and coursing having a negligible impact on overall hare numbers (Fig. 2e). Hare populations have been shown to be relatively resilient to culling pressure (Macdonald *et al.* 2000) with previous studies suggesting that annual adult removal rates of up to 69% may be sustainable provided suitable habitat exists to allow high reproductive effort (Marboutin *et al.* 2003). In Ireland, it has been estimated that hare mortality during captivity and coursing kills  $\leq 0.1\%$  of the total adult population annually (Reid *et al.* 2007b). Other studies have found similarly low rates of mortality suggesting that coursing has little or no impact on overall hare numbers (Stoate and Tapper 1993, Hutchings and Harris 1996, Burns *et al.* 2000). As with our first scenario, this hypothesis also assumes no net benefit of population management.

Tapper and Stoate (1994) suggest that predator control by landowners and gamekeepers is an important factor in helping to maintain local hare populations. Predation by foxes may limit hare numbers principally impacting juvenile recruitment (Lindström *et al.* 1994, Reynolds and Tapper 1995). Vaughan *et al.* (2003) suggested that hares were less abundant on farms where foxes were seen frequently whilst a fox sarcoptic mange epidemic demonstrated that fox removal can increase hare abundance (Lindström *et al.* 1994). It seems likely, therefore, that active fox control by coursing club members and associated landowners may positively affect local hare abundance.

In Ireland, where hares are held in captivity for up to 2 months prior to coursing, there may be less obvious benefits of coursing. Periods of captivity, veterinary attention, treatment with anthelmintics and artificial feeding during captivity (Anonymous 2008) may actually improve pre-breeding condition and subsequent reproductive fitness of hares released back into the wild (Murray *et al.* 1998, Dyrex *et al.* 2005, Molony *et al.* 2006). Overwinter survival of Scottish mountain hares *Lepus timidus scoticus* can be significantly improved by supplementary feeding, increasing male body mass and allow-

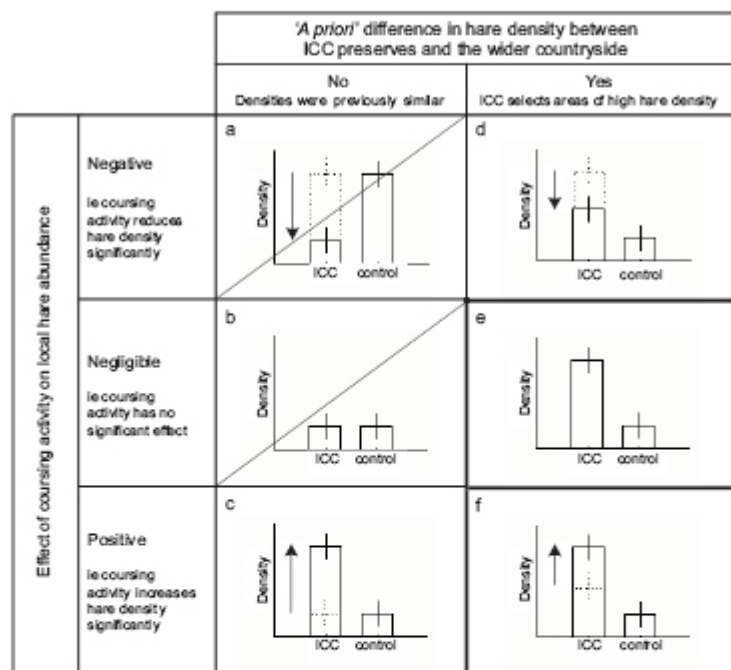


Fig. 2. Six scenarios for the possible impact of coursing activity on local hare abundance where dotted lines represent hare densities prior to management and solid lines represent current densities. Scenarios in boxes that have been crossed out (a–b) are inconsistent with observations of high hare density within ICC preserves. Open boxes contain scenarios that whilst possible are unlikely (c–d) and bold boxes contain scenarios that are both possible and plausible (e–f).

ing females to breed earlier while treatment with Ivermectin (a broad spectrum anti-parasite medication) can significantly improve female fecundity (Newey *et al.* 2007). Moreover, translocation of animals among subpopulations may increase genetic heterosis and combat the problems associated with habitat fragmentation.

Burns *et al.* (2000) suggested that in the absence of hare coursing there may be reduced tolerance by farmers of damage to agricultural

crops, less interest in encouraging and sustaining suitable habitats, greater propensity to allow shooting, an increase in illegal coursing and deliberate culling of hares to prevent illegal poaching. Coursing clubs are also responsible for actively publicising the hare and maintaining its importance to rural communities whilst collaboration with Government and academic institutions allow clubs to contribute information on the biology of the species.

Whilst we cannot rule out the role of habitat, our results suggest that hare numbers are maintained at high levels on Irish Coursing Club preserves either because clubs select areas of high hare density and subsequently have a negligible impact on hare numbers or actively manage hare populations and have a positive effect on numbers. Should the legal status of coursing be altered on animal welfare grounds without concessions for its potential affect on species and habitat conservation, additional public funds may be required to increase subsidies for conservation on private land together with a strengthened capacity to enforce legislation (Oldfield *et al.* 2003).

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Appendix. Review of Irish hare population densities recorded in various habitats from 1973–2006.

Country	Habitat(s)	Year	Hares/km <sup>2</sup> (range or 95% CI)	Reference
Republic of Ireland	Mixed farmland	1965	6.2(5.5–6.8)	Whelan (1965)
	Coastal grassland	1990–1994	12.0(5.0–19.0)	Wolfe (1995)
	Pastoral farmland	1992–1993	12.4(4.7–17.6)	Jeffery (1996)
	Coastal grassland	1994–1996	50.5(24.5–129.4)	Jeffery (1996)
	All	2006	3.3(2.0–6.3)	Reid <i>et al.</i> (2007c)
	All	2007	7.7(4.8–14.3)	Reid <i>et al.</i> (2007c)
	All	2007	7.7(4.8–14.3)	Reid <i>et al.</i> (2007c)
Northern Ireland	Shooting estates	1856–1940	63.0(2.0–138.0)	Dingerkus and Montgomery (2002)
	All	1994–1996	0.7(0.2–1.5)	Dingerkus and Montgomery (2002)
	Uplands	2000	2.1(1.7–2.7)	O'Mahony and Montgomery (2006)
	Lowlands	2000	0.3(0.1–0.8)	O'Mahony and Montgomery (2006)
	All	2002	1.0(0.5–1.8)	Preston <i>et al.</i> (2003)
	All	2004	5.1(4.2–6.2)	Tosh <i>et al.</i> (2005)
	All	2005	3.1(2.5–3.9)	Tosh <i>et al.</i> (2005)
	All	2005	3.0(2.0–4.5)	Reid (2006)
	All	2006	2.6(1.9–3.5)	Hall-Aspland <i>et al.</i> (2006)
	All	2007	4.0(2.8–5.8)	Reid <i>et al.</i> (2007c)

Email from Ashley Graham, Countryside Alliance

**From:** ashley-graham [ashley@caireland.org]  
**Sent:** 25 February 2010 10:21  
**To:** +Comm. Environment Public Email  
**Cc:** McGarel, Alex; Bowen, Antoinette; McVeigh, Nathan  
**Subject:** Supplementary information for the Environment Committee  
**Importance:** High  
**Attachments:** Environment Committee - Supplementary information - 24.02.10.pdf; Breeding success and causes of breeding failure of curlew *Numenius arquata* in Northern Ireland - Environment Committee - 22.02.10.pdf; ICC Licence Conditions - EC - 23.02.10.pdf; ICC Licence - EC - 23.02.10.pdf; QUB Press release - Hares - 24.02.10.pdf; Integrating field sports, hare population management - 2010.pdf; ICC Submission to the Environment Committee - 23.02.10.pdf

Dear Committee Members

Further to Countryside Alliance Ireland's presentation to the Committee last Thursday, please find attached the answers to the queries posed, together with some supplementary information.

Yours sincerely

Ashley Graham  
*On behalf of Lyall Plant, Chief Executive, Countryside Alliance Ireland*

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Sign up to the Countryside Alliance Manifesto by clicking the link: <http://www.countryside-alliance.org.uk/blogcategory/rural-manifesto/>  
Please consider the environment before printing this email

## Convention of Scottish Local Authorities (COSLA)Reply re Scottish Biodiversity Duty

**From:** Muir, Malcolm [Malcolm.Muir@southlanarkshire.gsx.gov.uk]  
**Sent:** 10 March 2010 15:21  
**To:** McCann, Sean  
**Cc:** 'Kristen Miller'

**Subject: Scottish Biodiversity Duty**

Hi Sean

Kristen Miller from COSLA had passed me your enquiry about the implementation of the Biodiversity Duty in Scotland.

The Biodiversity Duty as set out in the Nature Conservation (Scotland) Act 2004 is essentially non-prescriptive and wide ranging:

"It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.

(2) In complying with the duty imposed by subsection (1) a body or office-holder must have regard to—

(a) any strategy designated under section 2(1), and

(b) the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or any United Nations Convention replacing that Convention)."

In many ways, the lack of detailed prescription in the clause is key to its long term success. What it did was to establish the principle that biodiversity was a fundamental asset and its protection was the responsibility of all public services, not just those charged with "nature conservation." This was fundamental since one of the key factors holding back effective measures to protect biodiversity had been the deep rooted focus in Britain upon protecting the "rare and impressive" as opposed to dealing with the fundamental influences on biological diversity that are, almost entirely social-political: especially the direction of agricultural subsidies and the Planning and Land management functions within Local Government. The real potential "big wins" in protecting biodiversity were therefore to improve decision making across public services and, at the same time, provide better scientific and technical information to support evaluation, etc. This approach is not only effective but does not add any further, significant financial burdens on Local Government: what it does do is provide a focus on improving public service partnership towards resolving a problem that could have very significant, long term economic and social impacts upon Councils and the communities they serve.

Since the implementation of the Act, the Scottish Biodiversity Forum has, in common with most of the international community, adopted the "Ecosystem Approach" to biodiversity conservation. (<http://www.cbd.int/ecosystem/>) Essentially, this looks at the "natural world" as a series of functioning "Ecosystems" that, when functioning effectively, produce a range of key services to the human community: i.e. food production, water management, air quality, carbon sequestration, timber and materials, tourism, health, recreation, cultural landscapes, etc. Looked at this way, the priority becomes to understand the functioning of these productive ecosystems and employ a whole range of Government directed influences to ensure that the long term health can be maintained within a wider environmental framework of economic development and productive agriculture, etc.

The structure for delivery in Scotland is headed by the Scottish Biodiversity Committee (Chaired by the Minister for the Environment). The main strategic direction comes from four specialist working groups covering the main ecosystem components - Lowland/Urban, Woodlands, marine, freshwater, upland - and two cross cutting groups covering communications and science. These report to an Action Co-ordination Group, Chaired by Scottish Natural Heritage, that reports directly to the SB Committee. Representation on these groups comes from academic and agency experts, as well as NGO's, land managers and other community stakeholders.

All 32 Local Authorities in Scotland (and the two National Park Authorities) participate in a Local Biodiversity Action Plan (LBAP) Partnership and, in most cases, support these through the



employment of a Biodiversity Officer. These posts were mostly in place before the implementation of the Biodiversity Duty but have a substantial contribution to the delivery of biodiversity protection across Scotland. Initially, these posts were part funded through Scottish Natural Heritage but funding was transferred directly to Councils in 2009. The role of Biodiversity Officers is primarily to support their Local Partnership and co-ordinate the production and implementation of the LBAP. Generally, these posts have proved to be extremely useful to their employing Councils and have greatly improved partnership working with the environmental agencies, Forestry Commission, and the Rural development Programme, etc. They also undertake a great deal of advisory and support work for the development planning function.

A number of Scottish Councils (such as my own – South Lanarkshire) are now taking steps to formally embed the Biodiversity Partnerships within the Community Planning process. All Scottish Councils are responsible for co-coordinating the local delivery of Single Outcome Agreements with Scottish Government; and Environmental outcomes, including biodiversity, fall within this framework. The LBAP process offers an opportunity for Local Government to substantially increase its influence on decision making in these areas and build new relationships with agencies such as Scottish Natural Heritage that are increasingly less regulatory and more based on partnership and specialist advice.

In conclusion, I would suggest that the implementation of a "Biodiversity Duty" in Scotland has been largely successful and has not placed any significant, additional financial burden upon Local Government. What it has done is directed a more informed and coordinated approach to the very real issue of biodiversity loss, encouraged improved public service partnership and increased the influence and contribution of Local Government to a process that is critical to the long term economic and social wellbeing of rural and urban communities.

I hope that this is of some help. Please e-mail me or telephone if you would like to discuss any other points.

Regards

Malcolm Muir  
Countryside and Greenspace Manager  
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Ferniegair  
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## **RSPB Briefing on Good Agricultural and Environmental Condition Hedge Cutting Dates**



**A briefing from RSPB Northern Ireland**

## GAEC hedge cutting dates and the nesting seasons of birds in Northern Ireland

Hedgerows are an important feature of the Northern Ireland countryside and provide vital nesting habitat for a wide variety of birds. Cutting dates should be planned to avoid the breeding seasons of hedgerow-nesting birds. Under Northern Ireland's Cross Compliance regulations, hedgerow management is not permitted between 1 March and 31 August. Whilst the RSPB is aware of the interests of other stakeholders, we believe there is strong scientific justification to maintain the current Good Agricultural and Environmental Condition (GAEC) non-cutting dates of 1 March to the 31 August in Northern Ireland.

Table 1 shows the length of the breeding seasons for UK and Northern Ireland Priority Species (birds) that use hedgerows for nesting, many of which raise multiple broods in a single year. This analysis is based on reviews of many scientific studies. Priority Species are those most in need of conservation action in Northern Ireland and many are the subject of conservation work funded by the Northern Ireland government and other bodies. Given the laying and fledging periods measured in scientific studies across the UK, it is clear that the species shown in Table 1 would suffer nest damage or abandonment if cutting were permitted in August and their conservation status could be affected as a result. In many cases, cutting in September could also cause damage and we believe the existing dates are already a compromise.

Table 1. UK and Northern Ireland Priority Species (birds) that would suffer disturbance during the nesting period if hedge cutting was permitted in August (Laying periods and fledging periods (i.e. the time taken for nestlings to fledge) are taken from studies reviewed in S. Cramp (eds) Handbook of the Birds of Europe the Middle East and North Africa: The Birds of the Western Palearctic. Oxford University Press)

Species	Red-listed	Laying period	Fledging period (the time it takes from hatching for nestlings to leave the nest)
Ireland	UK		
Dunnoek		v Early March to late August	11-12 days
Song thrush		v Late February to late August	11-17 days
Grasshopper warbler		v Early April to mid-August	10-15 days
Spotted flycatcher		v Late May to mid-August	10-17 days
House sparrow		v Early April to late August	11-19 days
Tree sparrow		v Early April to mid-August	15-20 days
Bullfinch		v Late April to late August	12-18 days
Lesser redpoll		v Early April to early August	9-14 days
Linnet		v Mid-April to early August	10-17 days
Reed bunting		v Mid-April to early August	9-13 days
Yellowhammer	v	v Early April to early September	9-18 days

In addition, many other common and widespread species such as the woodpigeon, wren, blackbird, whitethroat, garden warbler, blackcap, willow warbler, chaffinch, greenfinch, and goldfinch all lay eggs and/or rear young during August (see Winspear & Davies (2005) A management guide to birds of lowland farmland. The RSPB, Sandy). The nests of these species could be damaged or abandoned if the GAEC cutting dates were extended into August.

The Wildlife (Northern Ireland) Order 1985 provides legal protection to all wild birds in Northern Ireland. This legislation, in part, transposes the EU Birds Directive 1979. Under Part 2 of the Order, it is an offence to intentionally take, damage or destroy the nest of any wild bird while it is in use or being built, or take or destroy the eggs of any wild bird. Given that many hedgerow-nesting species rear young in August, extending the hedge-cutting window into that month would invite land managers to break this law.

The Whole Farm Payment is funded by public money to protect the environment so it is unclear how DARD could justify changes to the current cutting dates given the scientific evidence provided above. For Priority Species, a change could also compromise existing publicly funded efforts to support their recovery, such as the management requirements of the Northern Ireland Countryside Management Scheme (NICMS). It would be absurd if the management prescribed in one form of publicly funded scheme were compromising the benefits of another.

Based on our analysis, we do not believe that the GAEC hedgerow non-cutting dates should be amended. We believe the existing dates of 1 March to 31 August should remain in place.

For more information contact Anne-Marie McDevitt, Conservation Manager, RSPB Northern Ireland, Belvoir Park Forest, Belfast BT8 7QT, email [anne-marie.mcdevitt@rspb.org.uk](mailto:anne-marie.mcdevitt@rspb.org.uk), Tel: 028 9049 1547

1st March 2010

## **Habitats and Birds Directives – Additional Information from RSPB for the Environment Committee**



a million voices for nature

This paper is to provide some additional information regarding two European Directives of particular relevance in the RSPB's response to the Wildlife and Natural Environment Bill (WNEB). It is subsidiary to the RSPB's main response submitted to the Committee following consultation. The majority of the paper supports our existing comments, but one aspect of the European Commission case against Ireland (case C-418/04) indicates that Northern Ireland may also require a direct transposition of Article 10 of the Birds Directive. This could be achieved through the WNEB.

### **The Birds Directive**

The original Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds had been modified several times, and so was recently codified. We refer in this paper to the new version, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

### **The Habitats Directive**

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora is commonly known as the Habitats Directive.

## Hunting and game issues

Article 7(1) of the Birds Directive places an onus on Member States to ensure that the hunting of species in Annex 2 does not jeopardise conservation efforts for those species in their distribution area.

Article 7(4), together with the overall requirement from Article 2 for Member States to take the requisite measures to maintain wild bird populations, encourages sustainable hunting and good practice:

"the practice of hunting...complies with the principles of wise use and ecologically balanced control of the species of birds...and...is compatible as regards the population of these species, in particular migratory species"

We believe this offers Directive support for:

- 1) full protection of curlew from shooting (WNEB clause 25 and schedules I and II);
- 2) licensing of game shoots (further to WNEB clause 31);
- 3) no change to the shooting seasons, as already proposed; and
- 4) the additional requirement for bag returns for the Department to monitor the sustainability of hunting (further to WNEB clause 31)

Article 9(1) of the Birds Directive offers very specific derogations from the protection of birds from legal and illegal activity (articles 5-8) under certain circumstances and "where there is no other satisfactory solution".

