



Department of the
Environment

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Review of the Wildlife (Northern Ireland) Order 1985

Synopsis of Consultation Responses

March 2009

1. Introduction

- 1.1 This document provides a synopsis of the responses received in relation to the Department's consultation exercise on the *Review of the Wildlife (Northern Ireland) Order 1985*, held between February and June 2008. As well as setting out proposals for updating and amending the Wildlife (Northern Ireland) Order 1985 ("the Wildlife Order"), the consultation also contained proposals to reform elements of the Game Laws, principally the game and game dealers licensing systems. It also contained some proposals for amending the Environment (NI) Order 2002 in order to enhance the management and protection of Areas of Special Scientific Interest in Northern Ireland. In total the consultation asked for views on 21 specific proposals and on a further 7 separate issues.
- 1.2 A total of 80 responses were received to the consultation, 21 from within government and other public bodies, 34 from Non Governmental Organisations (NGO's) and interest groups, together with 24 individual responses. A list of respondents who offered comments on the proposals is provided at **Annex A**.
- 1.3 Many respondents provided substantial replies and in producing this synopsis we have tried to express the wide range of comments and views submitted.
- 1.4 The Department would like to thank all those who provided comments and for the comprehensive input provided by many respondents. The number and nature of responses indicates an encouraging level of interest in wildlife in Northern Ireland and the detailed comments are a significant assistance in helping to inform decisions on the best way to progress with the review.

2. Executive Summary

- 2.1 A good level of interest to the consultation was indicated by the number and nature of responses from a wide range of interests, including environmental, agricultural, sporting, welfare and business interests, as well as a number of individuals.
- 2.2 In general, there was broad support for the review in order to bring the Wildlife Order up to date. A majority of the proposals highlighted within the consultation also received a good level of support, although it is fair to say that some proposals did receive a mixed response.
- 2.3 Respondents did not provide comments on all the proposals and some organisations have also taken the opportunity to suggest their own amendments/ideas for improvement of the Wildlife Order and protection of wildlife.
- 2.4 In view of the support received, a majority of the main proposals will be progressed with little change. The key proposals include:
- the introduction of a statutory duty upon government and public bodies to further the conservation of biodiversity;
 - strengthening the enforcement powers available to the police and the Department's wildlife inspectors;
 - making most of the proposed amendments to the Schedule to the Wildlife Order and placing a requirement upon the Department to undertake reviews to specified timescales;
 - amending the form of some offences, for example, making reckless action that harms wildlife an offence;
 - making the requirements of the Wildlife Order applicable to the Crown and public bodies;
 - making disturbance of basking sharks an offence; and
 - reform of the game licensing and game dealers licensing systems, and removing restrictions on the sale of game throughout the year.
- 2.4 For some issues, there were mixed views on the best way forward. How best to regulate the introduction of invasive non-native species, and effectively manage the wild deer population in Northern Ireland are two examples. The Department is continuing to give consideration to the best way forward on the outstanding issues in association with stakeholders as necessary.

- 2.5 The issue of statutory protection for the Irish Hare was given particular attention in the consultation and two options were identified. A majority of respondents agreed with option one, namely, to rely on existing statutory protection measures and focus attention towards addressing the main causes of population decline e.g. habitat loss. This is the approach on which it is proposed to move forward.
- 2.6 There were strong views expressed that the consultation did not propose to increase penalties for wildlife crime. In particular, there were calls to give courts the power to impose custodial sentences. After early consideration of the views expressed on this particular issue, the Minister recognised and agreed with the strength of the arguments, and to proceed with a proposal to introduce custodial sentences for wildlife offences.
- 2.7 The following section provides analysis of the responses to each of the proposals contained in the consultation, together with the other main issues identified by respondents.

3. Consultation Responses

Each proposal is listed alphabetically, mirroring the format of the consultation document. Issues that were not specifically assigned a letter, or that were not contained in the original consultation, are detailed at the end of Section 3 under 'Other Issues'.

Proposal A: to place a statutory duty upon the Department to review the Schedules (1, 2, 5 and 8) to the Wildlife Order every 5 years.

- Thirty-three respondents commented on this proposal. Most supported the proposal. A number of respondents emphasised the importance of ensuring that changes to the Schedules are underpinned by relevant and appropriate scientific evidence, and that there is proper consultation before any changes are made.
- Regarding the time interval between reviews, a majority of those who commented agreed that 5 years was appropriate. Some disagreed because they were concerned that such an interval was too short, potentially creating a climate of constant change and uncertainty, and not providing sufficient time to allow changes to the Schedules to be monitored and evaluated.
- Some respondents highlighted the importance of ensuring there is sufficient flexibility to allow changes to be made to the Schedules at any time, where a need arises.
- A number of respondents considered that all the Schedules should be subject to the review and that Schedule 9, in particular, should be subject to a more regular review.

Department's response: It is important to ensure that protection afforded to Northern Ireland's wildlife through the Wildlife Order remains relevant and up to date, therefore the Department will proceed with this proposal. An interval of 5 years is considered appropriate and has been applied successfully in other administrations. The review will focus on the main Schedules. Separate risk assessment processes in relation to invasive non-native species exist to enable necessary changes to Schedule 9 to be identified. The Wildlife Order already contains powers to change the Schedules at any time, therefore a 5-yearly review will not preclude the addition of species if a threat to the species is significant enough to warrant providing immediate protection. Any proposed changes, whether recommended as part of the 5-yearly review or otherwise, will be subject to full consultation as a matter of practice and subject to full scrutiny.

