

## **EXPLANATORY MEMORANDUM**

### **THE WILDLIFE AND COUNTRYSIDE ACT 1981 (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2004 No.1487**

#### **Laying authority and purpose**

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

#### **Department responsible**

Department for Environment, Food and Rural Affairs.

#### **Description**

The Statutory Instrument will give full effect to the UK's obligations under EC Council Directive 79/409/EEC on the Conservation of Wild Birds ("the Wild Birds Directive") by amending the definition of "wild bird" under section 27 of the Wildlife and Countryside Act 1981. This will extend the 1981 Act's provisions to wild birds that are not native within Great Britain, but which are naturally occurring in another European Member State.

#### **Matters of interest to the JCSI/SCSI**

There are none.

#### **Legislative background**

The Wildlife and Countryside Act 1981 currently defines "wild bird" in section 27(1) as "any bird of a kind which is ordinarily resident in or is a visitor to Great Britain in a wild state but does not include poultry or, except in sections 5 and 16, any game bird". Section 1 of the 1981 Act makes it an offence to kill, injure or take any wild bird; take, damage or destroy the nest of any wild bird; or take or destroy its eggs. In contrast to this, the Wild Birds Directive affords protection to all species of naturally occurring birds in the wild state in the European Territory of the Member States, including those which are native to other Member States.

These draft Regulations introduce amendments to the Wildlife and Countryside Act 1981 in order to ensure that the definition of "wild bird" accords with the UK's obligations under the Wild Birds Directive. It is proposed to amend the definition of "wild bird" in the Wildlife and Countryside Act 1981 so that its provisions also apply to wild birds which are not native in Great Britain but which are naturally occurring in another Member State. There are also consequential amendments to section 1(3) to clarify the provisions under which the possession of wild birds will be lawful. None of these measures will restrict trade in legally taken or captive bred specimens.

On 19 December 2003, Reasoned Opinion 2002/4783 was issued to the UK Government for its failure to properly implement the Wild Birds Directive, citing the above discrepancy between the definition of "wild bird" in the UK legislation and the Directive. The Government has undertaken to introduce legislation at the earliest opportunity to extend the definition in the 1981 Act to all species of birds covered by Article 1 of the Wild Birds Directive, rather than to just those native to Great Britain. This will ensure that where European species of birds are taken illegally elsewhere in the EC they may not be lawfully possessed or traded within Great Britain.

### Extent

The instrument will have effect within England. Environmental matters are a devolved responsibility and the National Assembly for Wales is preparing their own Statutory Instrument which is planned to come into force on 2 August 2004, and which will have effect within Wales. Scotland is taking forward similar amendments in the Nature Conservation (Scotland) Bill. Northern Ireland are carrying out an extensive review of their 1981 Wildlife Order and will adopt appropriate measures as soon as practicable.

### European Convention on Human Rights

This instrument is compatible with Convention rights.

### Policy Background

Objectives of the parent Directive: Within the European Union, the EC Council Directive 79/409/EEC on the Conservation of Wild Birds affords protection to all wild birds in Member States. This Directive lays down rules for the protection, management and control of these species. Member States are required to introduce legislation in line with the Directive's requirements and to ensure that it is applied effectively. The Directive requires Member States to establish a general system of protection for all wild birds, including prohibiting killing and capture of all wild birds (subject to exemptions in certain circumstances).

Part I of the Wildlife and Countryside Act 1981 transposes the Wild Birds Directive within Great Britain and is the principal legislation covering the conservation and protection of birds, other animals and plants.

Size and nature of the problem: There is an obligation upon the Government to ensure full compliance with the Wild Birds Directive. There is no evidence that our current legislation is creating conservation problems within the UK, however there is limited evidence of trade in birds illegally taken from the wild within the EC. Anecdotal evidence suggests that action should be taken quickly to block this apparent loophole.

Level of public interest in the policy: A 12 week formal consultation has taken place with relevant stakeholders from conservation agencies, voluntary and trade organisations. There have been a total of 19 responses to the public consultation exercise carried out within England and Wales between February and May 2004. Generally the respondents have welcomed and have been supportive of the technical amendment. No subsequent amendments have been made to the Draft Regulations as a result of the comments made during the consultation.

Importance: This technical amendment is legally important. Failure to introduce the amendment would lay the UK Government open to proceedings at the European Court of Justice (ECJ) for failure to implement the Wild Birds Directive.

### Impact

On businesses, charities or voluntary bodies: A Regulatory Impact assessment is attached. This measure is largely clarificatory and should not affect current business practices. There should be no impact on legitimate trade by small businesses because the measures are aimed at the prevention of illegal trade of birds.

On the Exchequer: None if the instrument is adopted. There are potential financial implications if changes to the Wildlife and Countryside Act 1981 are not adopted prior to the next stage of the ECJ proceedings, and the UK becomes liable to pay an infraction fine.

### Contact

Ms Chris Bear, Species Conservation and Marine Team, European Wildlife Division, Defra, 1/08b Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB

Telephone 0117 372 8027.

Email [chris.bear@Defra.gsi.gov.uk](mailto:chris.bear@Defra.gsi.gov.uk)

## TRANSPOSITION NOTE

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#### Council Directive of 2 April 1979 on the Conservation of Wild Birds (79/409/EEC)

The Directive on the Conservation of Wild Birds provides a framework for the conservation and management of, and human interactions with, wild birds in Europe. It sets broad objectives for a wide range of activities, but leaves to the discretion of each Member State how compliance with these objectives is achieved.