Article 9(3) requires Member States to report to the Commission on the derogations.

We believe Article 9 supports our call for a review of general licence procedures including:

- 1) a requirement for licence applicants to demonstrate that their circumstances meet the derogation requirements for a lethal licence, that there is no other satisfactory solution and that lethal control will be effective; and
- 2) a mechanism for the Department to be able to monitor the number and species of birds killed/taken under the licences.

Section C2 (Annex 1) of our full response list further recommended changes in line with Article 9.

This is also relevant to clause 17. We believe there is a need to ensure that damage 'as an incidental result of an otherwise lawful operation' does not go beyond those derogations under Article 9 e.g. public health and safety. Otherwise lawful operations could include, for example, hedgerow cutting by Roads Service for visibility reasons.

Requirement for proactive measures to avoid pollution or deterioration of habitats and species

Birds Directive Article 4(4) states that, inside protected areas, "Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds". Outside protected areas, "Member States shall also strive to avoid pollution or deterioration of habitats".

Habitats Directive Article 6(2) states "Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated".

European caselaw has further indicated that agri-environment measures are insufficient, as they are insufficiently targeted, voluntary and do not cover entire protected areas. The Poitevin Marsh judgement is referred to in section D (Annex 2) of our full response, and similar comments were made regarding agri-environment measures in Ireland (paragraph 185 case C-418/04).

Furthermore, in case C-418/04 the judge stated "Although the second sentence of Article 4(4) of the Birds Directive does not require that certain results be achieved, the Member States must nevertheless make a serious attempt at protecting those habitats which lie outside the SPAs" (paragraph 179 – own emphasis). (SPAs are Special Protection Areas designated under the Birds Directive).

It is further made clear that steps must be taken proactively, i.e. before deterioration has occurred: "Moreover, those provisions do not ensure protection of SPAs against the activities of individuals, as such protection requires that the individuals be prevented in advance from engaging in potentially harmful activities" (paragraph 208).

We believe this offers a clear need for temporary stop notices and protection of SPAs with no ASSI underpinning by:

- 1) applying Environment Order powers to Natura 2000 sites;
- 2) introducing a mechanism similar to nature conservation orders (NCOs) and special nature conservation orders (SNCOs) (e.g. Scotland); and
- 3) requiring SNCOs for all Natura 2000 sites with features that are not also features of a coincident ASSI.

We discuss this in detail in Annex 2 section D of our full response.

## **Monitoring and research**

Various articles in both the Birds and Habitats Directives call for adequate monitoring and research for species and habitats.

Birds Directive Article 2 requires Member States to "take the requisite measures to maintain the population of [Annex 1] species", which in turn supports Article 10 for Member States to "encourage research and any work required as a basis for the protection, management and use of the population of all [wild birds]".

Habitats Directive Article 11 says that Member States "shall undertake surveillance of the conservation status of...habitats and species..." while Article 18 provides for the encouragement of "the necessary research and scientific work" and "...transboundary co-operative research".

Case C-418/04 (the case against Ireland) makes it clear that that Article 10 needs specific transposition and refers to all species of birds referred to in Article 1 i.e. all wild birds (paragraphs 266-275).

This could apply equally in Northern Ireland, where a direct transposition does not exist either. This is an additional point to the RSPB's response to the WNEB consultation. These Articles clearly support the RSPB's calls for adequate monitoring and research put forward in our response, and through our other work with the Department.

#### Special conservation measures

Birds Directive Article 4(1) states that Annex I species "shall be the subject of special conservation measures concerning their habitat". This includes, but is not limited to, designation of SPAs.

We believe this offers support to our call for additional species to be added to Schedule A1, for nest protection outside the breeding season.

#### Habitat management in the wider countryside

Habitats Directive Article 2(2) states "Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species".

This is the overarching support for a system of measures in the wider countryside to protect important habitats and species, undertaken for example in Northern Ireland to a certain extent by the establishment and management of the ASSI network.

We believe this is support for ensuring that our ASSIs are adequately designated, monitoring, managed and protected, and therefore is support for our additional recommendations for tightening the Environment (NI) Order 2002 provisions to that end. These are listed in Annex 2 section C of our full response.

#### Education

Habitats Directive Article 22 places an obligation on Member States to 'promote education and general information on the need to protect species...and to conserve their habitats'

This supports our call for the inclusion of relevant text in the WNEB, as recommended in our response Annex 1 section C6.

Claire Ferry  
Senior Conservation Officer, RSPB Northern Ireland

The Royal Society for the Protection of Birds Comments re Invasive non-native species

#### Summary

The RSPB advocates the policy position put forward in Scotland that no species should be released unless they related to a number of exempted areas, activities or species. These exemptions would be necessary to allow people to carry out legitimate activities, and could be listed on a schedule or managed through a licensing system.

We believe that the Wildlife and Natural Environment Bill should be used to make these changes, as there is no other opportunity to do this in the short to medium term. While we welcome the Environment Council for the European Union call for a European Union Strategy on Invasive Alien Species<sup>[1]</sup>, in reality this is unlikely to be achieved quickly. Damage to biodiversity is occurring now, and a legislative provision to prevent releases is an important tool to avoid further damage.

The RSPB supports the work of Invasive Species Ireland and similar initiatives in Great Britain. We feel that additional support for their work, strategy and codes of practice could be given by the legislation.

## Background

There is a wide acceptance that current legislation across the UK and Ireland is not effective in preventing or prosecuting releases of invasive non-native species (INNS). This has been recognised in Government documents including:

- Fatham, M and Trumper, K. (2001) Review of non-native species legislation and guidance. Report for Defra.
- Defra (2003) Review of non-native species policy: Report of the working group.
- Defra, Scottish Government and Welsh Assembly (2008) The Invasive Non-Native Species Framework Strategy for Great Britain.
- Turner, S. (2008) The Control of Invasive Alien Species – a review of legislation and governance for Ireland and Northern Ireland. Commissioned by Invasive Species Ireland<sup>[2]</sup>.

This led to some minor changes in the Nature Conservation (Scotland) Act 2004 and the Natural Environment and Rural Communities Act 2006. There has since been a review of schedule 9 of the Wildlife and Countryside Act 1981 (WCA) by Defra, due to come into force in 2010. These are the only changes currently proposed in the Wildlife and Natural Environment Bill (WNEB).

The Scottish Government has recently proposed significant amendments to the Scottish system through their consultation on the Wildlife and Natural Environment (Scotland) Bill (WNE(S)B).

The Invasive Species Ireland-commissioned report made a number of recommendations for both Ireland and Northern Ireland. Many of these could be adopted as through this Bill. Likewise, the Framework Strategy set an objective to ensure that the legislative framework for addressing INNS issues is coherent, comprehensive, fit for purpose and 'proportionate' – this is our opportunity to get it right in Northern Ireland.

## International regulation

Article 8(h) of the Convention on Biological Diversity (CBD) requires contracting parties to prevent the introduction of, control or eradicate, those alien (i.e. non-native) species which threaten ecosystems, habitats or species.

Article 22 of the European Habitats Directive<sup>[3]</sup> obliges Member States to "ensure that the deliberate introduction into the wild of any species which is not native to their territory is regulated so as not to prejudice...[habitats and species]".

Article 11 of the European Birds Directive<sup>[4]</sup> provides a similar approach for birds, such that "... any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local flora and fauna".

## Key Problems

The existing legislation is considered largely ineffective in preventing further introductions and is difficult to enforce. For example, the WNE(S)B consultation identified that there have been only three cases submitted to the Scottish Procurator Fiscal Service since 1981 (even though there were many more recorded non-native escapes), only one was prosecuted but acquitted.

1. There is a difficulty in interpreting and enforcing the legislation, particularly due to lack of definitions (e.g. "the wild"). The Association of Chief Police Officers (amongst others) reported this problem in their response to the Defra consultation on the review of WCA schedule 9<sup>[5]</sup>.
2. There is unequal treatment of plants and animals in law, which prohibits introduction of all non-native animals but only named plants, and there is no cover for fungi or micro-organisms.
3. The schedules are lengthy, likely to become even more cumbersome under existing use, hard to update and inefficient.
4. There is no means to address the problems posed by further release of invasive non-native species which have already become established but may be released in another area (the definition of "ordinarily resident").
5. There is a problem of native species being introduced outside their natural range- the oft cited example is hedgehogs on Scottish islands damaging breeding bird populations.
6. There is an inability to deal with unintentional or accidental introductions covered by the defence at s.14(3) WCA and s.15(3) WO.
7. Fines for criminal offences in respect of invasive non-native species are very low in comparison to the potentially huge costs of damage, control and repair. Custodial sentences are now available to the courts but only in England and Wales – similar changes are being put forward in Scotland.
8. There are insufficient powers for statutory bodies to control and enforce INNS, for example giving powers of access to control invasive species or securing costs from landowners to pay for eradication.

## Solutions

The RSPB supports the CBD guiding principles, that:

- prevention is best and most cost effective;
- early detection and rapid action where species are released is vital; and
- that it is necessary to adopt more mitigation measures (contain, control, eradicate) where a species is more established. This can be done on a risk basis, targeting those species most threatening to native habitats and species.

The costs of invasive species are quoted as costing the GB economy ~£2 billion per annum and provide an economic justification in addition to the CBD recommended precautionary approach.



The RSPB therefore supports the Invasive Species Ireland project, the introduction of codes of practice etc, but we remain convinced that prevention is the most effective and least costly option and seek legislative support for this.

The proposed solutions below reflect the approach of the Scottish Government in the WNE(S)B and the RSPB's response to that consultation.

## Definitions

The term "animal" should include mammals, birds, fish, reptiles, amphibians, invertebrates and zooplankton (essentially, everything from microorganisms to mammals) and includes any part, gametes or propagule of such species that might survive and subsequently reproduce.

The terms "plant" and "fungi" include any part, gametes or propagule of such species that might survive and subsequently reproduce. Plant includes lower and vascular plants, marine plants and macro algae.

"Release" should be taken to mean any human action the direct consequence of which is to cause the movement or dispersal of any animal or plant into the wild.

The need for a definition of "wild", at least in regard to animals, could be avoided by simply prohibiting the release of any animal (non-native or otherwise, deliberate or accidental) from captivity or the control of people, unless under listed and exceptional circumstances. Sessile marine invertebrates may be an exception - for example, it would be unreasonable to expect a marina owner to entirely prevent the escape of marine invertebrate propagules from the hulls of clients' boats.

For plants, a definition of "wild" should be taken to mean any area under no active management or extensive management that retains its semi-natural character and is not subject to commercial cropping. Specified exceptions are listed below.

Definitions in the CBD can be used to derive additional definitions, although we recommend that the term 'non-native' replaces the CBD term 'alien', and that non-native species should be those that have arrived since the end of the last glaciation.

## Prevention of release

We support the proposal (as put forward in Scotland) that no species should be released unless they related to a number of exempted areas, activities or species. These exemptions would be necessary to allow people to carry out legitimate activities, and could be listed on a schedule or managed through a licensing system.

This reform would:

- provide legislative backing to the principle that no non-native species should be released into the wild;
- reduce bureaucracy by removing the requirement for numerous lengthy species lists and the need for regular consultation on schedule updates;
- simplify the legislation;
- remove confusion about release of native species outside their natural range; and therefore

- be more preventative.

For example:

If any person intentionally or recklessly releases, causes or permits to be released or allows to escape from captivity or the control of people any animal, except in accordance with the exemptions listed in schedule X, he shall be guilty of an offence.

The schedule (X) would then list specific exemptions such as:

- temporary release where the expectation is to re-capture the species (for example during activities such as ferreting and falconry where all reasonable attempts are made to recover the creatures and good practice is adhered to, or for pets such as dogs and cats);
- farming of livestock;
- release of invertebrates under licence for pest control purposes;
- release of former native species under licence for reintroduction and conservation purposes – including species that were native and became extinct (e.g. red kite) and species of conservation concern (e.g. chough, corncrake);
- release of named game species (e.g. pheasant, red legged partridge) under a general licence;
- release of honey bees used for agricultural pollination and commercial or local honey production (this would need definitions of relevant species and sourcing to avoid spread of bee diseases);
- release of live caught rodents in temporary captivity (humane trapping of pest species);
- release of native animals that have been rehabilitated following injury/illness (but within the range of usual occurrence); and
- release of animals at or near the point of capture for scientific or educational purposes, ringing or marking animals for research.

This would also remove the term “ordinarily resident”, which would then remove any requirement for schedule 9 as currently constructed, which has to list the array of species that are established (ordinarily resident) but only present because of human introduction.

A similar process would work for plants to bring parity and consistency and to provide a more precautionary approach. For example,

If any person intentionally or recklessly plants, causes or permits to be released or allows to escape into the wild any plant or fungi, except in accordance with the exemptions listed in schedule Y, he shall be guilty of an offence.

The schedule would then contain exemptions, as many plants are grown in the wider environment for commercial or productive gain, (equivalent to “under the control of man”). These might include:

- gardening within privately, publically, and communally owned gardens with clear boundaries;
- commercial forestry planting (exemptions listed by Forestry Service for commercial and amenity purposes);

- commercial agricultural crop planting (exemptions for commercial and productive purposes);
- the planting of non-invasive non-native species to be used as shelterbelts (subject to licences);
- the planting of non-invasive non-native species within designed or historic landscapes (subject to licences);
- planting of non-invasive species in urban amenity roadside locations; and
- specimen trees and shrubs under commercial forestry.

We propose that the title and function of schedule 9 be changed such in contain a list of the most dangerous newly arrived or expected invasive non-natives, to which a duty to investigate and implement control measures applies to named agencies.

#### Powers and duties

Where escapes do occur, a set of powers should be introduced to enable specified bodies to take action to control, contain or eradicate INNS i.e:

- a power to access land, waterways and marine sites to investigate and survey for non-native species and to ascertain whether a crime has been committed (similar powers exist for investigating wildlife crime)
- a power to require individuals to control and remove specified non-native species contained on their land, site or property; and
- a power to take action to control, contain or eradicate non-native species, including access to land, waterway or marine site where necessary.

The remit of other officers on the ground (such as plant, fish and shellfish health inspectors) could also be extended so that they are able to deal with INNS.

The power to require individuals or landowners to remove INNS (where they were not responsible for their release) should only be used where there is a strategic plan for control, containment and / or eradication in place and where the population is threatening biodiversity native to the UK or elsewhere in Europe, or the wider countryside. This would avoid the danger of valuable resources being diverted away from the delivery of conservation objectives by having to 'clear up' non-native plant invasions on nature reserves.

There should be a duty of care by legal underpinning for Codes of Practice. The duties could reference the invasive species strategy, but the strategy must be fully targeted. This would be similar to the new biodiversity duty, where public bodies must have regard to the biodiversity strategy.

The responsibility for INNS management or eradication costs should lie with those responsible for the illegal introduction of the non-native species and we would support the provisions of a legal basis for imposing fines on the 'polluter pays' principle.

Claire Ferry  
Senior Conservation Officer  
RSPB Northern Ireland

[1] [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/envir/108747.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/envir/108747.pdf)

[2] [www.invasivespeciesireland.com/downloads/general\\_information.asp](http://www.invasivespeciesireland.com/downloads/general_information.asp)

[3] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

[4] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version)

[5] Summary of Responses to the Consultation on (1) The Review of Schedule 9 to the Wildlife and Countryside Act 1981 and (2) The Ban on Sale of Certain Non-native Species, Defra May 2009

## **British Association for Shooting and Conservation e mail re Wildlife Bill briefing**

From: McCann, Sean [mailto:Sean.McCann@niassembly.gov.uk]  
Sent: 04 March 2010 15:13  
To: Roger Pollen (Northern Ireland)  
Subject: RE: BASC's response to the Wildlife and Natural Environment Bill

Sean,

I cannot make the morning of the 11th, due to a prior appointment that cannot be moved.

Can you please advise what process we need to adopt to ensure we get an opportunity to represent our members' views to Committee on these vitally important issues.

I would reiterate that we have been closely involved in the entire process, both in consulting our members and the wider sector, as well as assisting with the evaluation of responses to the public consultation. We have also met with each of the Environment Ministers who have been involved with the development of this legislation but our submissions have been made on the expectation that we will get an opportunity to expand upon them and discuss the issues with the Committee members.

I appreciate the pressures on the timetables, but the converse is also applicable and I am most surprised that we appear to be being offered no choice on date or time. I would urge that a further opportunity be found at which we might attend.

Regards,  
Roger

## **British Association for Shooting and Conservation email**

From: Roger Pollen (Northern Ireland) [mailto:Roger.Pollen@basc.org.uk]  
Sent: 24 March 2010 16:04  
To: McGarel, Alex  
Cc: =danny@castleuptongallery.com - Redirect  
Subject: Golden plover

Dear Mrs McGarel

I have just been speaking with Danny Kinahan and he asked me to contact you as he is mid-way between meetings.

I understand that the Environment Committee is giving consideration to recommending that full protection should be extended to golden plover, ie that they should be removed from the quarry schedules. I also understand that this is being considered simply at the behest of one lobby group and that the silence of other stakeholders, such as BASC, is being interpreted as acquiescence.

There is no data to support such a proposition, as the available surveys show that numbers have not declined since the 1994 surveys, and the proposal has not been made publicly nor even in private discussions between BASC and RSPB. Accordingly, any such proposal would be sustained by neither science nor proper consultation. It is for that reason that BASC has been silent on the issue - why would we comment on a proposal that has not been made by the Department or the Minister?

We believe that the proposals in the Bill for the introduction of a statutory quinquennial review of the Schedules give perfect opportunity for a measured consideration of evidence, in the open, and subject to consultation. This is the proper way to conduct such issues. If evidence were to be introduced in the course of such a review that a species was under significant threat, measures could be introduced to afford it appropriate protection. No such evidence has been laid in this case and the argument cannot be properly sustained.

I would be grateful if you could confirm to me whether or not my understanding of the situation is correct and, if so, what measures you will be taking to ensure balance and public confidence in the process. I will be at Stormont in the morning to see members of the Committee, so I would be grateful if you could advise me beforehand.

Yours sincerely,

Roger Pollen  
Director, BASC NI

## **E mail from the British Association for Shooting and Conservation**

From: Castle Upton [mailto:info@castleuptongallery.com]  
Sent: 15 March 2010 10:04  
To: McGarel, Alex  
Subject: Roger Pollen - Wildlife Bill

Dear Alex,

Roger Pollen is concerned that he can't get a chance to talk to the Environment Committee and give evidence for the Wildlife Bill. I'm wondering if Thursday is possible for him to talk to us? If so I need to know asap please, as he has to rearrange another meeting in England for the same day.