Proposal B: amend the Schedules to the Wildlife Order.

- Proposed changes to the Schedules produced significant interest. Thirty-six respondents commented, some in great detail, on the proposals. Whilst there was broad-based agreement to the majority of the proposed changes, there were some divergent views in relation to certain individual species, for example, the future status of the curlew.
- In addition to species identified by the Department for inclusion on the Schedules, some respondents suggested other species that should be considered for protection. We summarise the main issues as follows:

Protection of Wild Birds

Schedule 1 – ‘Birds protected by special penalties’

- The majority of the changes were supported. Additional species were proposed by some respondents, namely the Red Shank, Reed Bunting, Bull finch, Lapwing, Whinchat, Raven, Golden Plover, Swift, Snowy Owl and Gyrfalcon. Some pointed to a need for careful consideration of the inclusion of some quarry species (e.g. the golden plover) for the next review of the Schedules. A couple of respondents queried one or two of the criteria used as a basis for listing the species.
- Strong views were expressed on whether or not the **curlew** should be moved from Schedule 2 to Schedule 1 (i.e. removed from the ‘quarry list’). Those supporting a change cited the changed status of the curlew on the IUCN Red List i.e. to ‘near threatened’. Those opposed emphasised that self-regulation by the shooting community and supported management practices offered the best way forward.
- The consultation recognised concerns about the conservation status of the **Red grouse**. It proposed placing reliance on management actions such as those contained in the Species Action Plan, rather than giving the species statutory protection under the Wildlife Order. Eleven respondents commented on this issue and the majority of respondents supported the approach proposed, although one respondent called for a review of the Plan which has now been in place for over 5 years.
- Five respondents called for deletion of some species from the **pest list** due to concerns about their conservation status, namely, the house sparrow, starling, and black headed and herring gulls.

Schedule 2 – ‘Birds which may be killed or taken’.

- A proposed change to this Schedule was to add the **ruddy duck**. Six respondents commented on this proposal and all were in favour.

Schedule 3 – ‘Birds which may be sold dead at all times’.

- The consultation sought views on whether or not the sale of dead mallard should be permitted. Fifteen respondents commented. A majority did not object to permitting the sale of mallard, but most qualified this view by stressing that such activity should be controlled by licence (e.g. linked to rearing on shooting estates). Some opposed the idea due to concerns about a decline in the population, coupled with the threat that truly wild mallard may be at risk for commercial reasons. Two respondents emphasised the importance of mallard being retained on Schedule 2.

Schedule 4 – ‘Birds which may be shown for competitive purposes’.

- The consultation sought views on the possible addition of a number of species to Schedule 4. The consultation recognised that the system that regulates aviculture in Northern Ireland is different from that in the rest of the United Kingdom, due to the definition of ‘wild bird’ contained in the Wildlife Order.
- Fifteen respondents commented on this matter but opinion was quite divided on adding more bird species to the Schedule. Those in favour listed several species they wished to see included on the Schedule, arguing there is a ready market for captive bred birds and that ringing provides sufficient assurance that birds are not taken illegally from the wild. Those opposed wished to see more research carried out and evidence of sufficient captive bred sources before any changes are made. One respondent proposed that a new offence of tampering with the leg ring should be introduced.
- Opinion was also divided over whether or not the licensing system for aviculture should change with some respondents in favour of bringing it into line with that operating in Great Britain, citing the stricter Northern Ireland regime unfair. Others opposed any change in the system for NI.
- Three respondents called for the definition of wild bird to exclude captive bred birds, including falconry interests, who believe the existing definition is not in compliance with European law, citing particular case law, and also arguing that the system in Northern Ireland is over regulated

Department’s response (Protection of Wild Birds): the main changes to Schedule 1 will be progressed. Further consideration to the additions proposed by some respondents is continuing. We are also continuing to work with relevant interests on the question of the curlew. Consideration of allowing the sale of dead mallard will be pursued provided a practical licensing arrangement can be developed. Consideration of the definition of ‘wild bird’ and the treatment of captive bred birds under the legislation and the implications for aviculture and falconry is also continuing. The Department will consider the species on the pest list separately as changes do not require legislation. Treatment of the Red grouse and Ruddy duck will be as proposed.

Protection of Wild Animals

Schedule 5 – ‘Animals which are protected at all times’

- There was broad agreement to the proposed changes to Schedule 5, particularly in relation to the marine species proposed.
- Several respondents commented on the need for greater clarity in relation to the status of European protected species (i.e. bats, otters, cetaceans and marine turtles) in Northern Ireland legislation, as these have been removed from the schedules to the Wildlife Order and are given protection under the Conservation (Natural Habitats, etc) Regulations (NI) 1995.
- Five respondents wished to see bees given specific protection under the Wildlife Order due to general declines in their population numbers.
- Some called for protection for two fish species, namely, lamprey and pollan.

The Irish Hare

- The issue of future statutory protection for the Irish Hare was given specific prominence in the consultation, with two options identified. The first option proposed relying on existing protection measures (this option would mean the species remains a ‘game’ species, protected under Northern Ireland’s Game laws e.g. protected close seasons).
- Thirty-seven respondents commented on this issue, a majority of whom favoured the first option. They believed the biggest threats to hare conservation were as a result of habitat loss, agricultural practises, etc. and that appropriate management practices would be the most effective way to boost and support population numbers.
- The other option was to give the hare full statutory protection under the terms of Schedule 5 of the Wildlife Order. Six respondents favoured this option, citing the importance of the hare as one of only a few of Ireland’s mammals, and one that may be unique to the island.
- Several respondents emphasised the need for continued monitoring of population levels. A few considered that the effects of predation on the population needed to be given more specific consideration. A few also raised concerns about the impacts from the brown hare population which appears to be increasing in numbers.

