

EXPLANATORY MEMORANDUM TO
THE HUMANE TRAPPING STANDARDS REGULATIONS 2019
2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend the [Wildlife and Countryside Act 1981](#) (c. 69) (“the Act”) in order to implement, in Great Britain, requirements contained in the [Agreement on International Humane Trapping Standards](#) between the European Community, the Government of Canada and the Government of the Russian Federation (“the Agreement”). In doing so, the Regulations also implement the equivalent standards contained in the bilateral Agreed Minute between the European Community and the United States of America.
- 2.2 The EU is a Party to the Agreement, however there is no implementing legislation at the EU level. Under EU law, the UK as a Member State (MS) is therefore obliged to implement the trapping standards directly through domestic legislation.
- 2.3 For ease, this document will generally only refer to implementation of the Agreement. However, as mentioned above, in doing so, we will also be meeting the commitments in the separate Agreed Minute between the EU and the USA, which contains the same trapping standards.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 With the exception of regulation 8, the instrument extends to Great Britain. Regulation 8 extends to Scotland only.

4. Extent and Territorial Application

- 4.1 This instrument extends and applies to Great Britain, except regulation 8 which extends and applies to Scotland only.

5. European Convention on Human Rights

5.1 Thérèse Coffey MP Parliamentary Under Secretary of State for the Environment, has made the following statement regarding Human Rights:

“In my view the provisions of the Humane Trapping Standards Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 [Council Regulation \(EEC\) No 3254/91](#) (“the Leghold Trap Regulation”) prohibits the use of leghold traps in the European Union and the introduction into the EU of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.
- 6.2 The Leghold Trap Regulation defines a ‘leghold trap’ as a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal's limbs, thereby preventing withdrawal of the limb or limbs from the trap. In layman’s terms, this means something akin to what is commonly referred to as a ‘gin trap’. Gin traps haven’t been approved for use in the UK since the 1950s.
- 6.3 In 1997, the European Union (EU) concluded the Agreement with Canada and the Russian Federation and a similar Agreed Minute with the USA, for the purpose of establishing humane trapping standards and facilitating trade in fur and fur products. By establishing international standards, these agreements allow Canada, the Russian Federation and the USA (the main importers of wild-sourced pelts) to import pelts and manufactured goods of certain wild animal species into the EU.
- 6.4 The Regulations are required to meet the UK’s obligations under EU law to implement the Agreement. The EU is a Party to the Agreement, however there is no implementing legislation at the EU level. Under EU law, the UK as a Member State is therefore obliged to implement the Agreement directly.
- 6.5 Article 7 of the Agreement requires the UK to prohibit the use of traps that are not certified as meeting the humaneness standards which are set out in the Agreement, and Article 8 of the Agreement requires the UK to put in place appropriate processes to grant or remove permission for the use of traps.
- 6.6 The Agreement, however, does not prevent individuals from constructing and using their own traps and snares, provided that such traps comply with designs approved by the relevant competent authority. These traps constructed by individuals are meant to be simple home-made traps for the constructor’s personal use.
- 6.7 In exceptional circumstances, the use of non-AIHTS compliant traps is possible under Article 10 of the Agreement, which permits derogations to be granted on a case by case basis, provided they are not applied in a manner that would undermine the objectives of the Agreement.
- 6.8 Domestically, section 11 of the Wildlife and Countryside Act 1981 protects all animals from certain methods of killing and taking, with increased protection provided to those species listed on Schedule 6 to the Act. Our approach to implementation has been to amend this section, and the related section 16 (which allows derogation from those prohibitions, by means of licences), to reflect the requirements of the Agreement.