Many thanks,  
Danny

League Against Cruel Sports  
Further Information on Snares

#### In this briefing

- Why the League supports a ban on the sale, manufacture and use of snares
- New evidence showing the widespread use of snares in Northern Ireland
- Recommendations to the Environment Committee

#### Why a ban?

A snare is a wire noose fixed to the ground or to a heavy object and used to catch foxes and rabbits on farms and shooting estates. Self-locking snares that tighten with a one-way ratchet around the neck as the animal pulls are illegal in the UK but are still regularly found. So-called free-running snares are supposed to slacken around the captured animal's neck if it stops struggling. However, these snares can become twisted, kinked, rusty or otherwise fouled to the extent that they will not loosen.

Snares frequently capture non-target species including domestic pets, farmed animals and protected wild animals such as otters or badgers.

#### Indiscriminate traps

In December 2007, the Scottish SPCA released a report<sup>1</sup> on snaring compiled from the evidence of Scottish SPCA inspectors, wildlife crime police officers and vets. It showed that of 269 animals reported as having been caught in snares - ranging from badgers and deer to pet cats and dogs - only 23 per cent were "pests" such as foxes and rabbits. Companion animals accounted for 17 per cent of the total, and European protected species (EPS) a further 12 per cent.

The proportion of non-target species caught and held in snares set for foxes has been calculated as ranging from 21-69%: the report of the UK government's Independent Working Group on Snaring estimated that it might be difficult, in

some environments, to reduce the overall proportion of non-target animals caught in fox snares to below about 40%.

Because there are no adequate data it is not currently possible to assess how frequently severe welfare problems occur. However, there is no question that snares cause immense suffering to animals in Northern Ireland every year.

Adverse welfare impacts likely to affect snared animals include:

- The stress of restraint, which could include frustration, anxiety and rage;
- Fear of predation or capture whilst held by the snare;
- Friction, penetration and self-inflicted skin injuries whilst struggling against or fighting the tether;
- Pain associated with dislocations and amputations especially with un-stopped snares;
- Ischaemic pain (due to lack of blood supply) associated with ligation of body parts;
- Compression or injuries in muscles, nerves and joints associated with violent movements against restraint;
- Thirst, hunger and exposure when restrained for long periods;
- Inflammatory pain and pain from contusions associated with injuries during restraint, and in some cases persisting following escape;
- Pain and malaise associated with infections arising from injuries, in escapees;
- Neuropathic pain in those escapees that experience nerve injuries;
- Reduced ability of injured escapees to forage, move and hence survive;
- Stress of capture and handling before dispatch by the snare operator;

<sup>1</sup> *Snaring in Scotland: A Scottish SPCA Survey of Suffering*, Scottish Society for the Prevention of Cruelty to Animals, Edinburgh, December 2007

- Pain and injury associated with killing by the snare operator if unconsciousness is not immediate.<sup>2</sup>

Both illegal self-locking snares and legal free-running snares can cause abdominal, chest, neck, leg and head injuries to animals. Some animals get their legs caught in snares, and end up with the wire cutting through to the bone: such animals may attempt to escape by gnawing off their own limbs. Others are caught around the body. Badgers, foxes and otters have been found with snares that have almost cut them in half, the snares around their bodies having tightened to around five centimeters in diameter.

The Scottish SPCA report also revealed that, although snares are meant to be restraining devices, more than half the animals reported were either found dead in the snare or had to be put down.

Despite indications that most members of the public would like to see them banned<sup>3</sup>, the UK is one of only five European member states that still permits the use of snares.

#### New evidence to support a ban

It has been suggested that there is no need to legislate against snaring in Northern Ireland as the problem is not widespread enough to merit such action. The League believes this not to be the case and in order to illustrate this in February 2010 sent investigators to shooting estates in Northern Ireland to gain evidence to show the extent of the problem.

We visited a number of estates in the County Down, County Tyrone and County Antrim regions. Among our findings was the following:

- A number of shooting estates are in fact using snares
- We found snares which were set on or near water courses and on fence lines which is in breach of industry guidelines and codes of best practice
- Snares set without stops to prevent the noose closing beyond a certain circumference again in breach of industry guidelines
- One estate had 42 snares set along one fence line. To put this into perspective, in the past ten years of similar

investigations throughout the whole of the UK only a handful of estates have been found to exceed this number of snares making it one of our most significant finds for some time.

We believe these findings are just the tip of the iceberg and indicate that snaring is a problem in Northern Ireland. Our evidence shows that industry guidelines and codes of best practice are being ignored which impacts heavily on animal welfare. If the industry cannot be trusted to regulate itself then we believe this only adds to our argument that further regulation will be a waste of time as not only will it go no way towards reducing animal suffering but in many cases will most likely be ignored.

#### Recommendations

The League is urging the committee to ban the sale, manufacture and use of snares in the Wildlife and Natural Environment Bill

Recommends that the Committee fully consider the use of snares in the context of the Bern Convention: Section 39(1) of the Conservation (Natural Habitats, &c) Regulations 1994 (amended 2007)

*'It is an offence to...deliberately or recklessly to capture, injure or kill a wild animal of a European protected species.'*

DoE to invest in research to fully assess (in the context of DEFRA findings) the range of animals actually caught in snares, and the extent of injuries caused by the device in Northern Ireland.

#### Contact our team

Please contact the League if you feel we can be of assistance to you. Footage and still images from our investigations are available and we are happy to provide these on request.

Louise Robertson  
Deputy Head of Campaigns & Comms.  
louiserobertson@league.org.uk  
Tel 07980 232 267

Mary Friel  
Northern Ireland Campaigner  
maryfriel@league.org.uk  
Tel 07855 547 006

<sup>2</sup> Kirkwood et al., *Report of the Independent Working Group on Snaring*, DEFRA 2005

<sup>3</sup> League Against Cruel Sports/Communicate Research survey, February 2007. Out of 1098 Scottish adults polled, 75 per cent thought snares should be banned in Scotland.

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Registered office: New Spelling House, Holkney Hill, Godalming, Surrey, GU7 1QZ.

## Further Information from Talnotry Avian Care Trust re Wildlife Bill

Dear Chairperson and Committee members,

Re Wildlife Bill

We remain very concerned that NIEA's proposals for licensing of TACT may be unworkable and would request that the Committee ask NIEA to clarify their proposals

Our areas of concern are:

- 1) What would the practical and cost consequences of requiring TACT to obtain a zoo licence – in terms of application and more importantly implementation costs?
- 2) How can it be that no licence is required for the care of sick and injured animals, when it is not immediately clear whether an injured wild bird or animal can be rehabilitated and released or not [ see John Hill letter for explanation]. There is NO specific license which covers the Care & Rehabilitation of Native Wildlife towards eventual release.
- 3) How can a regime of part zoo licence and part rehabilitation section be applied to a single site?
- 4) How will NIEA assess whether an injured animal or bird is suitable for educational visits or not? Article 10 of Wildlife and countryside act 1981 specifically permits disabled wild birds to be licensed to be kept where they cannot be released to the wild, provided they have been obtained legitimately, and are not used for profit. Article 10 specifically allows such disabled birds to be used for educational purposes aimed at the conservation of the species.
- 5) TACT's education work has huge conservation benefits, with large numbers of mainly young people benefitting from first hand experience of a small selection of wildlife. We would need to be clear that NIEA's proposals do not prevent educational visits offsite occurring, and we would request that educational visits onsite not be prevented, as they are at present.

I would ask that you raise these issues with NIEA, and make sure that you are satisfied as far as possible that these issues have been thought through by them. Our strong preference would be for the amendment that we have proposed, which will avoid the need for a complex set of rules, with cost implications that TACT may not be able to meet.

I very much appreciate your attention and wish you well in your deliberations

Yours sincerely

Peter Baillie  
Chairman TACT

## **E mail with further info from Talnotry Avian Care Trust**

From: Baillie Peter [peter.baillie@viridianpower.com]  
Sent: 05 March 2010 13:02  
To: McCann, Sean  
Subject: RE: WILDLIFE AND NATURAL ENVIRONMENT BILL: consultation response

Sean,

Please express out thanks to the environment committee for inviting us and giving T.A.C.T a good hearing.

Their feedback was very positive and encouraging. We would like to extend an invitation to members to visit T.A.C.T centre at Crumlin at any time.



We would like to clarify one point from the session. We asked for a single general licence for an approved charitable centre such as T.A.C.T rather than needing to obtain a separate licence for every wild bird or animal. There may have been some confusion when the Chairperson asked whether we were requesting a single licence or a licence for each species.

T.A.C.T requests a single general licence for the centre to cover all native species of wild birds and animals brought to the centre, whether

We keep records and update NIEA twice a year on the number of birds and animals in our care.

We think that a single general licence is the best approach, but with a responsibility to keep records and agree the form and frequency with the NI environment agency.

Best regards

Peter Baillie

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### **Extract from Meeting on 4 March following Talnotry Avian Care Trust Oral Evidence Session**

Mr Beggs: Although TACT has an important role in caring for animals that have been injured, it also carries out a very important function by providing education about wildlife to youth groups and schools. We have learned from TACT that, in its current format, the legislation will result in its having to apply for 300 licences, which, with the cost of bureaucracy, will lead to its closure. That should not happen.

It is important that there is a mechanism in the Bill to help such a group, which is surviving on individual charitable donations and is carrying out very worthwhile work, particularly in providing education about wildlife. I suspect that there will not be any other group that will easily step into that role. There is no other group that will help foxes that have been injured and have not been set free from snares, for example.

When young people see wild creatures up close for the first time, they are very interested. I would be very concerned if legislation resulted in the closure of such a worthwhile organisation. How can you address TACT's concerns about the Bill so that the closure of TACT is not one of its outcomes?

Mr Michael Meharg (Department of the Environment): I will have a go at answering that, but anything that I say may make me seem like the Big Bad Wolf.

The Chairperson: That is an unfortunate turn of phrase to use when talking about the Wildlife and Natural Bill. [Laughter.]

Mr Meharg: I also live very near to Mrs Nevinnes's sanctuary in Crumlin and have seen the animals that she has released over the years. In fact, she has released animals on our farm, so we have worked closely with her. The work that she does is very important in Crumlin; she is a well-respected citizen in the area. We have worked closely with her on licensing over the years. In her presentation, she missed out the important point that NIEA has provided 75% of the cost of her education programme over the past three years. That has been part of our help with biodiversity.

Throughout Europe and the UK, the keeping of wild animals has to be very closely regulated, because of the way in which people may wish to do that. Due to that, there are a lot of different licences. There are also licences for collections of animals from which people make some sort of commercial gain. Those licences come under the provisions of the European zoos directive. The inspection that was carried out on Mrs Nevinnes's facility identified that, under the zoos directive, it qualifies as a zoo due to the number of species and their conservation status. That, through the Secretary of State's zoo panel and all that goes with it, has certain implications. We are working with Mrs Nevinnes and the owner of another County Antrim collection to see how we can get through the relevant requirements.

Some of the 300-plus licences to which Mrs Nevinnes refers may be required under not just the Wildlife Order but the zoos directive. The Department for Environment, Food and Rural Affairs (DEFRA) in the UK looks after the Convention on International Trade in Endangered Species (CITES). Some endangered species have a high conservation status and require licensing under the Control of Trade in Endangered Species (COTES) legislation, which enforces the provisions of CITES. Again, we are working closely with Mrs Nevinnes on that.

The situation is ongoing. We are mindful of what we are being tasked to do, and we must ensure that the licensing systems and all the correct processes are in place. There are three, if not four, different pieces of legislation that require different sorts of licensing for different reasons and purposes.

On top of that, members of the public contact us from time to time with concerns that animals are being kept for prolonged periods. A lot of good work is being done to enable animals to be released into the wild again, but animals that are kept for prolonged periods could be prolonging their injuries. Mention was made of keeping gannets, and the nearest gannetry is on Aisla Craig, an island off Scotland. Gannets fly freely throughout Europe. Some that are being kept cannot be released, and some have had wings or legs amputated as a result of being in captivity. If societies or organisations are asking questions about that, it is incumbent on us to follow through on the welfare aspects.

The zoos directive states that animals that are kept in captivity must be kept in suitable facilities so that that they are not a danger to themselves and so that their welfare is not compromised. We are working closely with Mrs Nevinnes and the Committee to ensure that the blend is right and that the positive work that she does is kept to the fore. Mrs Nevinnes mentioned the 25% of birds that she keeps that unfortunately become distressed and may die, and it is important that we keep the distress and welfare of those animals to a minimum.

We are very much involved with the centre, which I hope reassures the Committee on some of the licensing issues. We will consider the questions that have been asked. If there is an issue with the licensing of transient animals that are being cured, rehabilitated and released back into the wild, we want to address it. We want to ensure that it is as easy as possible for that rehabilitation to occur and that there is no cost attached to it.

We want to be careful that animals that are being kept long term, some of which have permanent injuries or amputations, are not being used for education purposes because that might send out the wrong message to young people. Animals that are intact and show what the species should be are the ones that should be used for those purposes. That is why we require some ongoing discourse with Mrs Nevinnes.

We will consider the recommendation and the questions that have been asked. We do not want to issue 300 licences because that creates a cost for NIEA as well as for the Mrs Nevinneses of this world, so we will take that on board.

Mr Beggs: Neither the Department nor Mrs Nevinnes would be interested in the paperwork and cost involved in dealing with licences for transient animals. Have you any idea of the numbers in that particular group? If the number is not 300, what is it? I suggest that consideration be given to devising a better method to deal with transient animals. It might be that licensing the body and having a register that must be kept up to date is another method of capturing the same information. Obviously, that register could be inspected at any time. There ought to be another means of dealing with transient animals that avoids costly individual licences.

Mr Meharg: We will look into that. I think that the number would be quite small. Under our legislation, all wild birds are protected, so all wild birds fall under the licensing provisions, whether it is one sparrow or a little clutch of sparrows like the ones in the pictures that Mrs Nevinnes showed to the Committee. At the moment, they all fall under that provision. We will look at that matter because we want to ensure that there is better regulation and that we are not wasting our time. We must ensure that we get the lists and that we know what is on them, and, as you say, that list would be open to inspection if required.

Mr Kinahan: I congratulate you on working closely with TACT. Some flexibility needs to be built into the system, as Roy has just said. Equally, some dynamism is needed so that things can happen quickly. I talked to both Mrs Nevinnes and Mr Baillie outside, and they told me that, because of the zoos directive, they have had to take signs down and remove some things from their website. They cannot follow the rules of the directive. As a result, people do not drop in. That is why I made the point about dynamism. Someone needs to look quickly at what stopped them from putting their signs up.

Mr Meharg: Legal advice was sought in respect of what constituted a business or the way in which the operation is working. Consideration was given to whether people could become friends of TACT as opposed to being visitors to the site, which would mean that we could have some sort of buy-in to the zoos legislation. Unfortunately, however, recent legal advice suggests that that could not happen. We do not want a second opinion, but we want to see whether the strict ruling from our solicitors' branch could be interpreted in a way that would allow us some flexibility.

Mr Ford: There is considerable sympathy around the table for TACT and the work that it is doing. You raised the wider issues around the long-term keeping of animals, and we should work on the fact that officials are looking at what can be done in that regard.

Mr Bradley effectively said that the Department thinks that the biodiversity duty is right, even though a number of people who have given evidence to the Committee would like to see it strengthened. It seems to me that, with some aspects of the legislation, the Department is in a position to respond positively to the evidence that we have received, even though the draftsmen no doubt thought that they had drafted the Bill perfectly in the first place. You are still saying that you got other aspects right, even though other people are saying that they are wrong. It would be useful, therefore, if we could identify at an early stage any other areas, besides the

specific licensing issue raised by TACT, where there is work that you can usefully do. We could do that before we decide whether to pressurise you on other aspects of the Bill.

Mr K Bradley: We put the biodiversity duty in the Bill because we thought that it was the better of the two options in the UK. We thought that it was fit for purpose, and all Departments signed up to that. From the evidence that you have received, it is clear that a number of bodies want to go a few steps further, and it is a question of whether we can accommodate those steps. We are open to that, and we will take that back to the Minister for his agreement. However, there are about three or four permutations from different bodies. Does the Committee have a preferred option?

The Chairperson: The Committee has been hearing evidence. We have not formed a view, but there seems to be some sympathy for taking a stronger approach.

## **Talnotry Avian Care Trust e mail re Wildlife Bill**

From: Peter Baillie [peter.baillie4@ntlworld.com]

Sent: 19 March 2010 19:39

To: McCann, Sean; Kelly, Dolores

Cc: Ford, David; office@ianmccrea.com; info@alastairross.org; =Kelly, Dolores - Redirect; Weir, Peter; Boylan, Cathal; McKay, Daithi - (Relay); =john.dallat@btconnect.com - Redirect; Kinahan, Danny; =roy.beggs@btopenworld.com - Redirect; Bell, Jonathan;

=danny@castleuptongallery.com - RedirectSubject: RE: Wildlife Bill - Urgent correspondence

Attachments: TACTletter190310030.pdf

Dear Chairperson and Committee members,

Re Wildlife Bill

T.A.C.T is very appreciative of the hearing you gave us. Following the receipt of Hansard of the NIEA testimony following our presentation we were very concerned by some of the comments made, and are very concerned that the proposals that NIEA have put forward in relation to licensing and a way forward are unworkable for T.A.C.T and would be likely to lead to closure of T.A.C.T. We met with Danny Kinahan and he has advised us to circulate a short letter to you outlining our grave concerns and request your support to find a workable solution for our unique injured wildlife care centre.

T.A.C.T 's key request in the letter is stated below.

T.A.C.T therefore requests the Committee to include a clarification in the NI wildlife bill that where the primary licence for an organisation is issued for the purposes of the care of sick and injured animals and birds, and where NIEA are satisfied that the organisation is not seeking to make a profit out of displaying those animals and birds, that such a licence would be a distinct classification, that would override the need for any classification as a zoo.

T.A.C.T works very closely with John Hill, MVB, MRCVS, a leading Northern Ireland veterinary surgeon, whose practice is based in Crumlin. Following discussions with NIEA last year, John carries out an annual inspection all animals and birds that are resident and this is provided to NIEA as a means of assessing the well being of resident birds and animals that are not able to be released back to the wild at that point. This was agreed so that wildlife welfare can be assessed by an expert, to meet NIEA's concerns.