Schedules 6 and 7 – activities in relation to protected animals.

- Seven respondents made comment on the proposed changes, the majority of whom were in favour of the amendments. There were calls from several respondents for protection for Northern Ireland’s native crayfish.
- Six respondents commented on the proposal to delete the fox from Schedule 7 and all but one agreed with the proposal.

Department's response (protection of wild animals): the Department will proceed with most proposed changes. Regarding the possible addition of skate species and the angel shark to Schedule 5, there are potential technical difficulties associated with the Common Fisheries Policy. Recent research by NIEA into the location of such species around our coast will help inform whether or not protection can be proposed.

Regarding the Irish hare, the Department proposes moving forward on the basis of the option favoured by the majority of respondents i.e. to focus efforts on proactive conservation measures rather than pursue enhanced statutory protection. The Department considers that the current population surveys indicate that the species would benefit little from the nature of the additional controls that would be provided by inclusion on Schedule 5 of the Order.

Regarding bees, we do not feel that statutory protection is the most appropriate way to boost population numbers. In conjunction with other areas of government e.g. the Department of Agriculture and Rural Development, certain more proactive measures are being investigated that are likely to be more effective in maintaining bee health and enhancing bee populations. Currently, 3 bees species are on the priority species list and others can be added if supporting evidence exists. These species will have Species Action Plans or management statements prepared.

Protection of Wild Plants

Schedule 8 – 'plants which are protected'

- Only five respondents specifically commented on the proposed changes to Schedule 8. Most were in favour of the majority of the changes. Several other species were suggested for inclusion on the schedule, for example, the juniper. One respondent queried why no fungi were proposed for inclusion.
- Several respondents considered that *no* species should be deleted from the Schedules as a precautionary measure, especially considering future threats such as climate change.

Department's response (protection of wild plants) – the Department will proceed with the proposed additions. Consideration of the additions proposed by respondents is continuing. Further consideration will be given to whether or not any deletions should be made

Invasive Non-native Species (Schedule 9)

Detailed comments on the approach to be taken in relation to invasive non-native species are included below - see **Proposal M**.

Proposal C:

- place a general statutory duty upon government departments and public bodies to further the conservation of biological diversity consistent with the exercise of their functions;

- place a statutory duty upon the Department to designate a Biodiversity Strategy for Northern Ireland;

- place a statutory duty on the Department to present to the Minister reports of progress on the implementation of the Strategy every 3 years; and

- place a statutory duty on the Department to produce lists of habitats and species of conservation importance, and to support and promote their conservation.

- Twenty-nine respondents commented and offered broad and, in many cases strong support, for these proposals.
- Two respondents urged direct action ‘on the ground’, rather than provide general duties.
- A number of respondents wanted to see the wording of the duty clarified to ensure the duty required proactive measures to ‘enhance and restore’ biodiversity.
- Several respondents emphasised the need for detailed guidance to support the new duty and to make plain the extent of the duty in government policies, while a couple of respondents emphasised the importance of proper resourcing to support the duty.
- Ancillary elements such as developing the lists of conservation importance and presenting reports to the Minister were not commented on widely but were supported where responses were given.

Department’s response: the Department will proceed with the proposals. The wording of the duty will clarify that conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat. The Department intends to separately develop guidance for government departments and public bodies to support the new duty which should help towards delivering direct action at a practical level.

Proposal D: give the police additional stop and search powers, and powers of entry, but with appropriate safeguards.

- Twenty two respondents provided comment and all were in support of the proposals.
- Several respondents were concerned to ensure appropriate safeguards would be put in place.

- Several respondents sought clarification on the role and identify of any persons who can 'assist' the police and sought assurance that the definition of 'assistant' would remain suitably flexible while ensuring that any such persons are suitably qualified and experienced.
- A few respondents expressed concern about the level of priority given to wildlife crime by enforcing authorities in the past and wished to see more resources dedicated to enforcement.

Department's response: the Department will progress these proposals.

While acknowledging that priority given to enforcement of wildlife crime has not been as high as some may wish, the Department believes the additional powers will assist the police in delivering a more effective enforcement regime. A number of initiatives are aimed at increasing the awareness of wildlife crime, including the establishment of the NI working group of PAW (Partnership for Action against Wildlife crime). This has also included recent initiatives such as developing a standard system of recording reported incidents of alleged crimes that the various stakeholders can direct to the appropriate enforcement agencies.

It is therefore hoped that a number of proposed amendments to the Wildlife Order, together with other initiatives, will help raise the level of awareness of wildlife crime and assist in its enforcement.

Proposal E:

- give Wildlife Inspectors powers of entry and inspection to investigate offences under Articles 7(1) & (2), 8(1), 9(1); 13(1) & (2) and 14(2) of the Wildlife Order;
- give Wildlife Inspectors powers of entry and inspection for the purpose of checking applications for licences or registrations and for checking compliance with same;
- require persons to make specimens available to Wildlife Inspectors conducting inspections for the above mentioned purposes and to assist the Wildlife Inspectors to examine the specimen;
- give Wildlife Inspectors powers to require the taking of blood or tissue samples; and
- make it an offence to obstruct an Inspector or fail to assist him.

