

**Explanatory Memorandum to The Wildlife and Countryside Act 1981
(Variation of Schedule 4) (Wales) Order 2009**

This Explanatory Memorandum has been prepared by the Department for the Environment, Sustainability and Housing and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) Description

The Wildlife and Countryside Act 1981 (Variation of Schedule 4) (Wales) Order 2009 (“the Order”) varies Schedule 4 of the Wildlife and Countryside Act 1981 (“the Act”) which lists the birds that if kept in captivity must be ringed and registered in accordance with Section 7 of the Act.

(ii) Matters of special interest to the Subordinate Legislation Committee

No matters of special interest

(iii) Legislative Background

Section 7(1) of the Act requires certain species, if kept in captivity, to be ringed or marked and registered in accordance with regulations made by the Welsh Ministers. If a person keeps or has in their possession or under their control any bird included in Schedule 4 which has not been registered and ringed or marked in accordance with the regulations made under the Act (the Wildlife and Countryside (Registration, Ringing and Marking of Certain Captive Birds) (Wales) Regulations 2003) then they shall be guilty of an offence under section 7 of the Act.

Schedule 4 of the Act lists the species to which this obligation applies.

The Order amending the Schedule will remove a number of species from the Schedule and will also remove the requirement for hybrids of all species listed in Schedule 4 to be registered. No new species will be added to the Schedule.

The powers of the Secretary of State under section 7 of the Act, and section 22 of the Act which gives the Secretary of State the power to make an Order to add any bird to, or remove any bird from Schedule 4 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672 and has subsequently been transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 of the Government of Wales Act 2006.

The Order is subject to the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

Policy Background

Part I of the Act implements the EC Council Directive on the conservation of wild birds (79/409/EEC) (the Birds Directive). Section 7 of the Act requires certain birds, those listed on Schedule 4, if kept in captivity, to be ringed or marked and registered with the Welsh Ministers. This is more commonly known amongst bird keepers as “the bird registration scheme”. Although the scope of the Birds Directive does not extend to captive bred birds, the Act included registration of certain birds kept in captivity as a mechanism to help deter illegal take from the wild of birds whose populations were threatened. As part of the review of Schedule 4 the Joint Nature Conservation Committee carried out an assessment of the populations of the birds in the wild and this indicated an improvement in the levels of many of the species included in Schedule 4.

The function of bird registration was devolved in 1999 and the Welsh Assembly Government became responsible for the legislation governing bird registration, although Defra administer the Scheme on behalf of the Welsh Assembly Government.

Commercial use of all wild birds is regulated under Section 6 of the Act and additionally many of the birds listed under Schedule 4 of the Act are also covered by Control in Trade of Endangered Species (CITES) controls which is managed by Defra for the whole of the UK. The existence of both bird registration and CITES controls may mean that a keeper has to fill in several pieces of paperwork, duplication information already supplied for one specimen.

Following requests from the National Audit Office and service users Defra consulted on behalf of Wales (and England and Scotland) whether the regulatory burden imposed by registration could be reduced without compromising the conservation status of wild bird populations.

Objective

Following the consultation exercise the policy objective is to ensure that the bird registration should be targeted at those species for which the taking from the wild within Great Britain would affect their conservation status; thereby balancing the conservation threat against the proportionality of the regulatory burden.

Schedule 4 will be revised through the Order to remove 50 species and all hybrids from the Schedule.

(v) Implementation

It is intended that this instrument should come into force on 23 April 2009.

Parallel legislation is already in place in England and Scotland.

(vi) Consultation

Details of the consultation undertaken are included below.

Regulatory Impact Assessment

a) Options (for achieving the policy objective – as set out in paragraph (iv) above) –

As detailed above currently keepers of birds in Wales have to register certain species through both the Wildlife and Countryside Act and CITES, this causes duplication of paperwork and is a legislative requirement that cannot be resolved through any non-legislative procedures.

JNCC have assessed the list of birds included on Schedule 4 and the final list proposed includes all those birds that if taken from the wild would have an impact on their conservation status, hereby requiring them to remain on Schedule 4 of the Act.

b) Benefits –

The legislation provides for a consistent approach across the UK that will ensure that keepers of birds in the UK are aware of the requirements regarding registration. It will reduce the amount of paperwork required to be submitted.