We would urge you to consider supporting our request. In our view NIEA's proposal to require a zoo licence for animals and birds that cannot be rehabilitated, whilst also saying that no licence is needed for those that can be rehabilitated, is unworkable. Injured creatures cannot be readily classified when they first come to T.A.C.T, and T.A.C.T itself is a single walled garden facility. We are non profit making and exist for the purposes of rehabilitating wildlife where possible, and caring where not possible. We have very limited funding and will not be able to carry an increased burden that would arise under the zoo licensing provisions.

Yours sincerely

Peter Baillie  
Chairman of Trustees (T.A.C.T)

**Talnotry Avian Care Trust Information**



2 CRUMLIN ROAD, CRUMLIN, CO. ANTRIM, NORTHERN IRELAND, BT29 4AD.  
TELEPHONE (028) 9442 2900

T.A.C.T

Chairperson

Environment committee

Stormont Assembly

15 March 2010

Dear Madam Chairman,

**NI Wildlife and Environment Bill – T.A.C.T submission**

Following receipt of the Hansard transcript of the Environment Committee ("the Committee") proceedings on 4 March 2010, T.A.C.T. was very concerned by some of the issues raised in the NIEA testimony that followed T.A.C.T.'s presentation. We appreciate that Mr Mike Meharg of NIEA has been to T.A.C.T. to see round the facilities and animals, and we do not intend the following comments to be critical of him. We appreciate his willingness to engage in dialogue with us, and we are keen to find an agreed way forward if possible.

However, we feel that there were some points made by Mr Meharg to which we need to respond. We do not agree with some of the views he expressed in relation to the work of T.A.C.T., there are some factual inaccuracies and there are also some points that were made that are alarming to T.A.C.T., on which we would request the Committee to seek clarification.

On page 39, Mr Meharg referred to COTES and CITES legislation that he said NIEA were working closely with Mrs Nevines on. Mrs Nevines has not had any discussions with NIEA on these issues to date, though would be happy to discuss any concerns with him at some stage.

On page 40 Mr Meharg appears to have said in relation to Gannets that 'some have had wings or legs amputated as a result of being in captivity'. (emphasis mine). He also misquotes Mrs Nevines on page 40 that '25% of birds that she keeps that unfortunately become distressed and may die'. (emphasis mine).

It is important to understand the procedures T.A.C.T follows when an injured animal or bird is brought to the centre by a member of the public. T.A.C.T works very closely with John Hill, a senior local vet, who is a member of the T.A.C.T committee. All animals and birds are brought to T.A.C.T by members of the public who find injured or distressed wild life. T.A.C.T has an arrangement with Glenburn vets practice where they will assess the animal's injury free of charge, and at a later date carry out any necessary procedures to save the animal or bird's life. The procedure is as follows:

On the day it arrives the injured bird or animal is taken to Glenburn Vets and it may be given antibiotics, stress relief injections and/or painkillers. No operations involving anaesthetics are carried out, as experience has shown that the injured bird or animal is too traumatised to withstand an immediate operation. T.A.C.T therefore keeps the injured creatures and feeds them for 3-5 days before any necessary operation or procedure is carried out by the Vet. The majority of the 25% of birds that become distressed and die occurs generally in the first 48 hours at T.A.C.T. We have heard this described by wildlife experts as the '48 hour syndrome'. This distress comes from the trauma of the injury and transportation to T.A.C.T, human contact, and limitations caused by the injuries.

T.A.C.T's objective at all times is to save life and to rehabilitate where possible. Mr Meharg's implication that death from distress occurs as a result of being kept in captivity over a long period is in our view not a fair reflection of what Mrs Nevines said, nor a fair description of reality. T.A.C.T does not keep animals that are capable of being released back into the wild, but only those that are not able to survive in the wild on their own. Where necessary T.A.C.T takes the Vet's advice before releasing any animal or bird back into the wild.

Mr Meharg also refers to the nearest Gannetry as being on Ailsa Craig. The gannets were brought injured to T.A.C.T in Northern Ireland by members of the public. Is Mr Meharg suggesting that we should put these birds down because there is not a Gannetry nearby? That would appear to be the conclusion of his point. If a gannet makes a sufficient recovery it will be released to fly away as soon as the Vet has deemed this feasible. If it has a long term injury such that it could not survive it is looked after by T.A.C.T.

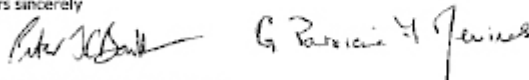
On page 41 Mr Meharg raises a key issue in the debate around the use of injured animals in education. He reflects the views of those who would view the use of an animal or bird that has been injured in an education setting as morally wrong, with the idea that a deformed or injured bird or animal is a distortion of wildlife. T.A.C.T would fundamentally disagree with such a view. We have found through our extensive experience that we are able to use the animal or bird's injury to explain the causes of the creature's injury to young and old, and through education to explain how we as people could make things better for these creatures. We also find that the few animals and birds we use (typically a maximum of 5 on any visit), become accustomed to human beings and also cannot escape or fly away. Are NIEA suggesting that we should use healthy animals and birds that ought to be rehabilitated to the wild as captives for educational purposes rather than release them? This is a key issue and we would ask the Committee to support T.A.C.T's view that selected injured animals are the appropriate ones to use for educational visits, as to use animals that could be rehabilitated, would be to deny them the chance to be wild again.

On page 42 the most serious issues are raised. NIEA is investigating whether T.A.C.T should be required to obtain a zoo licence and be classified as a zoo. The problem of this approach for T.A.C.T is that the zoo regulations could require T.A.C.T to be brought up to the standards of modern zoos, with public facilities such as disabled toilets and wheelchair access to be provided. Cleaning regulations would be applied and, instead of natural habitats, T.A.C.T would be required to provide zoo like enclosures with concrete floors. T.A.C.T is a voluntary not-for-profit charity that exists to care for sick and injured birds and animals brought to it by the public. T.A.C.T does not have the funding to implement the extensive requirements of a zoo, and T.A.C.T is not seeking and does not profit from showing animals and birds to people. The education arm is a way of teaching people to care about wildlife as well as contributing towards supporting 6 staff at the Centre. T.A.C.T is prepared to close its doors to the public rather than be treated as a zoo. Animals are not bought and sold. They are cared for and released wherever practicable, and those that cannot be released are assessed by a vet annually as to whether their health and quality of life is sufficient for them to remain at the Centre.

*T.A.C.T therefore requests the Committee to include a clarification in the NI wildlife bill that where the primary licence for an organisation is issued for the purposes of the care of sick and injured animals and birds, and where NIEA are satisfied that the organisation is not seeking to make a profit out of displaying those animals and birds, that such a licence would be a distinct classification, that would override the need for any classification as a zoo.*

We would appreciate it if the Committee could give these matters their urgent attention, and in particular address the issues raised with NIEA. We are extremely concerned that NIEA's well intentioned actions could have the result of closing down a unique Wildlife Care Centre for injured birds and animals, and we ask for your assistance.

Yours sincerely



Peter Baillie, Chairman of Trustees

Mrs Patricia Nevines, T.A.C.T Administrator





2 CRUMLIN ROAD, CRUMLIN, CO. ANTRIM, NORTHERN IRELAND, BT29 4AD.  
TELEPHONE (028) 9442 2900

Some comments and quotes from Teachers and Students Taking part in a Visit from the TACT Education Programme.

**Conner House Prep School, Bangor:**

**Children:** What did you enjoy most and why?

*'We all enjoyed seeing and stroking all the animals and hearing their stories. Our Favourites were the barn Owl, P.K. and the tame fox...'*

**Teacher, Mrs Heather Lyle:** Do you think it is important for young people to see the animals from TACT and why?

*'Yes, very much. This experience is so tactile, it gives the children a great opportunity to touch and feel the animals, also they learn a lot of information...'*

**Crumlin Primary School, Crumlin:**

**Children:** What is your favourite animal in Northern Ireland?

*'It would be a barn owl cause they are very soft, nice colours and they are in danger...'* Imogen Pearce..

**Teacher, Mrs Vicky Wright:** Do you feel the views have changed about Wildlife & Conservation as a result of the visit?

*'Yes, I think the pupils have more respect for wildlife, having observed different species close up...it is a valuable part of my Science Teaching...'*

*'It is important to see the animals because it is easier to learn about them instead of looking and learning from a book...'* Alana..

**Milburn Primary School, Coleraine:**

**Children:** Do you think it is important to see the animals from TACT?

*'I think its important for us to see them and learn because we would learn to care when we grow up and seeing them face to face is better and more real than television...'* Rebecca Moore..

Do you think caring for wildlife is important and why?

*'Yes, so our animals can exist and not become extinct'.. Casey O'Hara*

INLAND REVENUE CHARITY REFERENCE NO: XR15694

## Departmental Letter re Clause 28 - Definition of Occupier

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Mrs Alex McGarel Clerk to the Environment Committee Northern Ireland Assembly Parliament Buildings Stormont Belfast BT4 3XX	Telephone: 028 90 5 40855 Facsimile: 028 90 5 41169 Email: <a href="mailto:una.downey@doeni.gov.uk">una.downey@doeni.gov.uk</a> Your reference: Our reference: CQ/264/10
--	--

Date: 22 March 2010

Dear Alex

I refer to the Committee's request for clarification regarding the definition of 'occupier' referred to in clause 28 of the Wildlife and Natural Environment Bill.

Occupier

The Committee's concerns relating to 'occupier' centred on the issue of conacre. The Department can confirm that for the purposes of the Bill the term occupier would not include any person using land under a conacre agreement; to do otherwise would place an unnecessary burden on the farming community and the Department.

**Keady Hunt Club Petition**

Keady and District Hunt Club  
6, Carbury Heights  
Keady

1<sup>st</sup> March 2010

Cathal Boylan MLA  
Deputy Chairperson  
NI Assembly Environment Committee

Dear Mr. Boylan

I am writing to you with reference to the second reading of the 'Wildlife Bill for NI'.

In relation to this bill, our Hunt Club has some areas of concern we wish to bring to your attention

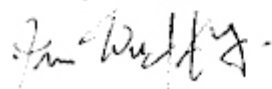
We the undersigned club members agree with the current act as stated in 'Schedule 5' but there are parts of the schedule we do not agree with and I quote, "Intentionally disturbing the Irish Hare from its form". Hunting with Foot Harriers has been a traditional recreational activity in Hunt clubs for over 200 years, so it is impossible to conceivably continue in our sport without 'disturbing the Hare'.

Speaking on a personal level, as a man who has hunted for 56 years, I have never witnessed a Hare or any other animal being intentionally abused and would not tolerate any such cruelty. In normal circumstances when a Hare is being pursued, the dogs are called off the scent at any time between fifteen minutes to one hour. This enables the Hare to make an escape, consequently allowing the club to hunt another day. There's no-one more experienced in the rules of nature or familiar with the concept of conservation than a Foot Harrier.

In light of our concerns, we the undersigned would urge you as our elected representative, to refrain from lending your support to this part of the proposed bill.

Thank you for your support.

Sincerely



Chairperson ( Keady & District Hunt Club)

# Petition to NI Assembly Environment Committee

Petition Summary and Background: WILDLIFE BILL FOR NI - SCHEDULE 5

Action Petitioned For: We, the undersigned, are concerned members of Keady & District Hunt Club who urge our MLA to act now to refrain from lending support to schedule 5 of the proposed bill as mentioned in our covering letter.

Printed Name	Signature	Address	Comment	Date
P. FORDE	[Signature]	12, P. HILL		7-3-2010
JOHN C. NEILL	[Signature]	12, P. HILL		8-3-2010
KENNETH C. NEILL	[Signature]	12, P. HILL		6-3-2010
TOM DIBBY	[Signature]	112, C. HILL		7-3-2010
NATHAN HONE	[Signature]	112, C. HILL		4-3-2010
J. DOUGHERTY	[Signature]	112, C. HILL		4-3-2010
SEAN DIBBY	[Signature]	66, DOUGHERTY HILL		7-3-2010
BARRY HILL	[Signature]	10, HILL		7-3-2010
FRANK J. HILL	[Signature]	29, HILL		7-3-2010
T. DILLON	[Signature]	Victoria St. Keady		7-3-2010

# Petition to NI Assembly Environment Committee

Petition Summary and Background: WILDLIFE BILL FOR NI - SCHEDULE 5

Action Petitioned For: We, the undersigned, are concerned members of Keady & District Hunt Club who urge our MLA to act now to refrain from tending support to schedule 5 of the proposed bill as mentioned in our covering letter.

Printed Name	Signature	Address	Comment	Date
John McCann	John McCann	25 Ballynawood RD Keady	Why stop a way of hunting like what will be next all sports	5/3/10
D. Duffy	D. Duffy	Thurstonville		12/2/10
D. Duffy	D. Duffy (Mrs)	Thurstonville		12/3/10
R. McEl	Peter McEl	Keady		12/3/10
G. McEl	Peter McEl	Keady		12/3/10
J. McEl	Joe McEl	Keady		12/3/10
J. McEl	Joseph McEl	Keady		12/3/10
B. McEl	Brian McEl	Keady		12/3/10
S. McEl	Seamus McEl	Keady		12/3/10
S. Duffy	Jim Duffy	Keady	No to Schedule 5	10/3/10

# Petition to NI Assembly Environment Committee

Petition Summary and Background:	WILDLIFE BILL FOR NI-SCHEDULE 5
Action Petitioned For:	We, the undersigned, are concerned members of Madden & District Hunt Club who urge our MLA to act now to refrain from lending support to schedule 5 of the proposed bill as mentioned in our covering letter.

Printed Name	Signature	Address	Comment	Date
Sumner de Cullen	S. W. de Cullen	64 Cooney's Lane, Lough	Opposed to the bill	12-3-10
Tim de Cullen	Tim de Cullen	64 Cooney's Lane, Lough	Opposed to the bill	12-3-10
Martin de Cullen	M. de Cullen	64 Cooney's Lane, Lough	Opposed to the bill	12-3-10
Silvan Rafferty	Silvan Rafferty	85 Farnham Road, Rathfriland	HUNTING 50 YEARS AGAINST BAA	12-3-10
John Rafferty	John Rafferty	86 Farnham Road, Rathfriland	Have been hunting for 70 years and have 2 dogs	12-3-10
Anthony Mallon	Anthony Mallon	10 Fernside Road, Rathfriland		12-3-10
Enda Mallon	Enda Mallon	10 Fernside Road, Rathfriland		12-3-10
Cillian Mallon	Cillian Mallon	10 Fernside Road, Rathfriland		12-3-10
Grace Mallon	Grace Mallon	10 Fernside Road, Rathfriland		12-3-10
Martin Mallon	Martin Mallon	8A Fernside Road, Rathfriland		12-3-10

# Petition to NI Assembly Environment Committee

Petition Summary and Background:	WILDLIFE BILL FOR NI-SCHEDULE 5
Action Petitioned For:	We, the undersigned, are concerned members of Madden & District Hunt Club who urge our MLA to act now to refrain from lending support to schedule 5 of the proposed bill as mentioned in our covering letter.

Printed Name	Signature	Address	Comment	Date
TONY McELWANN	TONY McELWANN	161 MONAGHAN RD	ARMAGH	9/3/10
PAT BAITLEY	PAT BAITLEY	159 MONAGHAN RD	ARMAGH	10/3/10
ANTHONY McELWANN	ANTHONY McELWANN	161 B MONAGHAN RD	ARMAGH	10/3/10
SEAN McELWANN	SEAN McELWANN	161 Monaghan Rd, Armagh		10/3/10
PAUL McELWANN	PAUL McELWANN	149 Monaghan Rd, Armagh		10/3/10
STEPHEN McELWANN	STEPHEN McELWANN	149 Monaghan Rd, Armagh		11/3/10
SHANE GORMLEY SHANE GORMLEY	SHANE GORMLEY	157 Monaghan Rd, Armagh		11/3/10
TONY McELWANN	TONY McELWANN	39 FENNELL RD, ARMAGH		11/3/10
PETER GREENE	PETER GREENE	MADDEN		11/3/10
SEAN HUGHES	SEAN HUGHES	MADDEN		

# Petition to NI Assembly Environment Committee

Petition Summary and Background:	WILDLIFE BILL FOR NI-SCHEDULE 5
Action Petitioned For:	We, the undersigned, are concerned members of Middletown & District Hunt Club who urge our MLA to act now to refrain from lending support to schedule 5 of the proposed bill as mentioned in our covering letter.

Printed Name	Signature	Address	Comment	Date
DAMIAN MC GUFFEY	<i>Damian Mc Guffey</i>	20 Mullinary Rd Middletown	MARKS ARE PLACED IN AREAS THAT ARE AGGRAVATED	15.3.10
NICOLA WOODS	<i>Nicola Woods</i>	20 MULLINARY RD MIDDLETOWN	"	15/3/10
BRENDAN WOODS	<i>Brendan Woods</i>	15 BERRYBROOK RD MIDDLETOWN	"	15/3/10
JOHN WOODS	<i>John Woods</i>	5 WILKINS MIDDLETOWN ARMAGH	"	
PADDY LENNON	<i>Paddy Lennon</i>	REIN MIDDLETOWN	"	
CONNELL MYLES	<i>Connell Myles</i>	5 JOY PARK MIDDLETOWN ARMAGH		
STEVEN MYLES	<i>Steven Myles</i>	STUY PARK MIDDLETOWN		
BRYAN W. KENNEDY	<i>Bryan W. Kennedy</i>	W/Town		
GAVIN MALLON	<i>Gavin Mallon</i>	Middletown		
GERARD WOODS	<i>Gerard Woods</i>	Hansleigh Rd H. Middleton Co. Fermanagh		15.3.10



## Petition to NI Assembly Environment Committee

Petition Summary and Background		WILDLIFE BILL FOR NI-SCHEDULE 5			
Action Petitioned For:		We, the undersigned, are concerned members of Middletown & District Hunt Club who urge our MLA to act now to refrain from leading support to schedule 5 of the proposed bill as mentioned in our covering letter.			
Printed Name	Signature	Address	Comment	Date	
John Woods	John Woods	20 MULLEN RD MIDDLETON	PLEASE SIGN ALWAYS	12.03.10	
SEAN GILMIRE	SEAN GILMIRE	23 MULLINARY RD MIDDLETON	"	13.03.10	
SEAMUS M <sup>RS</sup> GUGAN	SEAMUS M <sup>RS</sup> GUGAN	10 Black Hill Lodge Belderr	"	12.03.10	
Brendan M. GUGAN	B.M. GUGAN	38 MULLINARY RD MIDDLETON	"	12.03.10	
BARRY M <sup>RS</sup> GUGAN	BARRY M <sup>RS</sup> GUGAN	38 MULLINARY RD MIDDLETON	"	12.03.10	
PAUL M <sup>RS</sup> GUGAN	PAUL M <sup>RS</sup> GUGAN	38 MULLINARY RD MIDDLETON	"	13.03.10	
FORREST WOODS	Forrest Woods	20 MULLINARY RD MIDDLETON	"	14.03.10	
Chris Mc Donald	Chris Mc Donald	17 KILBARRID RD TYRONE	"	14.03.10	
Liam Woods	Liam Woods	20 MULLINARY RD MIDDLETON	"	14.03.10	
CELINE WOODS	Celine Woods	20 MULLINARY RD MIDDLETON	"	15.03.10	

## Departmental Information on Irish Hare Population

### Irish Hare Population

Table 1 below shows the density of Irish hares recorded in Northern Ireland during NIEA funded surveys and using a standard survey technique (from 2002 – 2010\*). These data suggest that the Irish hare population has stabilized. When the genetic assessment of the Irish hare is considered it appears that the population does not demonstrate 'genetic bottle necks' which would be expected if a population was at a very low level and isolation was occurring. The 2004

result shows that if a breeding year is suitable the Irish hare has the capacity to reproduce rapidly.