- Twenty one respondents offered comment on this proposal and all were in support.
- Several respondents wanted to see the new powers being matched with increased resources for enforcement activity.
- One respondent raised concerns about biosecurity issues when accessing property.

- One respondent wished to see a reasonable excuse defence in relation to the proposal to make it an offence to obstruct a wildlife inspector.

Department's response: the Department intends to take forward the proposals.

Proposal F: reckless action that harms wildlife listed on Schedules 1, 5, and 8 should be an offence.

- Twenty one respondents commented on this proposal. All but two supported it.
- A couple of respondents were concerned generally about applying the concept to wildlife offences due to potential difficulty in assessing the degree of awareness and knowledge of the presence of protected species, and of the specific consequences of a particular action.
- Two respondents wished to see the concept applied to disturbance of breeding and nesting sites. Three respondents also wanted to see the concept of recklessness applied to offences related to Schedules 6 and 9, and Article 16 of the Order.

Department's response: the Department proposes to move forward with this proposal. Consideration will be given to the merits of applying the concept of recklessness to other offences.

Proposal G: make it an offence for a person to cause or permit another person to carry out certain acts against wildlife i.e. those under Articles 4(1), (2) & (6); Article 10(1), (2) & (4); and Article 14(1).

- Seventeen respondents provided comment. All were in favour of the proposal.
- A couple of responses offered comment on the precise wording of the offence to ensure the intention behind the prohibition was accurately reflected. Several respondents wished to see employers held liable for actions of their employees.

Department's response: the Department will progress this proposal. Precise wording will be subject to legal drafting.

Proposal H: make it an 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.

- Twenty respondents commented on this proposal and most were in favour of it.
- Two respondents expressed concern that adoption of the word 'likely' may mean inadvertently catching legitimate users and questioned whether it would achieve the aim the Department is seeking i.e. to prevent the setting of traps etc intentionally to cause harm. Several respondents sought clarification on the precise wording, especially the use of the word 'likely'.

Department's response: the Department acknowledges the concerns expressed about the wording of the offence. Legal advice will be sought on the explicit wording of the offence to determine whether or not the proposed amendment will deliver the intended effect.

Proposal I: create an offence for anyone to attempt to commit wildlife offences.

- Nineteen respondents commented on this proposal. All but one supported it. The objection focussed on the need to determine what would constitute an offence and the need for sound evidence before prosecutions should be pursued. The precise form of wording was also queried by one respondent.

Department's response: the Department plans to take forward this proposal, subject to legal clarification on the appropriateness of the offence in NI law. The interpretation and wording of the offence is likely to closely mirror that introduced in other administrations of the UK. As such, its application will be subject to the same tests as elsewhere in the UK, which should hopefully remove concerns about inappropriate prosecutions.

Proposal J: set the time limit for bringing prosecutions for all offences under the Wildlife Order at 6 months from the date on which sufficient evidence comes to the knowledge of the prosecutor.

- Sixteen respondents offered comment and all supported the proposal.
- One respondent considered the time interval should be extended to 12 months.

Department's response: the Department plans to take forward this proposal. Six months is considered an appropriate time period.

Proposal K:

- qualify the statutory defences in Article 5(6) regarding action against wild birds by 'authorised' persons;
- qualify the circumstances requiring the Department to be sure, when issuing a licence in relation to wild birds, there was not another satisfactory solution and, for certain activities, the licence is on a selective basis and in respect of a small number of birds; and
- give the Department power to issue licences for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds; and add 'research' and the protection of 'inland waters' to existing derogations.

- Fifteen respondents commented on these proposals. The majority of respondents supported them.
- A couple of respondents emphasised the importance of ensuring that the Wildlife Order accurately reflects the requirements of the European 'Wild Birds' Directive, with particular comment made regarding the existing 'incidental result defence'.
- One respondent urged the Department to conduct a review of licensing policy generally and specifically the use of the general licence.
- Two respondents emphasised the importance of ensuring the granting of licences is based on sound scientific rationale.
- In supporting the proposal to regulate the re-population or re-introduction of species, one respondent emphasised the need to ensure that such projects are well planned and should meet internationally recognised standards.

Department's response: the Department will take forward these proposals and recognises the need to be mindful of European law in relation to the legislative provisions giving protection to wild birds. Consideration will be given to the need for and timing of any review of licensing policy, although such a review will clearly be necessary as a result of any changes to the Wildlife Order. The issue of controls on reintroductions/relocations of certain species will be considered further.

Proposal L: make it an offence to intentionally or recklessly disturb or harass basking sharks.

- There were fourteen responses to this proposal and all were in favour of it.
- A couple of respondents wished to see codes of practice introduced for boat operators, enforced by a licensing scheme.

- One respondent wished to see the introduction of byelaws to create exclusion zones in sensitive areas.
- Three respondents wanted the offence to be extended to marine turtles and cetaceans.

Department's response: the Department will progress this proposal. The NI Environment Agency actively promotes and supports a training and accreditation scheme for boat operators, known as the WiSe (Wildlife Safe) scheme. As such, the Department does not consider an additional code of conduct is required at this time.

A proposed Northern Ireland Marine Bill will provide for the creation of marine protected zones with supporting enforcement provisions.

Comments on the need to extend the offence to other marine species are valid, especially in relation to cetaceans. However these species are protected under a separate piece of legislation, the Conservation (Natural Habitats, etc.) Regulations (NI) 1995. The Department proposes introducing equivalent amendments to this piece of legislation at the earliest opportunity.