- 6.9 In addition to implementing the Agreement, the Regulations also improve the clarity of our implementation of the Leghold Trap Regulation.
- 6.10 Article 2 of the Leghold Trap Regulation prohibits the use of leghold traps in the EU. This prohibition is implemented in Great Britain by the spring trap approval system under the Pests Act 1954 and the Agriculture (Scotland) Act 1948 and an understanding that use of a leghold trap would not be approved under that system.
- 6.11 However, we consider that our reliance on the spring trap approval system for the purposes of implementing Article 2 should be made more transparent. To improve clarity, the regulations amend [section 8 of the Pests Act 1954](#) and [section 50 of the Agriculture \(Scotland\) Act 1948](#) to make it clear that the Secretary of State and devolved Ministers would not approve or authorise the use of a leghold trap.

7. Policy background

What is being done and why?

- 7.1 Under EU law, the UK is obliged to implement the Agreement (and the related Agreed Minute). The deadline for implementation of the Agreement was July 2016.
- 7.2 A ‘do nothing option’ would result in a continued failure to meet these obligations. In addition, there would be no improvement in animal welfare as there would be no incentive for trap operators to improve their traps. Since we are obliged to prohibit the use of traps which do not meet the standards contained in the Agreement, alternatives to regulation would be breach of our EU obligations.
- 7.3 The Regulations implement the Agreement using existing legislative frameworks. Whilst it would be possible to create a new legislative regime for implementing the Agreement, we feel that this would add unnecessary complexity and add to the already significant volume of wildlife legislation.
- 7.4 The Agreement covers trapping of animals for a variety of different reasons and applies to 19 species in total, most of which are not native to the UK. All traps, including cage traps, are covered by the Agreement.
- 7.5 Of the 19 species covered by the Agreement, only five occur in the wild in parts of the UK:
- European Badger, *Meles meles*
 - European Beaver, *Castor fiber*
 - European Otter, *Lutra lutra*
 - Pine Marten, *Martes martes*
 - Stoat, *Mustela ermine*
- 7.6 Of these, only the stoat is regularly and widely trapped in the UK and it is the only species for which kill (lethal) traps are commonly used.
- 7.7 In order to give manufacturers sufficient time to produce compliant traps in sufficient quantities and for trap users to replace their existing traps for stoats, Ministers have decided to include a transitional provision which delays implementation for stoat by 12 months (until 1st April 2020). This will provide a clear signal to manufacturers and traps users that they must transition to compliant traps, whilst recognising they will need time to do so. This transitional provision is permitted under paragraph 4.2.3 of the Standards (found in Annex 1 to the Agreement).

- 7.8 As mentioned in paragraph 6.9 to 6.11, the Regulations also amend section 8 of the Pests Act 1954 and section 50 of the Agriculture (Scotland) Act 1948 to make it clear that the Secretary of State and devolved Ministers would not approve or authorise the use of a leghold trap.
- 7.9 The regulations do not refer expressly to the Agreed Minute between the EU and the USA which contains equivalent trapping standards to the Agreement. However, implementation of the Agreement results in our also meeting the commitments contained in the Agreed Minute.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This instrument is not a consolidation.

10. Consultation outcome

- 10.1 Following several years of informal consultation with key stakeholders (trap users, retailers and manufacturers, welfare groups) and Devolved Administrations, the UK-wide 6-week public consultation on implementation of the Agreement ended on 30 April 2018. While stakeholders were broadly supportive of welfare improvements they opposed the implementation of the Agreement for two reasons:
- a. 74% of respondents (mostly gamekeepers and trappers) were opposed to the proposed implementation date of January 2019. They believe there will not be sufficient numbers of compliant stoat traps available in time. The Game & Wildlife Conservation Trust, the British Association of Shooting and Conservation and the National Farmers' Union support a delay in implementation, but have not proposed an alternative date. The National Gamekeepers' Organisation proposed a delay of three years, whilst individual gamekeepers called for delays of up to 5 years.
 - b. For many welfare groups, there was a general disagreement with implementation on the grounds of the perception that the Agreement facilitates the wider use of traps and international trade in fur. However the obligations in the Agreement bind the UK already (via the EU), and we're obliged to implement the Standards under EU law.

11. Guidance

- 11.1 Guidance on how implementation of the Agreement will affect trappers will be published on the Gov.uk website, on the [Natural England wildlife licensing pages](#).