The Department will be bringing forward a new Species Action Plan for the Irish Hare 2011 – 2020 which will propose a further suite of targets for the conservation of this iconic species. The population density can be assessed in time for the 5 year review and at that time it can be considered if further protection is necessary.

Table 1

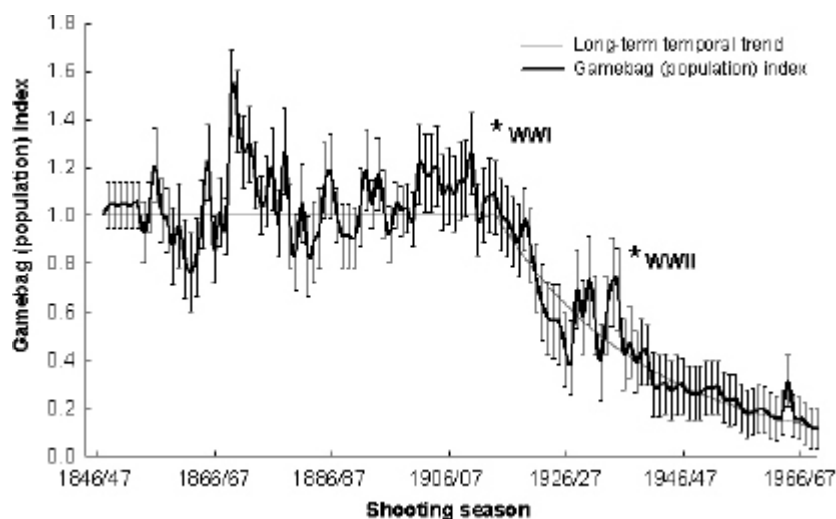
	Estimated density
2002	1.00/km <sup>2</sup>
No survey 2003	
2004	5.11
2005	3.10
2006	2.57
2007	4.03
2008	2.86
2009	1.95
2010*	3+

Note: 2010 figures are provisional and have not yet been confirmed.

These figures would suggest to the Department that the 3 targets contained in the 2000 Irish Hare Action Plan would appear to have been achieved i.e.

- To maintain the existing range and demonstrate a population increase by 2005.
- Double present population by 2010 over as much of the range as possible.
- Maintain and increase the area of suitable hare habitat.

Queen's University has constructed trends in the numbers of Irish hares shot annually throughout Ireland between 1846 and 1970 (graph below); this reveals a long-term historical decline in numbers of hares shot. This is held to reflect the population of hares in Ireland but may also reflect significant changes in shooting intensity and efforts of predator management throughout that period.



I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,  
Una Downey  
DALO

## **PSNI Information on Clause 15 Wildlife Bill**

Sean

I've liaised with firearms branch and criminal justice.

It would appear that the PSNI are not aware as to why clause 15 was suggested and without this information it would be difficult to comment. Would it be best that the Northern Ireland Environment Agency are approached in relation to this?

However, the following may be useful in the decision making process

Article 61 (2) of the Firearms (NI) Order 2004 states that

Carrying or discharging firearm in a public place

(2) A person who discharges any firearm on any public road, or within 18 metres of the centre of any public road, or in any church, churchyard or burial ground shall be guilty of an offence unless he shows that he had lawful authority or reasonable excuse for doing so.

I trust this to be of assistance

Emma Meredith  
PSNI

## **Draft PSNI Response – Wildlife and Natural Environment Bill**

Thank you for your letter on 12 January 2010 and the opportunity to contribute to the bill. I understand the original deadline was Friday 29 January 2010 and I appreciate the extension until 15 March.

The PSNI place considerable importance in the fight against wildlife related crime and we acknowledge this in our service provisions. A full time wildlife liaison officer was appointed in 2007 to offer expert advice, support and assistance to police and police staff when investigating a breach in the animal welfare/wildlife legislation. The wildlife officer has reviewed the wildlife bill and consulted with a number of departments within the PSNI including firearms branch, legal services and criminal justice to seek appropriate advice.

In brief, most of the points are fully supported by the PSNI and the proposal to transfer the snare section from the Welfare of Animals Act (NI) 1972 to the Wildlife Bill should strengthen controls.

Within the enforcement section clarity is required to identify if the PSNI need to physically present nest, birds and animals to the court.

The powers section refers to police powers to search on suspicion with reasonable cause which differs from PACE.

The PSNI also felt it was important to highlight the overlap between the Wildlife Bill and the Welfare of Animals Act (NI) 1972 to ensure wildlife is protected completely.

As requested the following is structured to address specific clauses.

1. Duty of care – fully supported by the PSNI
2. The biodiversity strategy – fully supported by the PSNI
3. Biodiversity lists – fully supported by the PSNI
4. Protection of nests and certain birds – fully supported by the PSNI
5. Offences: recklessness – fully supported by the PSNI
6. Offences: causing or permitting unlawful acts – fully supported by the PSNI
7. Defences in relation to offences under article 4 – fully supported by the PSNI
8. Disqualification for registration – fully supported by the PSNI
9. Protection of basking sharks from disturbance – fully supported by the PSNI
10. Snares -

The PSNI (at present) use offences both in the Wildlife (NI) Order 1985 and the Welfare of Animals Act (NI) 1972 section 21. It would appear the proposed legislation will transfer the snare section from the Welfare of Animals Act (NI) 1972 to the Wildlife Bill and ultimately strengthen controls of snares. This proposal is supported.

11. Protection of wild plants – fully supported by the PSNI
12. Introduction of new species - fully supported by the PSNI
13. Prohibition on sale, etc. of invasive, non-native species - fully supported by the PSNI
14. Licences under Article 18 - fully supported by the PSNI
15. Discharging firearms, etc. from vehicle – fully supported by the PSNI
16. Licences relating to deer - fully supported by the PSNI
17. Offences: possession of articles for purposes of committing offences - fully supported by the PSNI

18. Enforcement –

25 (a) requires clarity over whether the nest or animal needs to be physically produced to the court?

19. Powers of constable in connection with samples –

The bill gives powers to police to search on suspicion with reasonable cause. This differs from our PACE which refers to reasonable grounds to suspect. This part raises the question as to why 'cause' has been used in substitution of 'grounds'? I'm aware the Wildlife (NI) Order 1985 states 'cause'.

20. Enforcement: wildlife inspectors – fully supported by the PSNI

21. Time limit for prosecution of summary offences – fully supported by the PSNI

22. Penalties - fully supported by the PSNI

23. Application to the Crown – fully supported by the PSNI

24. Review of Schedules to the wildlife order – no comment

25. Amendments to Schedules 1 to 9 to the wildlife order – no comment.

26. Reduction in close seasons for female deer – no comment

Area of special scientific interest

27. Offences in connection with ASSI

28. Notification of change of owner or occupier

29. Notices and signs relating to ASSIs

30. Effect of failure to serve certain notices in connection with ASSI

The PSNI have no comment in relation to the above 4 clauses as there is no impact on the PSNI.

Game

31. Abolition of game licences and game dealers' licences – no comment

32. Sale of game – no comment

33. Minor and consequential amendments and repeals - fully supported by the PSNI

34. Commencement

35. Interception

36. Short title

The PSNI are aware both the Wildlife (NI) Order 1985 and the Welfare of Animals Act (NI) 1972 are under review. There are concerns that powers under the Welfare of Animals Act (NI) 1972 are maintained especially section 19 baiting and fighting and section 22 poisons as these appear to re-enforce and in occasions overlap with the Wildlife (NI) Order 1985. Therefore, the powers should be maintained to ensure the wildlife is protected completely.

I trust this to be of assistance.

## **Aide Memoire – NIBG Presentation to the Environment Committee - 4th March 2010**

### **Under the Biodiversity Duty in the Bill:**

We have already suggested that the biodiversity duty should include “to halt the loss of biological diversity”,

1. Since public bodies have both functions and the potential to influence others in various ways - in Clause 1 (1) we would suggest adding the words ‘policies or influence’ after the word ‘functions’ to ensure that the work of departments and public agencies that are intermediary funders for European and other funds and those that work through influencing others (such as for example the Department of Agriculture) is encompassed fully in the Bill.

2. Under the duty to conserve biodiversity Clause 1(3)a we would recommend adding ‘protecting, maintaining’ between the words fauna and restoring to read ‘in relation to any species of flora and fauna, protecting, maintaining, restoring or enhancing a population of that species. This provides a better checklist for the task of conserving biodiversity.

3. Likewise in the same Clause 1 (3) b relating to habitats we would recommend an identical addition of the words protecting, maintaining.

4. In Clause 1 (5) we would ask you to ensure that both the Crown and the Cross-Border Bodies and indeed NI Water are included within the definition of public body. All have an important role to play in conserving biodiversity and two are major landowners..

### **Under the Biodiversity Lists:**

We would suggest that the list to be published by the Department should be required to take account of agreed European priority habitats and species.

In Clause 3 (3) we do not understand why it is only the Department that is to take account of the list of species and habitats of primary importance and believe that this should read ‘the Department and Public Bodies’. In other words public bodies should have a particular duty to conserve species and habitats, within their influence, and about which there is most concern.

In Clause 1 paragraph 4 we have previously suggested that this should be amended to read ‘the Department shall or should issue guidance’, and it would be logical therefore to require public bodies to have regard to this guidance.

For consistency therefore the preceding points would also lead to an amendment of Clause 1(2) (in the Biodiversity Duty section) which would then read ‘ a public body must in particular have regard to any strategy, list or guidelines designated. etc

## **The Wildlife Order**

We would further propose an amendment to article 9 – proposing an insertion to Article 10 of the Wildlife Order. In the proposed insertion of para 4a we recommend including the words or injures following the word disturbs. This would then read 'recklessly disturbs or injures' any wild animal etc

Finally in terms of new evidence we would propose that in the case of snares the method of management is also covered by the Bill. This can be achieved by adding 'or so managed' after 'or so placed'. This would then read 'of such a nature or so placed, or so managed as to cause' etc. We would also recommend the deletion of 'as to be calculated' which suggests a particular intent which may or may not be present..

Judith A Annett  
Chair NIBG

## **Departmental email re Zoo Licensing**

From: Bradley, Ken  
Sent: 24 March 2010 12:34  
To: Downey, Una; Meharg, Mike  
Cc: Savage, Chris  
Subject: RE: Responsibility for zoo licencing

Una

I confirm that this Department has responsibility for the licencing of zoos and questions on any licencing issues should be addressed to the Biodiversity Unit of NIEA at the Klondyke Building. The relevant officials would be Michael Meharg or Declan Looney

Ken

From: McGarel, Alex [mailto:Alex.McGarel@niassembly.gov.uk]  
Sent: 24 March 2010 12:24  
To: Downey, Una  
Cc: McCann, Sean  
Subject: Responsibility for zoo licencing

Una

Please could you ask the Wildlife Bill Team to confirm that the Department / NIEA have responsibility for zoo licencing as well a licencing under the Wildlife Order. An emailed response I could show to the concerned member would be most helpful. It is in relation to the Talnotry issue.

Thanks

Alex

Alex McGarel  
Clerk to the Committee for the Environment  
Room 245  
Parliament Buildings

Stormont  
Belfast  
BT4 3XX

028 9052 1347  
07799718929

## **Wildlife and Natural Heritage Bill**

### **Amendments to be Moved at Consideration Stage**

Clause 1, page 1, line 9, after 'fauna,' insert 'maintaining, protecting'

Clause 1, page 1, line 11, after 'habitat,' insert 'maintaining, protecting'

Clause 1, page 1, line 12, leave out 'may' and insert 'must'

Clause 2, page 2, line 8, leave out subsection (4) and insert—

'(4) The Department must—

(a) not later than 5 years after the coming into operation of subsection (1), and

(b) at least once in every period of five years thereafter,

publish a report regarding the implementation of any strategy designated under that subsection.'

Clause 3, page 2, line 20, leave out 'the Department' and insert 'a public body'

Clause 3, page 2, line 21, leave out 'Department' and insert 'body'

Clause 3, page 2, line 24, at end insert—

'(4) In this section "public body" has the same meaning as in section 1.'

Clause 4, page 2, line 37, at end insert—

'Eagle, White-tailed	Haliaeetus albicilla
Osprey	Pandion haliaetus
Peregrine	Falco peregrinus
Kite, Red	Milvus Milvus'

Clause 9, page 4, line 29, after 'as' insert '—

(a) a common seal (*phoca vitulina*);

(b) a grey seal (*halichoerus grypus*); or

(c)'

Clause 26, page 15, line 9, leave out from 'for' to end of line 10 and insert 'for "1st March" in each of the three places where it occurs substitute "1st April".'



After clause 32 insert—

**‘Special protection for game**

32A.— (1) The Game Preservation Act (Northern Ireland) 1928 is amended as follows.

(2) In section 7 (close seasons) after subsection (3) insert—

‘(3A) If it appears to the Department expedient that any game birds should be protected during any period outside the close season for those birds, the Department may make an order with respect to the whole or any specified part of Northern Ireland declaring any period (which shall not in the case of any order exceed 14 days) as a period of special protection for those birds.

(3B) This section shall have effect as if any period of special protection declared under subsection (3A) for any game birds formed part of the close season for those birds.

(3C) Before making an order under subsection (3A) the Department shall consult a person appearing to the Department to be a representative of persons interested in the shooting of game birds of the species proposed to be protected by the order.”.

(3) In section 7C(1) (special protection order for game) after “purchase” insert “or possession”.’

Schedule 1, page 20, line 10, at end insert—

‘Curlew	Numenius arquata’
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Schedule 1, page 20, line 17, at end insert—

‘Lapwing	Vanellus vanellus’
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Schedule 1, page 20, line 20, at end insert—

‘Redshank	Tringa totanus’
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Schedule 1, page 20, line 22, at end insert—

‘Whinchat	Saxicola rubetra’
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Schedule 1, page 21, line 2, at end insert—

‘(3) In Part 1 omit the following entry

Common Name	Scientific name
Curlew	Numenius arquata’

Schedule 1, page 21, line 34, column 1, after ‘Common’ insert ‘(in respect of Article 10(1) only and with respect to coastal waters only)’

Schedule 1, page 24, line 17, at end insert—

‘Deer, Chinese water	Hydropotes inermis’
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Schedule 1, page 24, line 18, at end insert—

'Deer, Roe	Capreolus capreolus'
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Schedule 1, page 25, leave out line 16 and insert—

'Knotweed, Giant	Fallopia sachalinensis
Knotweed, Himalayan	Polygonum wallichii
Knotweed, Japanese	Fallopia japonica'

Schedule 2, page 28, line 2, at end insert—

'18. In Article 29(3) (orders) after "any order" insert "(other than an order under Article 4(10)).'

Schedule 3, page 28, line 10, column 2, at end insert—

' In Article 4(12) the words "Without prejudice to Article 29(3),".'

Long title, after 'game dealers' licences' insert 'and amend the Game Preservation Act (Northern Ireland) 1928'

## **Note of Chairperson's Meeting with Minster on Wildlife and Natural Environment Bill Amendments Monday 22 March 2010, Parliament Buildings**

Present:

Committee

Dolores Kelly (Chairperson)  
Alex McGarel (Clerk)  
Sean McCann (Assistant Clerk)

Department

Minister Poots  
Ken Bradley (Planning and Environment Policy Division)  
Chris Savage (Planning and Environment Policy Division)  
Mike Meharg (Northern Ireland Environment Agency)

Key points

### **Clause 1 – Biodiversity duty**

1. Minister supports Departmental amendments saying guidance 'shall' be produced and duty to 'maintain and protect'.

### **Clause 2 – Biodiversity strategy**

2. Minister supports Departmental amendments to required reporting period to be no less than every 5 years.

#### **Clause 4 – Protection of nests of certain birds**

3. Minister supports Departmental amendments to add red kite, osprey, white-tailed eagle and peregrine and happy to include barn owl if Committee wants it after seeing latest RSPB submission.

#### **Clause 9 – Protection of basking sharks from disturbance**

4. Minister supports Departmental amendment to add seals.

#### **Clause 10 – Snares**

5. Minister is not minded to amend this clause. He is concerned that a total ban will lead to other methods of pest control and a licensing system would be costly.

#### **Clause 15 – Discharging firearms etc from a vehicle**

6. Minister supports Department's position to retain clause.

#### **Clause 25 – Amendments to Schedules 1 to 9 of the Wildlife Order**

7. See Schedule 1.

#### **Clause 26 – Reduction in closed season for female deer**

8. Minister supports Departmental amendment to shorten close period by starting later rather than ending earlier.

#### **Clause 28 – Notification of change of owner or occupier**

9. Officials confirmed clause does not refer to land taken in conacre.

#### **Schedule 1 – Amendments to Schedules to the Wildlife Order**

10. Minister supports Departmental amendment to add curlew, whinchat, lapwing and redshank to Schedule 1 and remove curlew from Schedule 2. Minister not averse to golden plover being treated similarly to the curlew if the Committee recommends it.

11. Minister open to Committee recommendations for Irish hare BUT would be strongly opposed to a commitment to put a Special Protection Order in place every year for next 5 years because obtaining the population data to justify it has cost implications of 30-40k per year. It would also leave the Department open to criticism from the Examiner of Statutory Rules because it is not using the 'temporary' nature of the legislation as intended. Minister would prefer to include it on Schedule 5 and review it after 5 years.