Proposal M:

- Update Schedule 9, which will also include prohibiting the release of certain mammals onto offshore islands;
- give the Department power to prohibit the sale of any species it may specify in an Order;
- provide a discretionary general power for the Department to take action to control, contain or eradicate invasive non-native species and provide associated powers of entry;
- give the Department power to produce Codes of Practice about invasive non-native species;
- give courts the power to issue 'restoration orders' to persons convicted of causing damage under offences under Article 15; and
- clarify that existing offences cover hybrids of any species listed on Schedule 9.

- Twenty eight respondents offered comment on these proposals and there was general support for amendment of the existing regulatory framework.

General

- Several correspondents were concerned that the overall intention, construction and focus of the existing legislative provisions are not effective and would like to see a more fundamental review of the framework of regulation. They point to a number of problems such as a lack of appropriate definitions of key terms, the listing of species that are already widely established, a lack of focus on the ability to prevent introductions such as species that are high risk but not yet present in Northern Ireland, and a need to adopt a risk based tiered approach to listing species on the supporting Schedule.

Schedule 9

- The majority of respondents who commented expressed concern about the rationale for the content of Schedule 9 and its two individual parts.
- Five respondents identified an existing anomaly within the Wildlife Order with regards to the Goshawk, which is listed both on Schedule 1 and Schedule 9.
- Certain individual species were suggested for inclusion (for example, cherry laurel) and one respondent wished to see the Schedule reviewed every 3 years.
- There were divergent opinions in relation to the inclusion of certain species of deer. The issue of deer management is dealt with separately under **Proposal R** below.
- One respondent suggested having a separate Schedule containing high risk species similar to the existing Noxious weeds legislation.

Power to prohibit sale

- Four respondents commented on this issue and all were in favour. Some suggested certain individual species for control in this manner e.g. Muntjac deer and wild boar.

Definitions

- Eight respondents commented on the issue the definitions used in the Order. Most sought clarification of certain aspects while one respondent suggested definitions for key terms such as 'native', 'non-native', 'release', 'wild' and 'wild state'.

Power to take certain actions

- Ten respondents commented on this issue and most were in favour of the introduction of new powers. Some respondents recommended stronger controls that went further than those proposed in the consultation document. One respondent suggested that Ministers should be under a statutory duty to take action to eradicate invasive non-native species.

Codes of Practice

- Eight respondents commented on this issue and all were in favour of introducing codes of practice. A couple of respondents wanted Codes to be statutory for government departments. Two respondents wished to see a duty of care placed on landowners.

Restoration orders

- Five respondents commented and all agreed with the proposal.

Inclusion of hybrids

- Two respondents commented in favour of this clarification.

- In addition to the above, several other changes were recommended by respondents. Four respondents emphasised the importance of prohibiting the introduction of certain *native* species to islands. Three called for offences to be extended to cover the deliberate *or reckless* release of invasive non-native species.
- Several respondents also emphasised the importance of fines being based on the ‘polluter pays’ principle. Four emphasised the importance of having robust education and awareness programmes and several thought the most effective method for dealing with this particular issue was to adopt an ‘all-island’ approach. It was also suggested that actions should be taken to mitigate economic impacts as well as for conservation purposes.

Department’s response: the Department recognises that the issue of invasive non-native species is an extremely important area and one which connects many different sectors in NI. Several initiatives are currently under way to try to address the issue, including the all Ireland Invasive Species forum and proposals to prepare an Invasive Non-Native Species Strategy.

The Department also recognises the concerns expressed about the current structure of Article 15 and Schedule 9 and acknowledges that a more fundamental review may be necessary. With this in mind, the Department intends to take forward as many of the below proposals already made as possible, but will give further consideration to if and how more fundamental reform might be pursued.

Proposal N: make the provisions of the Wildlife Order applicable to the Crown and all public bodies that are part of the Crown.

- Nineteen respondents commented on this proposal and all were in favour of its introduction.

Department’s response: the Department will proceed with this proposal, especially in light of the requirements of European law.

Proposal O:

- clarify the provisions in the Wildlife Order that make it an offence to use a self-locking snare or to adapt or use any other form of snare in a manner that is likely to cause injury;
- make it an offence to possess (without reasonable excuse) a self locking snare;
- make it an offence for anyone to use or be in possession of a snare on any land without the owner/occupiers permission; and
- place a requirement upon any person setting a snare to inspect it at least once in any 24 hour period and to remove or release any animal caught.

- Seventeen respondents commented on this proposal.
- All except one were supportive of the proposal. One respondent believed the use of snares should be prohibited altogether.
- There were several queries on the exact nature of the proposed possession offence. One respondent considered the offence should not be for possession of a self locking snare, but for 'setting' one.
- Three respondents considered an interval of 24 hours was too long.
- One respondent would like to see an offence introduced making it illegal to interfere with a legally set snare.
- One respondent wished to see the use of snares regulated by a licensing scheme.

Department's response: the Department plans to proceed with its proposals. It is likely the offence of possession without reasonable excuse will be retained. A 24 hour interval is considered appropriate; a lesser time interval would be likely to be overly onerous on responsible, legitimate users, as would subjecting the activity to a licensing regime.

Proposal P

- make a new provision giving the Department power to issue licences for the disturbance of animals' shelters or movement of rare plants (but excluding European Protected Species) for the purpose of development;
- amend Article 18(3)(c) to permit licensed activity to conserve wild birds; and
- make it an offence to contravene a condition of a licence issued under Article 18 of the Wildlife Order.

