

## HOW THE NI WILDLIFE BILL PROPOSALS COMPARE WITH WILDLIFE ORDERS IN ENGLAND, SCOTLAND AND WALES.

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### 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'<sup>1</sup>)

### Comparisons with Other UK Legislation

Proposals in NI Wildlife Bill	England and Wales	Scotland
<b>Clause 1:</b> introduces a new statutory duty upon government departments and public bodies to take action to further the conservation of biodiversity.	Similar to section 40 of the Natural Environment and Rural Communities Act 2006 <sup>2</sup> .	A similar duty has been introduced in the Nature Conservation Act 2004 <sup>3</sup> Part 1 section 1.
<b>Clause 2:</b> 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 2000 <sup>4</sup> and the Natural Environment and Rural Communities Act 2006 <sup>5</sup> ).	Similar to provisions made in the Nature Conservation Act 2004 section 2.

<sup>1</sup> [NI Wildlife and Natural Environment Bill Explanatory and Financial Memorandum](#)

<sup>2</sup> [Natural Environment and Rural Communities Act 2006](#)

<sup>3</sup> [Nature Conservation Act 2004](#)

<sup>4</sup> [Countryside and Rights of Way Act 2000](#)

<sup>5</sup> [Natural Environment and Rural Communities Act 2006](#)

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<b>Clause 3:</b> 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.
<b>Clause 4:</b> 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 2006 <sup>6</sup> 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.
<b>Clause 5:</b> 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
<b>Clause 6:</b> enables action to be taken against someone who knowingly causes or allows someone else to cause damage (to animals, birds and plants) <i>before</i> that damage occurs <b>Clause 17:</b> 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 Act <sup>7</sup> in GB contains a provision (Article 18) which makes it an offence for anyone to <i>attempt</i> to commit an offence under its forgoing provisions, or have possession of anything that is capable of being used to commit the offence.	
<b>Clause 7:</b> '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	The 1995 Statutory Instrument amends the Wildlife and Countryside Act 1981 to include the need to show there was no other satisfactory solution.	<b>Refer to point 3 under 'Differences' at the end of this matrix</b>

<sup>6</sup> [Natural Environment and Rural Communities Act 2006](#)

<sup>7</sup> [Wildlife and Countryside Act 1981](#)

Proposals in NI Wildlife Bill	England and Wales	Scotland
must perform such an activity then they must apply to the DOE for a licence		
<b>Clause 8:</b> 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.		<b>Refer to point 4 of the ‘Differences ‘section at the end of this matrix.</b>
<b>Clause 9:</b> 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 2 <sup>nd</sup> 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.
<b>Clause 10:</b> 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.
<b>Clause 11:</b> 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

<sup>8</sup> [Wildlife and Countryside Act 1981\(Variation of schedule 5 and 8\) Order 1998](#)

<sup>9</sup> [Deer Act 1991](#)

<sup>10</sup> [Scottish Wildlife and Natural Environment Bill Consultation Document](#)

Proposals in NI Wildlife Bill	England and Wales	Scotland
<b>Clause 12:</b> 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.
<b>Clause 13:</b> 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.
<b>Clause 14:</b> 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>	
<b>Clause 15:</b> removes restrictions on any person from shooting a deer from a vehicle, provided the vehicle is not moving and its engine is turned off. <b>Clause 16:</b> gives the DOE broader powers to issue licences to kill, injure or take any (fallow, red or sika) deer during the close season.	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.	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.
<b>Clause 18:</b> enhances the stop and search powers available to police officers to obtain evidence of an offence.  There is provision for entry to premises under the authority of warrant issued by a lay magistrate to investigate an offence.  Provision also permits a police officer to be	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.	Similar provisions are found in the Nature Conservation Act 2004 Chapter 4 Article 43.

<sup>11</sup> [Wildlife and Countryside Act 1981 \(Amendment\) Regulations 1995](#)

<sup>12</sup> [Regulatory Reform \(Deer\) \(England and Wales\) Order 2007](#)

<sup>13</sup> [Deer \(Scotland\) Act 1996](#)

Proposals in NI Wildlife Bill	England and Wales	Scotland
<p>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><b>Clause 19:</b> 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><b>Clause 20:</b> gives similar powers mentioned in Clauses 18 and 19 to the DOE Wildlife Inspectors.</p>	<p>As above</p>	<p>As above</p>
<p><b>Clause 21:</b> makes the time limit for bringing court proceedings for all offences under the Wildlife Order to 6 months.</p>	<p>Similar to schedule 6 of the Natural Environment and Rural Communities Act 2006 which amends the Wildlife and Countryside Act 1981</p>	<p>Similar provision is made in the Nature Conservation Act 2004 Article 46 and schedule 6</p>
<p><b>Clause 22:</b> 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</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,</p>

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	wildlife inspector. Also separate fines will have to be paid by each individual for every bird, nest, egg, animal, or plant harmed.	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.  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 3 <sup>14</sup> .
<b>Clause 23:</b> 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.		A similar clause can be found in the Nature Conservation Act 2004 Part 5 section 55.
<b>Clause 24:</b> 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.	
<b>Clause 25:</b> amends the lists of bird, animal and plant species contained in Schedules 1 and 2, and 4 to 9 of the Wildlife Order.		
<b>Clause 26:</b> The close season for female deer, which gives protection from taking and killing, is shortened and changed to end on 30 <sup>th</sup> 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	In the 1959 Deer Act the close season for female Red Deer runs from 16 <sup>th</sup> February to the 20 <sup>th</sup> October. The 1996 Deer Act has provisions allowing the Secretary of State to fix

<sup>14</sup> [Criminal Justice \(Scotland\) Act 2003](#)

<sup>15</sup> [Regulatory Reform \(Deer\) \(England and Wales\) Order 2007](#)

Proposals in NI Wildlife Bill	England and Wales	Scotland
	season ends on the 31 <sup>st</sup> October (a month later than the NI proposal)	a close period each year; specific dates are not stipulated. 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><b>Clause 27:</b> 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 <b>Clause 27</b> 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>
<p><b>Clause 28:</b> places a requirement on the owners of land within an ASSI to notify the Department of change of ownership or occupation of the land.</p>	<p>Similar provisions are made under the Countryside and Rights of Way Act 2000 schedule 6.</p>	<p>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 told the land is an SSSI (s 3-</p>

<sup>16</sup> [Scottish Wildlife and Natural Environment Bill Consultation Document](#) (p. 15/16)

<sup>17</sup> <http://www.snh.org.uk/pdfs/protect/NCASSSIleaflet.pdf>

<sup>18</sup> 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](#))



Proposals in NI Wildlife Bill	England and Wales	Scotland
		22).
<b>Clause 29:</b> 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.
<b>Clause 30:</b> 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	
<b>Clause 31:</b> 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> .
<b>Clause 32:</b> 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.

<sup>19</sup> [Regulatory Reform \(Game\) Order 2007](#)

<sup>20</sup> [Scottish Wildlife and Natural Environment Bill Consultation Document](#)



## **The Scottish Wildlife and Natural Environment Bill**

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.

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<sup>21</sup> <http://www.scotland.gov.uk/Resource/Doc/1221/0082607.pdf>

### 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<sup>22</sup>.
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)<sup>23</sup>. However, clause 7 of the NI Bill expands upon this subject by stipulating that 'authorised people' (owners/occupiers) must show there was no satisfactory 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.

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<sup>22</sup> Muirburn is the act of prescribed burning of vegetation on open semi-natural habitats such as heath or moor.

<sup>23</sup> [Scottish Wildlife and Natural Environment Bill Consultation Document](#) (p. 58)