12. Impact

- 12.1 The effects of the instrument will primarily impact those who trap stoats in the UK; especially the gamekeeping sector who regularly and widely catch stoats to protect game birds, but also, farmers, pest controllers and conservation agencies. Businesses such as trap retailers, manufacturers and importers, pest control companies, country estates/farms and other land managers and traders of fur and fur products derived from trapped animals will also be affected. They will be required to replace nearly all

existing stoat traps, costing ~ £1.7m in the first year following implementation. This is offset by a reduced need to replace older (non-compliant) traps in subsequent years, giving a total net cost of ~ £1.0m. Gamekeepers also face a total cost of ~ £0.1m in the first year to familiarise themselves with the new, compliant, traps. A total cost on business is calculated to be £1.2 million.

- 12.2 By removing less humane traps from use, implementation will result in improvements to the welfare of the 5 species covered by the Agreement. Furthermore, because stoat trappers catch multiple species in their traps, other small ground pest species will also benefit from more humane stoat traps. Evidence shows that the UK public places a value on higher welfare standards for animals, which suggests non-market benefits associated with implementation of the preferred option.
- 12.3 The impact on charities or voluntary bodies is likely to be minimal as few if any will be involved in trapping, especially stoats.
- 12.4 The impact on the public sector is likely to be minimal. We already have legal mechanisms in place for stipulating which traps can be used to capture certain species. The Agreement simply improves the standards with which traps must comply before they can be used and extends the scope of existing trap offences to two additional species (stoat and beaver). It does not require the introduction of new offences or penalties and we would not anticipate significant additional enforcement costs as a consequence of implementing the Agreement.
- 12.5 The existing licensing mechanism would be used to allow compliant traps to be used. Licences are already required to trap all UK species covered by the Agreement except for stoat and beaver and we propose that trapping of stoats using compliant traps should be permitted under a [general licence](#). This will result in negligible costs to the licensing authority and provides the least burdensome approach for trappers.
- 12.6 A full Impact Assessment is annexed to this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. These may include trap retailers, manufacturers and importers, pest control companies, country estates/farms, and importers of products derived from trapped animals. Private individuals (e.g. keepers of small flocks of poultry) who wish to trap the species covered by the Agreement may also be affected to a lesser degree.
- 13.2 Due to the nature of trapping, the cost of implementation will primarily fall to small businesses. The policy objectives and benefits cannot be achieved without impact to small business. Moreover, the AIHTS has no derogation options which would allow us to reduce its financial impact on this sector.
- 13.3 To minimise the impact of the requirements on small businesses (employing up to 50 people), we have taken the least burdensome approach to implementation where possible: for example, we propose that the use of compliant traps for stoat be permitted via a general licence.
- 13.4 We have agreed with stakeholders a delay to the implementation of the Agreement for stoat (as permitted under the Agreement) to give the sector sufficient time to identify, manufacture, supply and deploy new compliant stoat traps.

14. Monitoring & review

- 14.1 Defra will monitor the measures introduced by this instrument by keeping under review the level and nature of prosecutions in respect of illegal trap use under the 1981 Act. This will be done through liaison with the Police and the Crown Prosecution Service.
- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Thérèse Coffey MP Parliamentary Under Secretary of State for the Environment, has made the following statement:

“The Regulations are not expected to have a significant annualised net impact on business. The government has consulted on the Regulations and accepts the argument put forward by respondents that implementing AIHTS in January 2019 would be challenging for people who trap stoats.

The transitional provision for stoats sends a clear signal to manufacturers and traps users that they must transition to compliant traps, whilst recognising they will need time to do so. A statutory review could introduce uncertainty for the future regulatory environment and could impose unnecessary burdens for manufacturers and trap users.”

15. Contact

- 15.1 Simon Liebert at the Department for Environment, Food and Rural Affairs, Tel: 020802 66898 or email: simon.liebert@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Richard Pullen at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Thérèse Coffey MP at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.