#### **Schedule 2 - Amendments**

12. Minister supports Departmental amendment to include 'possession' in Special Protection Orders but will be inserted as a new clause after Clause 32.

#### **Clause 14 - Licensing**

13. Minister keen to see the issue of multiple licences handled sensitively and will advise his officials accordingly but warned of the risks of drafting legislation to accommodate a single example.

## **Wildlife and Natural Environment Bill - proposals for amendments or additional clauses by RSPB**

The RSPB is keen to ensure that necessary amendments to proposed clauses, and additional clauses recommended by us, are included at the Committee stage of this Bill. In the tables below we give brief reasons for these amendments and additions – we have given details in previous submissions to the Committee.

It has become necessary for us to seek the additional or amended clauses, as we have not received responses from the Department on our concerns, particularly those regarding ASSIs. Officials have said they cannot meet us until after Easter, at which point all changes would have to be sought through private amendments. The Committee has previously been supportive of our attempts to work with officials, and we hope will support us in seeking amendments at this stage.

Table 1 presents amendments to schedules we seek from the Committee for inclusion in the Committee report and Bill.

Table 2 presents additional clauses we believe are necessary to make changes to both the Wildlife Order and the Environment Order. We ask the Committee to consider these for Committee amendments at this stage (subject to review by professional Bill drafting team), or as a minimum to include as recommendations in its report for the Department to work on prior to the next reading of the Bill. Of note are:

- Wildlife Order – an offence for ring tampering, new possession of pesticides clause, ensuring that legislation permits prosecution for offences committed elsewhere in Europe.
- Environment Order – protection of Natura 2000 sites where features are not also features of a coincident ASSI, temporary stop and reinstatement notices, management agreements on land outside ASSIs, various examples of tighter wording to bring us in line with legislation elsewhere.
- Within the Bill – suggested clauses (U) and (V) on Directive requirements for research and education.

Table 3 presents general concerns that will not be met through the Bill, but where we ask the Committee to include as recommendations in its report. Of particular note are the need for an urgent review of licensing procedures, and the treatment of non-native and invasive species.

Table 1. Amendments

Amendments to proposed schedules we seek from the Committee for inclusion in the Committee report and Bill

No protection of curlew from shooting	Remove curlew from Schedule 2 and add to Schedule 1	The Department has agreed to this with support of Committee. If the Department does not bring this forward, we would seek a Committee amendment to achieve this.
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No guarantee of species on Schedule 4 being sourced from captive bred populations	Remove yellowhammer, twite and reed bunting from Schedule 4.	<p>Yellowhammer and twite are red-listed species of conservation concern. Reed bunting as a priority species under the NI Biodiversity Strategy.</p> <p>As a minimum, the Department should review all species listed on the schedule and show evidence of sufficient captive-bred sources to support the inclusion of species on the Schedule. There is evidence of widespread illegal trapping in Britain, particularly of finches, to support captive populations, as many of these species do not breed to excess (ie to support a viable captive population). We believe these birds are also entering the UK through Belgian markets.</p>
No guaranteed protection of the Irish hare while research is pending	As a minimum, ensure the Special Protection Orders (SPOs) continue until the five-year review.	The RSPB supported option 1 on the proviso that SPOs would continue until the next five-year review, when we asked for further evaluation of the population. The Department indicated at the Committee meeting 18 March that the SPOs may not continue, even in the absence of statutory protection. We seek Committee support that, in the event of no permanent protection of the Irish hare, that the SPOs would continue until the next five-yearly review.

Table 2. Additional clauses or recommendations

NB. Clauses are labelled here as A, B, C etc, but would need to be renumbered accordingly if included within the Bill. These proposals have not been subject to legal checks and would need to be reviewed by the Bill drafting team. Many of these suggestions are based on similar legislation in Britain, as described in our full response.

We ask the Committee to consider these for Committee amendments at this stage (subject to review by professional Bill drafting team), or as a minimum to include as recommendations in its report for the Department to work on prior to the next reading of the Bill.

Legislative gap	Additional clause (example)	Reason and implications
Wildlife Order		
Wild birds may be illegally taken into captivity using tampered rings.	<p>Protection of captive birds</p> <p>(A). –</p> <p>(1) Article 9 of the Wildlife Order (protection of captive birds) is amended as follows.</p> <p>(2) After paragraph (3) insert –</p> <p>“(4) Every person who-</p> <p>tampers with approved rings, or possesses tampered rings shall be guilty of an offence.”</p>	<p>This change would reduce the risk of wild birds being illegally caught for use in captivity. There would need to be a process for inspecting the rings.</p> <p>This is particularly important if species of conservation concern, such as yellowhammer, are not removed from Schedule 4.</p>

Legislative gap	Additional clause (example)	Reason and implications
<p>There is a legal loophole which means someone may possess highly toxic chemicals for which there is no legitimate use, and therefore likely to be used to commit a poisoning offence</p>	<p>Possession of pesticides</p> <p>(B).- After Article 12 of the Wildlife Order insert –</p> <p>“12A Possession of pesticides</p> <p>(1) Any person who is in possession of any pesticide containing one or more prescribed active ingredient shall be guilty of an offence.</p> <p>(2) A person shall not be guilty of an offence under subsection (1) if the person shows that the possession of the pesticide was for the purposes of doing anything in accordance with—</p> <p>(a) any regulations made under section 16(2) of the Food and Environment Protection Act 1985 (c. 48), or</p> <p>(b) the Biocidal Products Regulations(NI) 2001 (S.I. 2001/422) or any regulations replacing those regulations.</p> <p>(3) In this section—</p> <ul style="list-style-type: none"> <li>▪ “pesticide” has the meaning given in the Food and Environment Protection Act 1985 (c. 48), and</li> <li>▪ “prescribed active ingredient” means an ingredient of a pesticide which fits it for use as such and which is of a type prescribed by order made by the Northern Ireland Assembly.”</li> </ul>	<p>This was proposed in the Department’s consultation. As a minimum, we seek a Departmental response as to its non-inclusion.</p> <p>This drafted amendment is based on similar provisions in the Nature Conservation (Scotland) Act 2004. It would need a list of ‘prescribed active ingredients’, but this could be based on the list in Scotland. There have been at least 11 convictions in Scotland since this was brought in – we believe it has had no impact on legitimate users.</p> <p>The Natural Environment and Rural Communities Act 2006 introduced such powers in England and Wales.</p>
<p>Possession (in Northern Ireland) of protected wildlife taken illegally elsewhere in the EU cannot be prosecuted against</p>	<p>(C).- DRAFT NEEDED</p>	<p>A similar loophole has been closed in England &amp; Wales, and separately in Scotland. It would require an amendment to Article 4(4), to ensure that the statutory defence is adequate i.e. that the ‘relevant provisions’ included legislation in all</p>

Legislative gap	Additional clause (example)	Reason and implications
		Member States. We seek a Committee recommendation for this to be reviewed and an appropriate mechanism brought forward to ensure that possession of protected wildlife taken illegally elsewhere in Europe can be prosecuted for.
Environment Order		
Lack of protection for Natura 2000 sites where (i) not underpinned by ASSIs and (ii) where European site features are not also features of the coincident ASSI	<p>Protection of European sites</p> <p>(D).-</p> <p>DRAFT NEEDED</p> <p>This additional clause would:</p> <ul style="list-style-type: none"> <li>▪ apply ASSI protection powers to European sites;</li> <li>▪ introduce nature conservation orders to prohibit certain activities by third parties; and</li> <li>▪ ensure that European site features not also listed as a coincident ASSI features would have relevant prohibited operations listed.</li> </ul>	<p>The Department is unable to exercise proactive measures to avoid pollution or deterioration of habitats and species in accordance with the Birds Directive (Article 4(4)) and the Habitats Directive (Article 6(2)). The European Court has found against Ireland on the same issue. Details are given in the paper we produced in response to the Committee's request for further information. Examples of damage are taking place in Northern Ireland, such as large-scale peat cutting within Slieve Beagh SPA.</p> <p>The Department's reason not to pursue this amendment is that a review of the Conservation Regulations is expected but there are no timescales. The reality, given other Assembly pressure, is that this could not happen within several years.</p> <p>The Department could base a clause on similar legislation already introduced by Scotland. We seek a Committee recommendation that this be done as a matter of urgency.</p>
No ability to stop damaging (or potentially damaging) operations on ASSIs immediately.	<p>Temporary stop notice</p> <p>(E). -</p> <p>DRAFT NEEDED</p>	<p>The Department proposed this in the consultation.</p> <p>Officials stated this would not be included now but reviewed under other legislation – however the timescale of 2-3 years given to Committee (18 March) is considered very unlikely. We seek a Committee recommendation for the Department to include this amendment.</p>
No ability to enforce restoration without	Reinstatement notice	As for temporary stop notices.

Legislative gap	Additional clause (example)	Reason and implications
proving criminal intent or recklessness.	(F). -  DRAFT NEEDED	
<p>There is no statutory purpose for the declaration of ASSIs</p> <p>Give clarity to the status of an ASSI if a declaration is neither confirmed nor rescinded.</p>	<p>Declaration of ASSIs</p> <p>(G).-</p> <p>(1) Article 28 of the Environment Order (declaration of ASSI) is amended as follows.</p> <p>(2) After paragraph (1) insert –</p> <p>“(1A) In determining for the purposes of paragraph (1) whether any land is of special interest the Department must have regard to—</p> <p>(a) the extent to which declaration under that paragraph in relation to the land would contribute towards the development of a series of areas of special scientific interest in Northern Ireland representative of the diversity and geographic range of—</p> <p>(i) Northern Ireland’s natural features,</p> <p>(ii) the natural features of the UK and Ireland,</p> <p>(iii) the natural features of the member States, and</p> <p>(b) any guidance issued or approved by the Department so far as containing information about areas of special scientific interest.”</p> <p>(3) After paragraph (10) insert -</p> <p>“(10A) If such a declaration is neither confirmed under paragraph (6)(b)(i), nor rescinded under paragraph (6)(b)(ii), within the time periods defined, it ceases to have effect.”</p>	<p>Insertion of (1A) would introduce a statutory purpose, making it clear why, and what breadth of, ASSIs are needed. This exists in Scotland already.</p> <p>(10A) would give landowners and occupiers certainty about the status of their land if an ASSI declaration is neither confirmed nor rescinded. This is already the case in GB.</p>
Ensure that denotifications only apply to the part of	Denotification of ASSIs	The implications of this are:



Legislative gap	Additional clause (example)	Reason and implications
<p>the ASSI that no longer holds the features for which it was designated.</p> <p>Ensure that denotifications are in line with the statutory purpose.</p> <p>Give clarity to the status of an ASSI if a notification to revoke all or part of a declaration is neither confirmed nor rescinded.</p>	<p>(H).-</p> <p>(1) Article 31 of the Environment Order (denotification) is amended as follow.</p> <p>(2) After paragraph (1) insert-</p> <p>"(1A) A notification under paragraph (1) shall specify the Department's intention to revoke the ASSI declaration or, as the case may be, modify it so as to disapply its effect to the part of the site in question.</p> <p>(1B) In determining for the purposes of paragraph (1) whether all or any part of a site of special scientific interest is no longer of special interest, the Department must have regard to—</p> <p>(a) the extent to which declaration under that paragraph in relation to the land would contribute towards the development of a series of areas of special scientific interest in Northern Ireland representative of the diversity and geographic range of—</p> <p>(i) Northern Ireland's natural features,</p> <p>(ii) the natural features of the UK and Ireland,</p> <p>(iii) the natural features of the member States, and</p> <p>(b) any guidance issued or approved by the Department so far as containing information about areas of special scientific interest."</p> <p>(3) After paragraph (4) insert-</p> <p>(4A) If such a notification is neither confirmed under paragraph (4)(b)(i) nor rescinded under paragraph (4)(b)(ii), within the</p>	<ul style="list-style-type: none"> <li>▪ Only the part of the ASSI that no longer meets the scientific criteria can be denotified – not any other parts of the same ASSI that may still qualify;</li> <li>▪ Any denotifications have to be compliant with the statutory purpose for ASSIs; and</li> <li>▪ Landowners and occupiers are given certainty about the status of their land if a denotification is neither confirmed nor withdrawn (as for declarations).</li> </ul>

Legislative gap	Additional clause (example)	Reason and implications
	time periods defined, it ceases to have effect.	
Ensure that a longer period can be allowed for appeals, where necessary	<p>Appeals in connection with consents</p> <p>(I).-</p> <p>(1) Article 33 of the Environment Order (appeals) is amended as follows.</p> <p>(2) In paragraph (3)(b) for ". " substitute ", or"</p> <p>(3) After paragraph 3(b) insert -</p> <p>"3(c) in either case, within such longer period as is agreed in writing between the Department and the appellant."</p>	This means that if an appellant has a good reason to need a delay for lodging an appeal, they can negotiate a new timescale with the Department.
The Department has no ability to secure management on land outside an ASSI, but where management is necessary to secure favourable condition of the features on an ASSI	<p>Management agreements</p> <p>(J).-</p> <p>(1) Article 34 of the Environment Order (management agreements) is amended as follows.</p> <p>(2) For paragraph (1) substitute-</p> <p>"(1) The Department may, for the purpose of conserving those flora, fauna or geological or physiographical features of an ASSI, enter into an agreement ("management agreement") with the owners, lessees and occupiers of any land included in an ASSI (or of any other land)."</p> <p>(3) Omit paragraph (6).</p>	<p>This means that</p> <ul style="list-style-type: none"> <li>Management agreements are established for a clear purpose to conserve the ASSI features</li> <li>Management agreements can also be made with lessees of the land, for example in a situation where the land is owned by one party, on a long term lease to a second party but occupied perhaps by a short term occupant. In this instance, it makes most sense for the agreement to be with the lessee.</li> <li>Management agreements can be made on land adjacent to or nearby an ASSI, where management of that land is needed to conserve ASSI features, for example where water levels need to be maintained by action outside the ASSI.</li> <li>Development plan considerations are not relevant to management agreements.</li> </ul>

Legislative gap	Additional clause (example)	Reason and implications
		The Department may need this in order to achieve its targets for favourable condition of ASSIs.
<p>There are fewer grounds for appeal in NI compared to elsewhere in GB.</p> <p>There is no guidance on how appeals will be carried out.</p>	<p>Appeals against management notices</p> <p>(K).-</p> <p>(1) Article 36 of the Environment Order (appeals) is amended as follows.</p> <p>(2) After paragraph (1) insert -</p> <p>“(1A) An appeal may be on the ground that:-</p> <p>some other owner, lessee or occupier of the land should take all or any of the measures specified in the management notice, or should pay all or part of their cost, or</p> <p>the Department should make a payment in accordance with 37(2).”</p> <p>(3) After paragraph (3) insert -</p> <p>“(4) The Department may introduce regulations made by statutory instrument, or issue guidance, on the appeal process for appeals under this section, including about —</p> <p>(a) the period within which and the manner in which appeals are to be brought, and</p> <p>(b) the manner in which they are to be considered,</p> <p>and any such regulations may make different provision for different cases or circumstances.”</p>	<p>This gives more reasons for owners, lessees or occupiers to appeal management notices, in line with similar provisions elsewhere in GB.</p> <p>It also provides for the introduction of statutory instruments or guidance to explain how appeals are carried out.</p>
A consequential change if management agreements are to be made for lessees (clause K)	<p>Payments by Department</p> <p>(L).- In Article 37of the Environment Order (payments by Department) substitute in</p>	This is simply for consistency with the change made under management agreements.

Legislative gap	Additional clause (example)	Reason and implications
	paragraph (2) "owner, lessee or occupier" for "owner or occupier".	
The definition of public body does not include reference to Ministers, persons holding office or the Assembly	<p>Public bodies: general duty</p> <p>(M).- In Article 38 of the Environment Order (Public bodies: general duty) substitute for paragraph (3) -</p> <p>"(3) In this Part "public body" means-</p> <p>(a) a Minister of the Crown or a Government department;</p> <p>(b) a Northern Ireland Department;</p> <p>(c) a department of the Government of the United Kingdom;</p> <p>(d) the Northern Ireland Assembly;</p> <p>(e) a district council;</p> <p>(f) a statutory undertaker (within the meaning of the Planning (Northern Ireland) Order 1991 (NI 11));</p> <p>(g) any other body established or constituted under a statutory provision; or</p> <p>(h) an office-holder in any public body."</p>	This brings Northern Ireland in line with other parts of the UK.
Agencies within the Department are not required to notify that they are carrying out operations which may affect an ASSI.	<p>Public body: duties in relation to operations</p> <p>(N).- In Article 39 of the Environment Order (public body: duties...), omit paragraph (7).</p>	There is no reason why this requirement should not apply to the Department, given that there are separate agencies (e.g. Planning Service, Water Management etc) carrying out operations that may affect ASSIs. They should also be required to notify the ASSI team within the Department.
Requirements to minimise damage and to restore in Article 39 do not also apply to licensing actions	<p>Public body: duties in relation to authorising operations</p> <p>(O).- In Article 40 of the Environment Order for paragraph (7) substitute -</p>	This ensures that agencies must notify the relevant section of the Department when licensing operations (as above), and that there is a requirement when licensing to minimise damage and restore if any damage does occur.

Legislative gap	Additional clause (example)	Reason and implications
	<p>"(7) On issuing the permission, the body shall include sufficient conditions as to ensure that:</p> <p>(a) the operations are carried out by the applicant in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest (taking account, in particular, of any such advice as is referred to in paragraph (5)(b)); and</p> <p>(b) the site will be restored to its former condition by the applicant, so far as is reasonably practicable, if any such damage does occur."</p>	
The Department is unable to acquire land outside an ASSI if needed to secure management of the ASSI	<p>Powers to acquire land</p> <p>(P).- In Article 41 of the Environment Order (powers to acquire land) in paragraph (1) after ASSI insert –</p> <p>“,or any other land,”.</p>	This means the Department may acquire land outside an ASSI where it is necessary to the management of an ASSI. The Department may need this in order to achieve its targets for favourable condition of ASSIs.
The scope for byelaws is limited in comparison elsewhere in the UK	<p>Power to make byelaws for ASSI</p> <p>(Q).-</p> <p>(1) Article 45 of the Environment Order (Power to make byelaws for ASSI) is amended as follows.</p> <p>(2) In paragraph 2 for (c) substitute</p> <p>“(c) regulate or prohibit the lighting of fires, or the doing of anything likely to cause a fire, on the land;”</p> <p>(3) In paragraph 2 after paragraph (e) insert-</p> <p>“(f) prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in the ASSI, the taking, destruction or disturbance of eggs, larvae or other immature stage, of any such</p>	These amendments are taken from the Nature Conservation and Amenity Land Order 1985.