Licences to disturb / move for purposes of development.

- Twelve responses provided comment on this individual proposal. A majority supported the proposal while two respondents reserved judgement until further details were available on how the licensing regime would work in practice.
- Three respondents expressed concerns that the system should not be used to enable developers to avoid species protection, that only activities for over-riding public interest should be considered and that the regime should not apply to private dwellings.
- Three respondents emphasised a need for any disturbance/movement to be conducted at appropriate times and to avoid impacts of the conservation status of the species.

Permit licensed activity to conserve wild birds

- Nine respondents commented on this proposal and all were in favour of it.

Make it an offence to contravene the conditions of a licence

- Eight respondents commented on this proposal and all were in favour of it.

Department's response: the Department plans to take forward the proposals.

In relation to licences for development purposes, this was primarily considered necessary for the relocation of badger setts, which is usually successful. NIEA will consider the need to award licences on a case by case basis and ensure that a licence will be granted only where there is a clear justification and the disturbance won't affect the population as a whole.

Proposal Q: extend the definition of 'wild plant' to include fungi and non-vascular plants; clarify that protection afforded to Schedule 8 (Part 1) species extends to all stages of their biological life cycle.

- Thirteen responses commented on this proposal and all were in favour of it.

Departments response: the Department will proceed with this amendment. Some consideration will be given to whether or not it is necessary for legal clarity purposes to specifically incorporate 'seeds or spores' to the core offence of picking any wild plant in Part 1 of Schedule 8, an issue that has been specifically identified in equivalent legislation for Scotland.

Proposal R:

- add Fallow Deer, Sika Deer and Muntjac Deer to Schedule 9 of the Wildlife Order;
- provide a definition of 'trade or business' to distinguish between wild deer and farmed deer;
- give the Department additional power to issue licences for the purposes of the management of deer populations; and
- clarify that shooting from a stationary vehicle without the engine running is permissible.

- Seventeen respondents commented on this proposal. While there was general support for the aims to improve deer management, there were differing views, some expressed quite strongly, on the best way to achieve that aim. A couple of respondents questioned the supporting assertions contained in the consultation document about the increased population numbers and its basis for the need for additional regulation. Those responses called for regular surveys of the wild deer population in order to identify trends and establish numbers.

- The main issue of contention was the proposal to allow the culling of deer for additional specific reasons under licence (for example, for the conservation of the natural heritage) and principally, the possibility that this could entail shooting at night. While there was support from a number of respondents, a number of others voiced strong opposing views, arguing that a suitable alternative solution would be to change the open season for hinds/doe, similar to changes introduced in England and Wales in recent times. These respondents were totally opposed to the idea of allowing night time shooting. One suggested that 'conserving the natural heritage' was too vague and 'conserving biodiversity and landscape' would be a clearer purpose.
- There were also divergent views about classifying certain deer species as 'invasive non-native species' and including them in Schedule 9 to the Wildlife Order. Some argued that some of the species mentioned in the consultation document, specifically Fallow and Sika, have been well established in Northern Ireland for a long time. While other respondents identified certain species that they believed should be added to the Schedule, namely, Roe, Red and Chinese Deer.
- There were also divergent views on how to define 'farmed deer'; some called for greater regulation of deer farming, perhaps under a licensing regime and the tagging of farmed deer. Some suggested that there should be a requirement for deer proof fences to be inspected and maintained regularly. Some urged caution that any definition proposed should not include deer parks.
- Regarding the proposal to allow shooting from a stationary vehicle, four respondents were in favour, one was strongly opposed and one cautioned against possible damage to hearing and the need to employ ear guards.
- A few respondent suggested that the issue of deer management needs to be addressed on an all island basis and that there is a need for a form of stakeholder group or statutory commission.

Department's response: several actions will be pursued by the Department. The problems of Article 15 and Schedule 9 have been discussed elsewhere and the proposals to add various deer species will be taken into account as part of wider considerations on the role of those provisions. The management of farmed deer raises particular problems and may not be achievable solely through the conservation legislation.

The proposal to extend the hind shooting season has been mentioned by several informed groups and would mirror changes introduced in administrations in England and Wales. The Department would propose providing for an extension of the season, but will need to consider whether this should apply at the start or end of the open season (or partly both start and end).

The proposal to allow shooting at night for deer management has clearly raised concerns and the Department is minded not to proceed with the proposal.

Despite the concerns raised about shooting from stationary vehicles, the Department feels the existing provisions impose unnecessary restrictions on deer managers and will therefore proceed with this proposal; however, further guidance may be issued on how to carry out this activity with safety in mind.

Proposal S: prohibit registration under Articles 7 and 13 where persons have been convicted of offences involving the illegal trade in internationally endangered species.

- Fifteen respondents commented on this proposal. All supported the proposal.
- One respondent wished to see the time for disqualification extended to from 5 to 10 years.

Department's response: the Department plans to proceed with the proposal.

Proposal T:

- remove the requirement to hold a licence to take or kill game;
- remove the requirement to hold a licence or certificate to deal in game;
- remove the restriction on dealing in game during the close season; and
- prohibit the purchasing, sale, possession, transporting, etc. of game which a person knew was taken or killed in breach of the game laws.