The reduced list of bird species will be monitored and a compliance and enforcement strategy is being developed by Animal Health Agency to ensure that the conservation status of the birds that remain on Schedule 4 is not compromised.

c) Costs

Currently keepers of birds in Wales have to pay registration costs under the bird registration scheme of the Wildlife and Countryside Act and certification under CITES. The revisions to Schedule 4 will mean that fewer birds will require registration and therefore will result in a reduction in costs to the keepers. Figures provided by Animal Health indicated that it takes on average 20 minutes to complete a registration application form. Keepers waged are £15.68 per hour

Animal Health Agency carries out the registration of birds on behalf of Wales through a Service Level Agreement and at no cost to the Welsh Assembly Government. The revisions to Schedule 4 will have no cost implications to the Welsh Assembly Government but will reduce the administrative burden and costs carried by Animal Health on behalf of Wales.

Table 1 illustrates the costs for keepers based on the current list of Schedule 4 birds and on the figures received for 2006/07

Table 1 – Baseline costs

| | |
|---|---------------------|
| Number of registration requests for 06/07 | 606 |
| Costs to Keeper | £ |
| Fees | £3636 – £12,120 |
| Time spent completing forms | 202 hours |
| Costs of keepers time | £3167.36 |
| Total Cost | 6803.36 – 15,287.36 |
| | |
| Costs for Administering Scheme | |
| Animal Health administration costs calculated at £61 per registration | 36, 966 |

Following the revisions to the list the costs of registration for keepers and Animal Health have been revised and are included in Table 2. The figures are based on the revised list of white-tailed eagle, Montagu's harrier, honey buzzard, osprey, marsh harrier, goshawk, golden eagle, peregrine falcon and merlin .

Table 2 – Revised costs based on reduced list

| | |
|---|---------------------|
| Number of registrations -revised list of species (06/07 figures) | 141 |
| Costs to Keepers | |
| Fees | £836-£2820 |
| Time Spent completing Forms | 47 hours |
| Costs of keepers time | £736.96 |
| Total Cost | £1572.96-£3556.96 |
| | |
| Savings under revised list | £5230.40-£11,730.40 |
| | |
| Costs for Administering Scheme | |
| Animal Health administration costs calculated at £61 per registration | £8601 |
| | |
| Savings under revised list | £28,365 |

d) **Consultation**

In November 2006 Defra carried out a consultation on behalf of Wales (England and Scotland) on a review to consider the

regulatory burden placed on keepers of captive birds and to determine the most appropriate bird species to be included in Schedule 4 of the Act. The consultation attracted 131 responses, 6 of which were from Wales. The consultation outlined five proposals for changes to the scheme ranging from outright abolition of the scheme to revisions to the list based on advice from JNCC.

Since the consultation on bird registration closed, the international situation for the commercial trade of birds changed due to avian influenza i.e. the prohibition on importation of wild birds into the European Union. Defra questioned the need to retain or add non-native species to a Schedule when no new specimens are allowed to be imported into the EU. JNCC were asked to reconsider the list in light of this prohibition and apply the strict criterion: the wild population is so small that even the taking of a very few individuals would have a detrimental impact on the conservation of the wild population.

JNCC subsequently recommended 16 species for retention: wryneck, red-backed shrike, serin, black redstart, Scottish crossbill, chough, snow bunting, fieldfare and redwing.

The final list of birds to be retained on Schedule 4 are the 7 birds of prey identified in the JNCC list as it is felt that these are most at risk of illegal take from the wild and that taking of these birds would affect that conservation status. Namely: white-tailed eagle, Montagu's harrier, honey buzzard, osprey, marsh harrier, goshawk, golden eagle. In addition peregrine falcon and merlin are also to be retained, whilst not identified in the revised JNCC list the species are felt to still be at risk of illegal take and retention on the list.

The remaining birds from the list were not included in the revisions as the number of birds held in captivity are relatively low and evidence of illegal take is negligible.

e) **Summary**

The Order is being put forward to address the requirements detailed above. The benefits will provide a consistent bird registration scheme across the UK and will reduce the costs for the keepers of the birds and Animal Health as administrators of the scheme. The revised list includes those species that require continued protection from illegal take from the wild.