Legislative gap	Additional clause (example)	Reason and implications
	<p>creature, the taking of, or interference with, vegetation of any description in the ASSI, or the doing of anything therein which will interfere with the soil or damage any object in the ASSI;</p> <p>(g) prohibit or restrict the shooting of birds or of birds of any description within such area surrounding or adjoining the ASSI (whether the area be of land or of sea) as is requisite for the protection of the ASSI."</p>	
<p>There is no offence for bodies corporate for damage to ASSIs</p>	<p>Offences by bodies corporate</p> <p>(R).- After Article 46 of the Environment Order (offences) insert –</p> <p>"46(A) (1) Where an offence under this Part committed—</p> <p>(a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—</p> <p>(i) is a director, manager or secretary of the body corporate, or</p> <p>(ii) purports to act in any such capacity,</p> <p>the individual (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.</p> <p>(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.</p>	<p>NB This may need to be extended to ensure that all relevant bodies are covered in Northern Ireland – in Scotland this also applies to Scottish partnerships and other unincorporated associations. The RSPB has not had time to check the equivalent legislation in Northern Ireland, but the principle is the same.</p>
<p>The Crown is currently exempt from Articles 32-37</p>	<p>Application to the Crown</p>	<p>ASSIs owned by the Crown would receive equal protection.</p>

Legislative gap	Additional clause (example)	Reason and implications
	(S).- In Article 49 (application to the Crown) omit paragraph (2).	
Land charge should be changed if an ASSI declaration is varied, added to or denotified	<p>Statutory charges</p> <p>(T).- In Article 50 of the Environment Order (statutory charges), for (b) substitute –</p> <p>“(b) at the end there shall be added - “43. Any declaration under Article 28(1) of the Environment (Northern Ireland) Order 2002, any variation under 29(1) of that Order, any additional under 30(1) of that Order, any denotification under 31(1) of that Order, any management agreement under Article 34 of that Order or any waiver relating thereto and any management notice under Article 35 of that Order.””</p>	
Within the Bill		
No transposition of Article 10 of the Birds Directive	<p>Research</p> <p>(U). –</p> <p>The Department will encourage research and any work required as a basis for the protection, management and use of the population of all wild birds.</p>	The European Court found against Ireland on this point (Case C-418/04) and made it clear that that Article 10 needs specific transposition. Further details are in our paper already submitted to the Committee on Directive issues.
No transposition of Article 22 of the Habitats Directive.	<p>Education</p> <p>(V). – Every local authority shall take such steps as they consider expedient for bringing to the attention of the public and of schoolchildren in particular the effect of –</p> <p>(a) the provisions of this Act; and</p> <p>(b) any order made under this Act affecting the whole or any part of their area.</p>	<p>Habitats Directive Article 22 places an obligation on Members States to ‘promote education and general information on the need to protect species...and to conserve their habitats’.</p> <p>NB the reference to ‘local authority’ could be replaced by more appropriate bodies for delivering this function, if necessary.</p>

Table 3. Issues for recommendations

These are general concerns that will not be met through the Bill, but which we ask the Committee to include as recommendations in its report.

Issue	Description
Licensing procedures and sustainable hunting	<p>The RSPB has raised a number of concerns about licensing, including under Article 4 and 18 of the Wildlife Order, general licences, the use of the term 'general pest species', and licences relating to deer and game shoots. We seek a recommendation from the Committee for the Department to undertake a timely review of licensing procedures in order to ensure compliance with all Habitats and Birds Directives requirement, as set out in our previous paper to the Committee.</p> <p>For hunting, the prime objective must be for the Department to be able to ensure that hunting is sustainable, according to the definition of the Birds Directive.</p>
Non-natives and invasive species	<p>The RSPB sought a comprehensive review of Article 15 and Schedule 9 of the Wildlife Order, such that no species should be released unless they related to a number of exempted areas, activities or species. The Department believes European legislation may require this in future, but there are no definite timescales. We ask the Committee to recommend an urgent and comprehensive review of non-native and invasive species legislation, also in line with recommendations made by the Invasive Species Ireland group. We supply further information in a separate paper.</p>
Incidental result of an otherwise lawful operation	<p>We would like the Department to review the extent to which this defence has been used. This has been an issue in the past for the RSPB, but the new biodiversity duty (also in the Forestry Bill) may place increased pressure on public bodies to ensure that operations do not result in the destruction of active nests.</p>
Monitoring of effects on mallard	<p>We supported the retention of mallard on Schedule 2, but we remain concerned that the legality of selling mallard throughout the year may lead to illegal hunting within the close season. We urge the Department to introduce a monitoring programme to investigate whether the proposal result in illegal shooting.</p>

#### Schedule 1 Amendments



#### **Schedule 1 Amendments**

Schedule 1, page 20, line 24

At end insert

Plover, Golden                      *Pluvialis apricaria*

Schedule 1, page 21, line 2

At end insert

(3) In part 1 omit the following entry –

Plover, golden    *Pluvialis apricaria*

Schedule 1, page 21, line 29

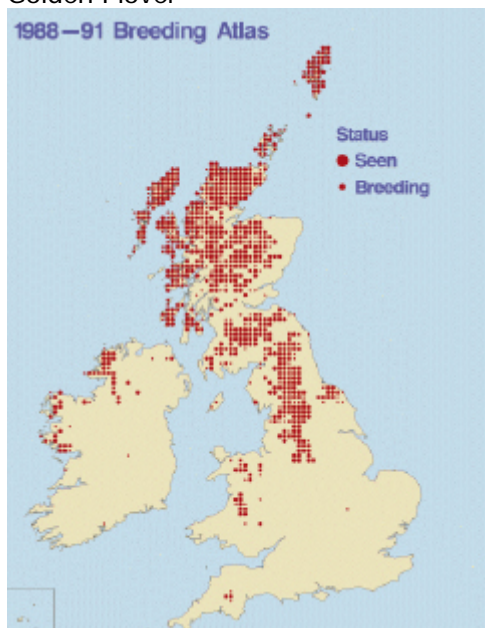
At end insert

Hare, Irish                      *Lepus timidus*

### **Information from the Department in relation to the Population of Birds**

Text in Red gives the NIEA view re the changes suggested to the status of the birds listed below.

## Golden Plover



### Annex I species (European Birds directive)

Golden Plover has a very limited occurrence in Northern Ireland as a breeding species where it has declined in recent years e.g. previously identified key sites in the west (Pettigoe Plateau and Cuilcagh mountain) now typically hold < 50% of the bird numbers present some 20 years ago. Overall the all-Ireland breeding population has declined by >25% over last 25 years (1999).

The species is more numerous and widespread outside the breeding season. Birds arrive in Ireland from Iceland, Ireland being the most important area for wintering Icelandic birds. Numbers are greatly affected by general weather patterns in NW Europe e.g. large influxes were noted at Northern Irish coastal sites during the 2009/10 winter probably representing birds that would normally winter in Scotland. It is possible that the Irish wintering population includes at least part of our remnant breeding population as some British breeding birds are known to winter in Britain.

Wintering Golden Plover are widely distributed throughout the countryside, but are only surveyed at our major coastal and inland wetland areas. These are surveyed regularly throughout the autumn - winter – early spring period as part of the WEBS (Wetland Bird Survey) programme. There have been no full surveys of this species in Northern Ireland. The current British Trust for Ornithology (BTO) Atlas programme will provide a fuller picture of winter distribution in the wider countryside and of total non-breeding populations. It is not clear what proportion of the total wintering population is surveyed through the WEBS programme but is thought to be a high percentage.

### Sites of all-Ireland importance in Northern Ireland

	03/04	04/05	05/06	06/07	07/08	5 year mean
Strangford Lough	15,988	4,578	7,970	8,513	8,817	9,174
Lough Foyle	7,647	7,372	7,640	9,534	9,211	8,439
Loughs Neagh and Beg	7,091	3,447	6,537	6,475	7,712	6,252
Bann Estuary	2,265	2,100	2,610	2,100	1,350	2,085

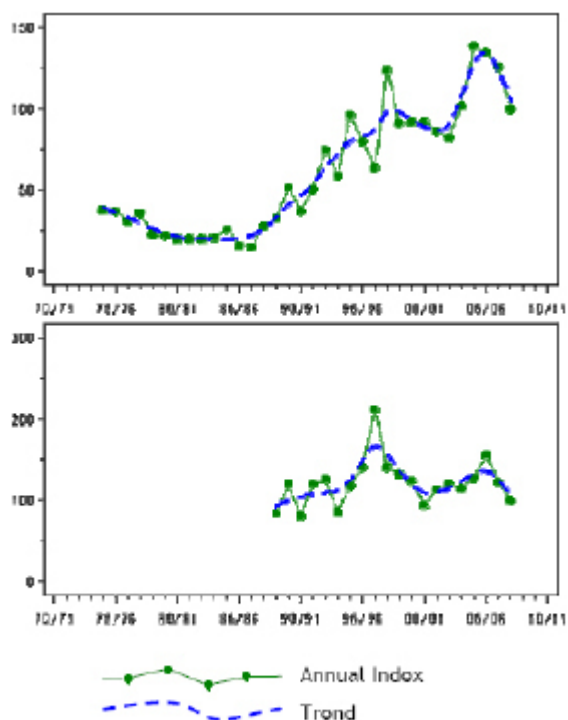


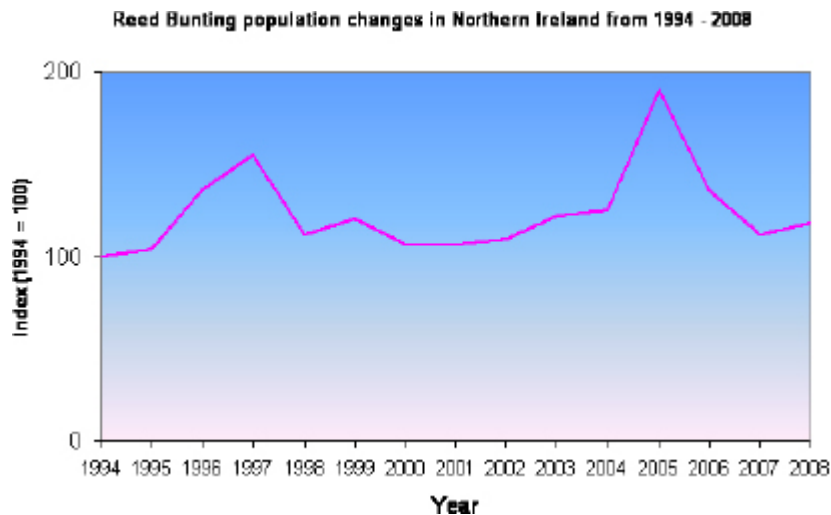
Figure 44.a, Annual indices & trend for Golden Plover for GB (above) & NI (below).

Wintering trends (based on WEBS site populations) are shown below –

The data shows an annually fluctuating population in Northern Ireland but with little overall change between the late 1980's and 2007/08. This contrasts with the GB WEBS population which has seen a notable increase over a similar timescale although a decline of some 20% is evident in more recent years. Therefore NIEA sees no case to remove Golden Plover from the quarry list and for the species to be given special protection.

#### Reed Bunting

Year	Index
1994	100
1995	104
1996	136
1997	155
1998	112
1999	120
2000	106
2001	106.5
2002	109
2003	122
2004	125
2005	190
2006	135
2007	112
2008	118



The survey results show a slight population increase for Reed Bunting in Northern Ireland over the past 15 years therefore NIEA sees no case to add to Schedule 1.

Most Breeding Birds which are widespread in the countryside are surveyed on a 10 year cycle. NIEA is contributing funds to facilitate the collection of data for the current survey which runs from 2007-2011. It is accepted that the best scientific data relating to distribution of breeding birds in Britain and Ireland is cited as Breeding Bird The new atlas of breeding birds in Britain and Ireland: 1988-1991. T. & A.D. Poyser. Gibbons, D.W., Reid, J.B. & Chapman, R.A. (1993).

Data from the ongoing survey will be available to help make decisions about the protection that bird populations may require in time for the statutory 5 year review.

## **Ravens**

68-72 Atlas – 1250 pairs in the whole of Ireland

88-91 Atlas – 3500 pairs in the whole of Ireland

On a pro-rata basis this could be extrapolated to reveal an increase in the population of Ravens in Northern Ireland from approx 400 pairs ( $1250/3$ ) in 68-72 to 1160 pairs in 88-91. There is no evidence to suggest that this trend has reversed. Therefore NIEA sees no case to add to Schedule 1.

## **Bullfinch & Whinchat**

The 88-91 Breeding Bird Atlas shows that Bullfinch is a widespread breeding bird in Northern Ireland and estimates 100,000 pairs of Bullfinches across the island of Ireland. There is no evidence to suggest that the population has declined since the last atlas NIEA sees no case to add to Schedule 1

The 88-91 Atlas indicates a scattered distribution of Whinchat across Northern Ireland with a concentration in the uplands of Co Antrim. Estimates for the whole of Ireland is 1250 – 2500 pairs.

There is no evidence to suggest that the population of Whinchats has declined since population estimates were published in the last atlas. NIEA sees no case to add to Schedule 1

## **Response from Department of Agriculture and Rural Development in relation to Deer Farming Exemptions**

For the protection of deer, the Wildlife (Northern Ireland) Order 1985 (the Order) prohibits the doing of certain acts except where the Department of Agriculture and Rural Development (the Department) certifies that, in its opinion, the person keeps and breeds the deer for the purposes of a trade or business (ie the deer are farmed, not wild). Article 20(2)(b)(ii) of the Order refers.

If the Department considers that such a trade or business is being carried on, it issues a Certificate of Exemption based on an inspection report.

Since 1988, only 25 certificates have been issued, the last of which was in 2007.

When a request for a Certificate of Exemption is received, an inspection is carried out, a report is completed and a recommendation, together with supporting reasons, is made resulting in the issue or non-issue of a certificate. A copy of each certificate issued is forwarded to the Department of the Environment.

### **Ulster Wildlife Trust Letter**

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Ulster Wildlife Trust

Mrs. Dolores Kelly MLA,  
Chairperson,  
Environment Committee,  
Parliament Buildings,  
Stormont  
BT4 3XX

8<sup>th</sup> April 2010

Dear Mrs. Kelly,

Re: **Wildlife and Natural Environment Bill**

The Ulster Wildlife Trust is the largest locally funded nature conservation charity working for a natural environment, rich in native wildlife, valued by everyone. The Trust is a membership charity and we have in excess of 7,900 members supporting our work. We are the only locally based charity concerned with all aspects of wildlife conservation, both on land and in our seas.

The Trust strongly welcomed the review of the Wildlife (Northern Ireland) Order 1985 and responded to the Department's consultation. We would like to thank you for the opportunity to give evidence to the Committee on 25<sup>th</sup> February 2010 with respect to the Wildlife and Natural Environment Bill. In our oral evidence we offered to write to the Committee to follow up on some points. We have outlined these in the document accompanying this letter. They concern in particular:

- Our position on the Irish hare.
- The importance of provision of public guidance about the Bill once it passes into law.
- The need for adequate resources for enforcement of the legislation.
- The relationship between scientific names and the legal status of a species.

If you would like any further information please do not hesitate to get in touch with me.

Yours sincerely,

Andrew Upton  
Nature Conservation Director



#### **Wildlife and Natural Environment Bill: Ulster Wildlife Trust**

This document provides follow-up to specific points raised in the oral evidence session of 25<sup>th</sup> February 2010.

#### **The Ulster Wildlife Trust's position on the Irish hare.**

Since 2004 the Irish hare has been given temporary statutory protection from taking and killing by the means of Special Protection Orders. In its consultation document the Department identified two possible future options:

- Leave existing levels of protection as they are within the Wildlife Order.
- Full protection under the revised Wildlife Order.

The primary nature conservation objective for the Irish hare is to secure a viable population in the long-term. The Ulster Wildlife Trust's position, based on peer-reviewed scientific evidence, is that the long-term sustainability of the Irish hare population depends primarily on appropriate habitat management. Appropriate habitat management is not something that can be secured by the medium of revising the Wildlife Order, however, agri-environment schemes such as the Department of Agriculture and Rural Development's Countryside Management Scheme have an important role to play in delivering appropriate habitats for the Irish hare. The timing of cutting and grazing of vegetation is important to allow hares to breed successfully.

In our response to the consultation on this legislation the Ulster Wildlife Trust took the decision to confine our comments to those aspects of the consultation that related to our core business of conservation, leaving those organisations with particular expertise in animal welfare, and for whom welfare was their core business, to make representation on animal welfare issues.

Therefore, in relation to the primary objective of securing a viable population in the long term the first option proposed by the Department was considered adequate by the Trust, though we emphasised that this should be reviewed after five years. The Ulster Wildlife Trust is the lead partner on the Species Action Plan for the Irish hare, working with other stakeholders. Analysis of population trends undertaken by Quercus (Queen's University of Belfast) will also provide valuable scientific data for a future review by the Department.

#### **Provision of Guidance on Wildlife Legislation to the Public**

The Trust currently receives around ten enquiries each month from members of the public about different aspects of environmental crime. A wide range of issues are covered but the subjects attracting most queries relate firstly to badgers with both baiting and sett disturbance of concern to the public and secondly incidents relating to tree cutting and hedges.

The Trust has strongly welcomed the review of the Wildlife Order and recognises the need to have up-to-date legislation in place. We are also aware that navigating the complexities of legislation can prove challenging for members of the public who nevertheless feel strongly about wildlife crime levels. Following the Bill passing into law the public will need to be informed and

made aware of the changes. This is the sort of situation where voluntary and community sector organisations such as the Ulster Wildlife Trust can help support the aims of the legislation by informing and educating its members and the wider public.

#### **Resourcing Enforcement**

As with any other piece of legislation there is a need for enforcement. As a result of our contact with the public we are aware that wildlife crime is assuming greater importance in their eyes. Badger persecution and the disturbance or destruction of birds' nests are clearly two significant issues. Of the 204 incidents reported by PSNI to the UK National Wildlife Crime Unit in 2008 46 were of badger persecution and 42 related to disturbance or destruction of birds' nests. There were also 21 incidents involving poaching.

Resourcing enforcement of wildlife crime is dependent on reporting of crimes by the public and while the Trust is often contacted in relation to alleged crimes, we advise members of the public about the importance of making a report to PSNI and getting a crime reference number. Statistics on wildlife crime are based on the PSNI crime figures but are produced by the UK National Wildlife Crime Unit.