- There were twenty two responses about this proposal. There was broad agreement to the proposals from all but 2 individuals, who wished to see efforts re-focused on enforcing the existing regime.
- Several respondents qualified their support for the proposals by emphasising the need for a method of gathering data on the numbers of huntable species being taken; several methods were suggested.
- One respondent stated a preference for the licensing of organised shoots, rather than individual shooters.
- Only two respondents mentioned allowing the sale of game all year round and both were supportive of the proposal.

Department's response: in view of the broad support the Department will proceed with the proposed changes. The need for a system of data collection of huntable species is acknowledged, not least to ensure the requirements of the Wild Birds Directive are being met. This will need to be taken forward and

the Department will consider which method would be the most effective to deliver reliable data.

Proposal U:

- introduce a new offence of damaging the an ASSI site despite not being aware of the ASSI declaration;
- make it an offence for competent authorities to fail to inform the Department of any consent it proposes to give or has given;
- introduce a new power for the Department to issue temporary stop notices to prevent unlawful damage to ASSIs and associated powers of entry;
- give new power to Department to issue reinstatement notices and associated right of appeal, and make it an offence for failure to comply;
- introduce a new requirement on owners/occupiers to inform the Department of change of land ownership/occupancy;
- amend the procedures regarding notifications to owner/occupiers;
- give the Department a general power to erect signs/place notices on land within an ASSI or proposed ASSI; and
- clarify when it is a reasonable excuse to carry out an operation which would otherwise be an unlawful act.

- Twenty six respondents commented on these proposals, which received broad support.
- Two respondents were concerned that the proposals might place excessive burdens on owner/occupiers.
- Twelve respondents made specific reference to the new offence of damaging an ASSI despite not being aware of the ASSI declaration, and all supported the proposal.
- As regards the new duty for competent authorities to inform the Department of consents, six respondents supported the proposal whereas two respondents sought clarification on the interpretation of 'competent authorities'. One respondent was concerned about the burden this could place on licensing authorities for certain regimes.
- Ten respondents commented on the proposal to give the Department new powers to issue temporary 'stop notices' and all supported the proposal.
- In relation to 'reinstatement notices', eleven respondents commented and were in favour of their introduction. Two respondents considered that the associated penalty (maximum £5000) was too low and one respondent wished to see the proposal extended to public bodies too.
- The proposal to introduce a new requirement on owners/occupiers to inform the Department of any change of land ownership/occupancy was met with mixed responses. Five respondents were in favour while six were opposed (some strongly). Those who opposed believed that the existing

land registration system was sufficient to ensure new owners would become aware of the ASSI designation affecting their land.

- Regarding the proposal to amend the procedures for notifying owners/occupiers of ASSI declarations, seven respondents were supportive of the change whereas two were opposed because of concerns that this may leave owner/occupiers vulnerable to prosecution for breaching legislation if they are not aware of the status of their land.
- Four respondents supported the proposal to give the Department power to erect signs while one respondent expressed concerns about the new power due to biosecurity concerns. One respondent wished to see a new offence introduced of tampering with signs erected by the Department.
- Eight respondents commented on the proposal to clarify the scope of the reasonable excuse defence, and all sought further explanation of the intention of this proposal and the circumstances in which it would be used.
- One respondent provided detailed comments about the provisions contained in the Environment (NI) Order 2002, calling for a number of other changes to the provisions for managing ASSIs.

Department's response: the Department will progress the majority of the proposals. It is considered that enhanced enforcement powers such as the introduction of stop notices, reinstatement notices and an offence of damaging an ASSI despite not being aware of the designation (i.e. third party damage), will enable more effective protection of valuable designated sites. The other proposals will be given more consideration before being progressed to ensure that any new duties or requirements minimise the possibility of placing excessive burdens on licensing authorities or owner/occupiers. The issue of requiring owner/occupiers to notify change of ownership will be given more detailed consideration.

Other issues

This part deals with a number of issues identified in the consultation document on which views were sought, as well as a number of issues that respondents have identified that were not mentioned in the consultation document.

Shooting Seasons

- Twenty two respondents offered views on this issue. Nine respondents preferred to see the current situation remain, namely no change to the shooting season.
- Views about any possible extension of the foreshore shooting season received mixed responses from sporting and conservation interests. Some respondents suggested that maintaining parity with the shooting season on the foreshore with the Republic of Ireland, rather than seek parity with Great Britain, was more important. Similarly, mixed views on any possible delay in the start of the shooting season were also received. Some conservation interests wanted to see more research on the effects of hunting when weak or immature birds may be susceptible to greater risk. In contrast, sporting interests have stated that responsible shooters would not pursue late-hatched birds as quarry.
- Two respondents wished to see moonlight shooting permitted, similar to Great Britain. One respondent wished to see shooting permitted on Sundays, while a couple of respondents were opposed to that idea.

Department's response: on balance the Department does not believe that any of the arguments received offer a sufficiently compelling case to make any changes to the shooting seasons.

Penalties for wildlife offences.

- Comments on this issue were received from nineteen respondents; a number expressing surprise that the consultation document did not propose any changes to the existing level of penalties. The majority of respondents called for the introduction of custodial sentences for certain offences, in line with Great Britain and Ireland.
- Fourteen respondents also wished to see the level of financial penalties increased, stating that the current maximum of £5000 is insufficient deterrent for activities that would incur much more significant financial profit. In particular, development activities often result in significant profits, making £5,000 fines a rather insignificant sum. Some respondents suggested penalties should be somehow linked to profits in such circumstances. One respondent suggested there should be a minimum fine with scale increases depending on nature of offence.
- Four respondents considered the use of fixed administrative penalties would be a useful tool for more minor offences.