The Ulster Wildlife Trust has, in the past, expressed concern about the general level of good quality information on the levels of wildlife crime in Northern Ireland.

#### **The relationship between scientific names and the legal status of a species.**

The name used in the Schedules should identify correctly and unambiguously the right organism. We would therefore propose including the taxonomic Authority as well as the Latin name which leaves much less room for doubt as to what was intended and provides a certain 'pedigree' for the name. The issue for those seeking legal protection for a species by placing it on a schedule is the legal status in the event of any change to that scientific name as a result of later scholarship which is a different perspective from that of the researcher and taxonomist. In the Schedules of the Wildlife Order the common name is included by way of guidance only and according to the legislation in the event of any dispute or proceedings, only the second column (i.e. the scientific name) is to be taken into account. From the perspective of biologists having an unambiguous name for an organism enables effective communication among taxonomists and researchers. It is this rationale that has been the driver for internationally accepted rules governing the formation and use of these names.

However, given the sheer variety and complexity of life on earth, the naming of organisms is an ongoing enterprise for science rather than a completed task, so in some cases names will change or two sub-species become recognised as two separate species following further investigation or innovation in research techniques eg molecular genetics. In its 2008 5<sup>th</sup> Quinquennial Review of Schedules 5 and 6 of the Wildlife and Countryside Act 1981 the Joint Nature Conservation Committee (JNCC) stressed the importance of ensuring that the scientific



names of all the species listed on schedules 5 and 8 were correct. Appendix 8 of the 2008 Quinquennial Review was intended to notify Government of taxonomic changes. An example is the Schedule 8 (Wildlife and Countryside Act) lichen *Cladonia striata* which has now been re-determined as *Cladonia trassii*. *Cladonia striata* still exists but it is present only in Europe while the lichen seen in Highland Scotland is actually *Cladonia trassii*.

Letter from Dr Donald in relation to the Irish Hare

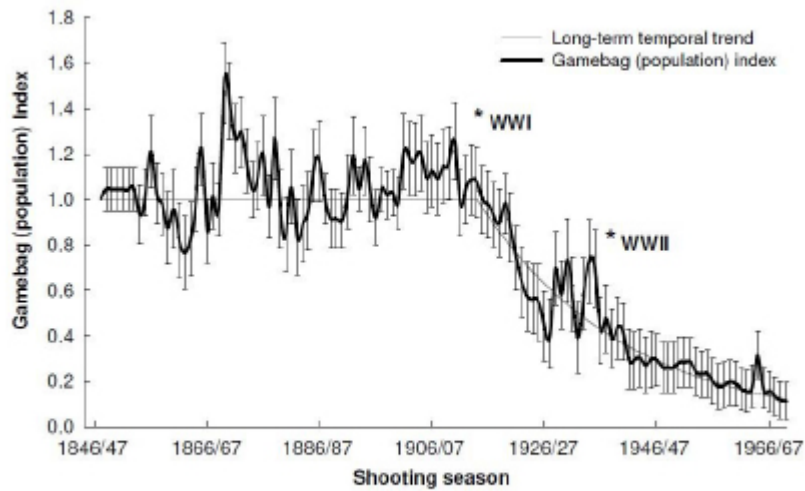
not make any relation to any of the other years except its own, whereby the confidence interval in 2008 has absolutely no relation to the confidence interval for 2009. The only way to determine that there is no significant difference between the mean populations in each year (i.e. population stability) is to statistically test for it by, for example, ANOVA or similar statistical analysis. However, in the 2009 Irish Hare survey because the 2009 95% CI overlapped with the 2008 95% CI the author concluded that there was no significant change in the Irish Hare population. I have to presume that this is the same conclusion presented to the committee and is why the committee has removed the Irish Hare from Schedule 5 of the new wildlife bill. Unfortunately, at present the conclusion drawn by the author of the survey is flawed, and by consequence any decisions based on these conclusions are equally flawed unless more robust statistical analysis of the data is conducted.

I would also like to draw your attention to one further issue which I believe the committee should at least be aware of, if not consider. Without criticism of any individual, the authors of the Irish Hare Surveys continue to receive funding from the pro-hunting/coursing lobby to conduct research. Although this is not a hidden fact, my question to the committee is whether this calls in to question the independence of the results/conclusions of the Irish Hare surveys when there may be an identified conflict of interest? May I propose that the committee has some form of independent audit/review conducted on the research to assure that the conclusions drawn are factually and scientifically correct?

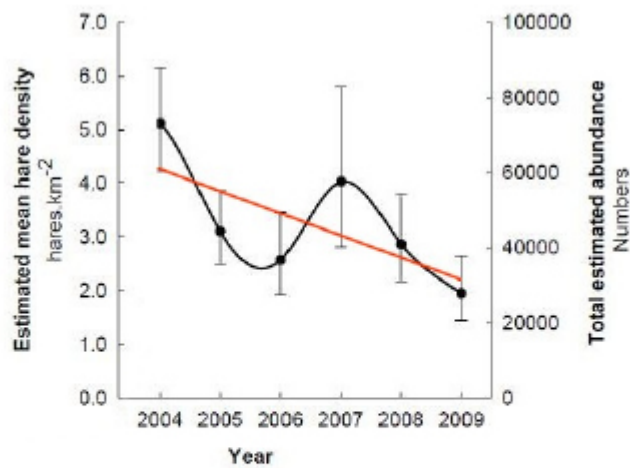
Robust scientific research into the recovery of any species requires long term trend analysis and monitoring (to include population count) to ensure preservation and maintenance of a species population. Currently there has been no scientific evidence presented to suggest that there is stability within the Irish Hare population during a period when hunting/coursing was banned. Therefore it can only be concluded in the absence of robust scientific datum that the Committee must re-assess their recent decision to remove the Irish Hare from Schedule 5 and apply the precautionary principal until clear unequivocal scientific data is presented to the committee. Having set the precedent for the review of the Special Protection Order later on this year, the Environment Committee could have effectively sealed the fate of the Irish Hare based on weak misleading statistical analysis of a short term data set.

Yours

Dr Nigel Donald Bsc Hons Dphil MIES



**Fig. 1** Temporal trends in Irish hare game bag indices from 14 shooting estates throughout Ireland from 1846-1970 (Reid et al. 2007)



**Figure 2.** Showing results reported from the last six Irish Hare surveys between 2004 and 2009. Trend analysis (red line) shows a negative trend (declining population) during the current period of study.

**Submission from the Department  
of Health, Social Services and Public Safety**

FROM THE MINISTER FOR HEALTH,  
SOCIAL SERVICES AND PUBLIC SAFETY  
Michael McGimpsey MLA



Department of  
**Health, Social Services  
and Public Safety**

[www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)

AN tOIR  
Sláinte, Seirbhísí Sóisialta  
agus Sábháilteachta Poiblí

AN tOIR  
Poblaíoch, Heaghlántaíocht Heimin  
an Fowl Sícear

Department of  
**Health, Social Services  
and Public Safety**

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Our Ref: COR/85/2010

19<sup>th</sup> March 2010

Thank you for your letter of 27 January forwarding a letter dated 12 January from the Environment Committee seeking evidence in relation to the Committee Stage of the Wildlife and Natural Environment Bill from the Department of Health, Social Services and Public Safety (DHSSPS), agencies and 'arms length' bodies.

Please find the attached Memorandum for forwarding to the Environment Committee containing the views of the DHSSPS, its agencies and 'arms length' bodies on the proposed Bill, particularly in relation to the new biodiversity duty on public authorities.

I note that the Department of the Environment have indicated that they do not consider that the Bill will place any additional financial burden on the public purse. However, I would like to highlight that a significant number of Health, Social Care and Public Safety bodies have indicated that they will require additional resources in order to comply with the Statutory Duty contained in the Bill however further analysis will be required to quantify these costs in detail.

I hope you find this information helpful.

Michael McGimpsey MLA  
Minister for Health, Social Services and Public Safety

NI ASSEMBLY

23 MAR 2010

HSS&PSCOMMITTEE



Working for a Healthier People



## MEMORANDUM

### **Committee for the Environment: Committee Stage of the Wildlife and Natural Environment Bill**

#### **Introduction**

The following Memorandum is provided by the Department of Health, Social Services and Public Safety (DHSSPS) in response to the letter dated 12 January 2010 from the Environment Committee forward by the Committee for Health, Social Services and Public Safety on 27 January 2010.

#### **Response**

To demonstrate compliance with the proposed statutory biodiversity duty, Health, Social Care (HSC) and Public Safety (PS) bodies will need to establish a biodiversity action plan which includes an assessment of the baseline biodiversity on the lands they control together with actions to conserve that biodiversity.

In relation to the core Department, we have no land under our control, therefore our existing biodiversity action plan focuses on assisting HSC and Public Safety PS bodies conserve biodiversity and so comply with the biodiversity duty.

In preparation for the implementation of a statutory biodiversity duty Health Estates Investment Group (HEIG) has commission guidance, due to be published by the end of March 2010, to assist HSC and PS bodies comply.

For those bodies that have capital development programmes, procedures are already in place through the use of the Health Estates Sustainable Design Development Brief and the use of BREEAM healthcare, to ensure conservation of biodiversity within the boundaries of the capital project and in the immediate vicinity.

To provide a comprehensive response to the request, we asked our HSC and PS bodies to their views on the Wildlife and Natural Environment Bill and the views returned are set out as follows:

#### **1. Health and Social Care Board**

The Health and Social Care Board (HSCB) has no particular issues with the Bill. However, given that under Article 1(2) a public body must have regard to any strategy designated by the Department in 2(1), it would be preferable that public bodies would be consulted with in regard to any strategy before publication.

However, HSCB has minimal land within its control and will therefore include consideration of biodiversity implications within its environmental management procedures which are part of the Corporate Services Directorate Risk Register.

#### **2. Northern Health and Social Care Trust**

The Trust has reviewed the proposed Bill and has no comments to make.

### 3. South Eastern Health and Social Care Trust

**Re Clause 1 (1), (2), (3):** The 'Duty to Conserve Biodiversity' which this Bill imposes on public bodies is to be welcomed. However, in order to conserve and enhance natural habitats/biodiversity on Trust-owned land, comprehensive information on the current status of all such lands would be required. The implication of this is that full habitat/biodiversity surveys of all Trust owned estate should be carried out and periodically reviewed. Whilst such information would be valuable and would allow for informed decisions to be made in fulfilment of the other requirements of the Bill, there would obviously be a significant resource implication.

**Re Clause 4 (2):** The increased protection afforded to wild birds, their nests & eggs is again to be welcomed. The main implications for the Trust would be primarily in terms of Grounds Maintenance and Capital Development in that it would now be an offence to *obstruct or prevent any wild bird from using its nest*. This requirement may have financial implications in terms of restricting tree removal or disturbance during construction projects and will also need to be reflected in grounds maintenance contracts.

**Re Clause 5(1), (2):** The increased protection this clause provides to wild birds, their nests & eggs/certain wild animals/wild plants/wildlife refuges should have minimal impact on the Trust as we should already be complying with the relevant clauses of The Wildlife Order (NI) 1985. The addition of the offence of 'Recklessness' to that of 'intentional' disturbance closes a loophole in the defence of any such disturbance which responsible bodies should be happy to comply with.

**Re Clause 6:** This amendment to The Wildlife Order which makes an offence of '*permitting to be done*' the various offences listed in the Order may impact the Trust in that, as a commissioner of works the Trust may be liable for any offences committed by contractors working on Trust sites. The terms & Conditions of all contracts would have to be amended to reflect this.

In regard to all of the above, it would be imperative that clear and timely direction be provided to the Trusts by the Department in order that required funding is identified and all relevant parties are made aware of the requirements.

### 4. Southern Health and Social Care Trust

The SHSCT is committed to good Environmental management and welcomes the opportunity to provide their feedback in relation to the proposed Wildlife and Natural Environment Bill and will identify where applicable their concerns below in relation to the impact of this Bill to the Trust.

#### Clause 1

In reading the Bill it is assumed that the Trust and other public bodies have the resources to support this legislation. The SHSCT operates from over 180 sites from Craigavon to Clogher and as far south as Killeel. In order to meet the requirements of this Bill it is understood the Trust would have to complete a biodiversity study of all sites and then, where necessary, restore and enhance any habitat or population of species.

the local experts and receive advice on the identification, management, restoration and enhancement of any habitats or population of species.

#### **Clauses 5 and 6: Offences**

The Trust feel that there has been no consultation with their staff in regard to this bill and feel a seminar for Health Trusts in Northern Ireland would be very worthwhile and a requirement for the future of this Bill in Northern Ireland.

The unlawful introduction of "non-native" plant species. Would the DOE hold information on this and does the Trust require permission for planting of same? Does the Trust require a licence for planting of same?

#### **Clause 7**

Who is the authorised person under this Bill and how will this relate to the Trust?

#### **Clause 11: Protection of wild plants**

In relation to this clause the Trust would again seek clarification on who is the authorised person. It should also be noted of course that as we are a public body we are open to the public to use all sites across the Trust. Who is responsible if a member of the public was to remove a wild plant including "fungi" from any premises?

#### **Clause 12: Introduction of new species**

Concerns over lack of correspondence with public bodies in relation to this new Bill which has major implications for the Trust including criminal or civil proceedings for not complying with guidance issued by the DOE. How do the DOE ensure that all bodies are aware of the requirements of the Bill and ensure that those responsible have been notified? Again, the Trust would welcome any guidance and an early meeting for assistance on this issue and to ensure the Trust completes any works as reasonably practicable under this Bill.

#### **Clause 14: Licence under Article 18**

In an instance of a tree which has a disease and must then be destroyed will the Trust need a licence to destroy same or can the licence be held by the Trust's chosen contractor?

#### **Clause 27: Offences in connection with ASSI**

If the Trust permits the carrying out of an operation which damages any of the flora, fauna or geological or physiographical features by reason of which an ASSI is of special interest it will mean that the Trust is "guilty of an offence" and is liable on summary conviction to a fine not exceeding £20,000 or on conviction of indictment to a fine. The Trust would welcome further clarification on this.

There is likely to be a significant cost to the Trust to carry out surveys and invest in remedial measures – such as they may be. This is at a time when the Trust is under substantial pressure to reduce spending and protect front line services.

Unless sufficient funding is made available it would mean that the Trust would be unable to comply with the legislation. Alternatively funds would have to be diverted from health care activities or the maintenance of Trust buildings. This is an unrealistic option.

The Trust has limited resources with one full-time member of staff responsible for the areas of waste, water and energy and all other environmental issues and the monitoring of same across the Trust's 180 sites. This will be added workload to this one member of staff and on the already stretched budget for environmental management.

The Trust would welcome the opportunity to meet with the DOE representatives to advise on what actions can be taken to meet the requirements of the Bill and in particular how this can be accomplished with minimal impact on budget.

However, in relation to the following requirements the Trust identifies the pressures that this will put on it in order to comply with the proposed Bill:

**Duty upon government departments and public bodies to take action to further the conservation of biodiversity.**

The Trust must firstly have an understanding of the biodiversity on all sites across the Trust and take appropriate actions for conservation where applicable ie Biodiversity Survey will have to be undertaken for the whole of the Trusts estate at considerable expense.

**Aims to raise the profile and visibility of biodiversity as a natural part of decision making in the public sector.**

The Trust currently meets this for any new build projects as it is required to complete a BREEAM Healthcare assessment for all such projects. This includes a section requiring a report or study completed on the ecology of the area. However this bill would also have an impact and potentially add cost to even small development works.

**In fulfilling this duty the public authorities are expected to have regard to the principles and actions contained in the Northern Ireland Biodiversity Strategy.**

The Trust must quantify and identify resources to meet the demands set out in the Northern Ireland Biodiversity Strategy.

**Clause 3: Biodiversity lists**

No correspondence has been received by the Trust in relation to the biodiversity listings. The Trust would welcome the opportunity to work with



**Financial Effects of the Bill:** The Department of the Environment does not consider that the Bill will place any additional financial burden on the public purse, nor on the general public.

With reference to Clauses 1-7, 11, 12 and 27 the Trust must be aware of the Wildlife and Natural Environment across all 180 sites.

As there are a number of locations in a rural setting there would therefore be a requirement to have surveys completed by a specialist contractor and a record kept of the various flora and fauna on Trust sites. Further to this it would be a requirement to ensure that the Trust takes the necessary measures to protect the population of species and habitats listed in the Wildlife (N.I.) Order 1985 and any amendments under Schedule 1 and 2 of the proposed Wildlife and Natural Environment Bill.

Taking into consideration all of the above the Trust believes that there will be considerable costs incurred to comply with this legislation and knowledge which must be recorded and notified to any contractors working on behalf of the Trust.

**5. Belfast Health and Social Care Trust**

Belfast Trust would be very keen to support the additional measures requested within this Bill that will assist with the conservation of wildlife and the natural environment supported within and by the Trust's Estate. However, the creation of 'Departmental' biodiversity strategies, reports and guidance proposed by the Bill will necessitate the allocation of associated financial resource to enable the full and correct implementation of this Bill.

The level of this resource has not been fully ascertained but its availability would need to be considered if this Bill is to be effective and make a genuine difference to the environmental diversity that currently exists within the public sector estate in Northern Ireland.

**6. Northern Ireland Ambulance Service Health and Social Care Trust**

NIL Return

**7. Business Services Organisation**

Nil Return

**8. NI Guardian Ad Litem Agency**

The N.I. Guardian Ad Litem Agency would wish to comply with any strategy designated in relation to biodiversity.

**9. NI Fire and Rescue Service**

Can the Department of the Environment confirm that under Article 6 of the proposed WILDLIFE AND NATURAL ENVIRONMENT BILL – "offences", NIFRS can rely upon the Article 7(7) "defences" of "there was no other

*satisfactory solution*" to apply in the event of NIFRS supervising areas of controlled burn on a mountain side due to risk to Firefighters, limited availability of resources in times of peak activity etc? The action of a controlled burn could be perceived as "any person who knowingly causes or permits to be done" harm to the flora, fauna, etc.

Again specifically ref ASSIs, in article 27 "(5A) A public body which, in the exercise of its functions, permits the carrying out of an operation which damages any of the flora, fauna or geological or physiographical features by reason of which an ASSI is of special interest", does this article have application to the NIFRS in the event of an operational incident within an ASSI? If this article has application to NIFRS, it could require that we notify the department in writing after each emergency incident. This would not obviously be the intention of the legislation, but clarity or confirmation would be helpful.

Department of Health, Social Service and Public Safety: February 2010