Department's response: after early consideration, the Minister agreed with the strength of views expressed about the need for custodial sentences and provisions giving the courts powers to impose such sentences will be progressed.

The case for increasing the maximum level of fines in addition to the availability of custodial sentences will need some further consideration.

The option of introducing fixed penalties for certain offences will need to be considered in greater detail and will require liaison with other authorities such as the PSNI.

Protection of Nests on a year round basis.

- Twenty one responses offered a view and all were in favour of introducing provisions to protect certain bird nests on an all year round basis. One respondent suggested that such protection should be accompanied by a provision for a licence to be issued to move the nest in certain extenuating circumstances.
- The following species were commonly suggested for year round protection of their nests: golden eagle (three respondents), barn owl (ten respondents), white tailed eagle (three respondents), osprey (four respondents), merlin/hen harrier/peregrines (four respondents), chough (two respondents).
- Several respondents also wished to see protection for nest *sites* included in the provisions, for example the nest sites of swift colonies. Heronries and rookeries were also mentioned by one respondent. One respondent however expressed concern about blanket protection for nest sites.

Department's response: the general principle of having permanent protection for certain nests has met with wide agreement and therefore provisions to provide this legislative protection will be taken forward. In liaison with NIEA staff, consideration will be given to which species such protection should be afforded to.

Protection of nest *sites* will need further consideration. Such protection would likely be much broader than that required under European legislation and there could be issues with identifying the sites and determining the practical application without placing excessive burdens on owner/occupiers. Alternative methods of protection may be more effective, e.g. protection schemes that are outside the legislative provisions and rely on raising awareness, taking practical measures, etc.

Pesticides

- The consultation sought views on whether or not the possession of certain pesticides without reasonable excuse should be made illegal. Seventeen respondents offered comment and opinion was divided. Some respondents clearly felt the illegal use of pesticides needed some form of control; while others highlighted the fact that certain pesticide use is already subject to controls in the agricultural sector, while others had concerns about the practical impacts of such a proposal. There was a general feeling that more research and consideration into the matter was needed before any proposals were brought forward.

Department's response: the Department has considered the responses carefully and considers that this is a complex area that needs further research and consideration before any proposal could be made.

Seals (make it an offence to disturb or harass seals)

- In proposing to introduce a new offence to disturb or harass basking sharks, the consultation sought views on the possibility of introducing a similar offence for seals.
- Fourteen respondents commented and all except two were in support of the proposal. Those opposing cite damage being done to salmon stocks by seals and the view that there is already sufficient protection for seals under the Conservation (Natural Habitats, etc.) Regulations (NI) 1995.

Department's response: While the common and grey seals receive protection under Article 6 of the Habitats Directive (disturbance likely to affect their conservation status), the aim of the proposal is to deter mindless and reckless disturbance or harassment, particular in haul out areas. The Department will therefore progress this proposal.

General comments

Responses contained a number of general comments associated with the review of the Wildlife Order. A couple of the key comments are summarised as follows:

- To ensure maximum benefit is gained from new legislation, there is a need for a high profile awareness and education campaign of all aspects of wildlife law. This should include detailed guidance for separate sectors and the possibility of a web based facility with links to main stakeholders should be explored. One respondent suggested that the Department should be under a statutory duty to educate the public.
- There were calls for new policies and or legislation for the better protection of high quality habitats outside designated areas. One respondent believes that wider landscape policies should be considered and planning policies used in a better way to protected and enhance habitats generally.

4. List of Respondents

In total the Department received 80 responses to the consultation exercise. The groups and organisations who provided comments are listed below. In addition, twenty four responses were received from individuals, whose names are not listed.

- Antrim Borough Council
- Aquaculture Initiative
- Ards Borough Council
- Ballinderry White-clawed Crayfish Project Steering Group
- British Association for Shooting and Conservation
- Belfast City Council
- Belfast Hills Partnership
- British Deer Society NI
- Council for Nature Conservation and the Countryside
- Countryside Alliance Ireland
- Department of Agriculture and Rural Development
- National British Bird and Mule Club of NI
- Department of Environment, Food and Rural Affairs
- Derry City Council
- Devenish Wildfowlers and Conservation Club
- Fermanagh District Council
- Forest Service
- Hunting Association of NI
- International Tree Foundation
- Irish Hawking Club
- League Against Cruel Sports
- Lough Erne Wildfowlers Club
- Lough Neagh and Lower Bann Advisory Committee
- Loughs Agency
- Mid Ulster British Bird Mule & Hybrid Club
- Ministry of Defence
- National Trust
- Natural England
- Newtownabbey Borough Council
- Northern Ireland Biodiversity Group
- Northern Ireland Biodiversity Officers Forum
- Northern Ireland Environmental Link
- Northern Ireland Deer Society
- Northern Ireland Irish Hare Species Action Plan Steering Group
- Northern Ireland Masters of Hounds Association
- Northern Ireland Raptor Study Group
- Northern Ireland Swift Group
- Omagh District Council
- Partnership Against Wildlife Crime
- Police Service of Northern Ireland
- Royal Society for the Protection of Birds
- Scottish Association for Country Sports
- The Shark Trust
- Society of Greyhound Vets
- Sunnylands Beagle Hunt Club
- Translink
- Ulster Farmers Union
- Ulster Society for Protection of the Countryside
- Ulster Wildlife Trust