The Directive was implemented by Part I of the WCA 1981. Since then, the Commission has commenced infraction proceedings (2002/4783/EC, reference CJ/0036/04) against the UK for allegedly failing to protect all wild birds found in the Territory of the EU Member States. The UK Government has undertaken to amend the definition of “wild bird” in response to the infraction proceedings and the Wildlife and Countryside Act 1981 (England and Wales) (Amendment) Regulations 2004 (“the Regulations”) deal with the additional transposition of Article 2 of the Directive.

#### TRANSPOSITION - Wildlife and Countryside Act 1981 (England and Wales) (Amendment) Regulations 2004

<b>Article</b>	<b>Purpose</b>	<b>Implementation</b>	<b>Responsibility</b>
1	Protection to be given to all species of naturally occurring birds in the wild state in the European Territory of the Member States to which the Treaty applies.	Section 27 of the Wildlife and Countryside Act 1981 defines “wild bird” as any bird of a kind which is ordinarily resident in or is a visitor to Great Britain in a wild state. Regulation 4 of the Regulations extend the definition of wild bird to include wild birds of other European Member States and to ensure compliance with Article 1 of the Directive.	Department of Environment, Food and Rural Affairs
5	Establishment of a	Implemented by section 1	Department of

	<p>general system of protection for wild birds prohibiting in particular the deliberate killing or capture of birds; the deliberate destruction of, damage to or removal of eggs and nests; the deliberate disturbance of birds; and the keeping of species the hunting and capture of which is prohibited.</p>	<p>of the Wildlife and Countryside Act.</p> <p>Regulation 3 of the Regulations amends these provisions to ensure that it is possible to keep birds lawfully taken in other member States.</p>	<p>Environment, Food and Rural Affairs</p>
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# REGULATORY IMPACT ASSESSMENT

## 1. Title of Proposal

The Wildlife And Countryside Act 1981: Illegal trade in wild birds native to other EC Member States.

## 2. Purpose and intended effect of measure

### (i) objectives

To amend the Wildlife and Countryside Act 1981 in order to bring the definition of “wild bird” given within section 27(1) of that Act into line with that given in Article 1 of the EC Birds Directive 79/409 EEC.

To ensure that with the new definition of “wild bird” within section 27(1) in place, the UK is not in breach of its obligations under Article 28 of the EC Treaty relating to quantitative restrictions on trade.

Separate amending regulations will be taken forward for England and for Wales. This issue is being taken forward in Scotland in the Nature Conservation (Scotland) Bill currently before the Scottish Parliament.

### (ii) background

The Wildlife and Countryside Act 1981 transposes the Birds Directive within Great Britain. Under the Wildlife and Countryside Act 1981 protection is currently afforded to birds which are ordinarily resident in or are visitors to Great Britain in a wild state. This amendment will extend that protection to all species of naturally occurring birds in their wild state in the European territory of the Member States to which the Treaty applies. It will close a loophole in existing legislation whereby birds which have been illegally taken from the wild within other Member States can be legally traded within Great Britain.

### (iii) risk assessment

The amendment is required in order to fully transpose the EC Birds Directive 79/409 EEC. To fail to bring the current UK definition of “wild bird” into line with Article 1 of this Directive would leave the UK open to court proceedings for failure to fully implement the Directive .

## 3. Options

### (i) do nothing

To do nothing would leave the UK open to court proceedings for failure to implement the EC Directive. It would allow wild birds which have been illegally taken from the wild within other EC Member States to be traded within Great Britain.

(ii) amend the definition of wild bird within the Wildlife and Countryside Act 1981 by means of Statutory Instruments made under section 2(2) of the European Communities Act 1972.

The extension of the definition of "wild bird" may have some minor consequences regarding the application of the Wildlife and Countryside Act 1981, with regard to offences other than the possession or sale of wild birds illegally acquired within the EU. These will be addressed during the review of Part I of the Wildlife and Countryside Act 1981 taking place later this year.

(iii) Amend the definition of "wild bird" as part of a public consultation exercise on the whole of Part I of Wildlife and Countryside Act 1981.

A public consultation on the whole of Part I of the Wildlife and Countryside Act 1981 is scheduled to take place later this year. However, to delay taking action on this issue until the full consultation is ready would effectively delay the necessary amendment by Statutory Instrument until 2005, and lay the UK Government open to court proceedings for failure to implement the EC Birds Directive.

#### **4. Benefits**

Option 1: do nothing.

There are no perceived benefits associated with this option.

Option 2: separately amend the definition of "wild bird" by Statutory Instruments made under section 2(2) of the European Communities Act 1972.

The amendment will enable the UK Government to comply quickly with the requirements of EC Directive 79/409. Consultation on this single issue could be completed by 30 April. Within England a Statutory Instrument could be laid before Parliament before the summer recess. The Welsh Assembly is also aiming to make corresponding Regulations prior to the summer recess.

It would prohibit the possession and sale of any bird which has been illegally taken whether in the UK or in another EC Member State.

Option 3: delay amendment until the public consultation exercise on the whole of Part I of Wildlife and Countryside Act 1981 is undertaken

There are no perceived benefits with this option.

## **5. Costs**

This measure is largely clarificatory and should not affect current business practices significantly.

## **6. Consultation with small business**

This measure is largely clarificatory and should not affect current business practices. It is therefore proposed not to consult with traders prior to the publication of a public consultation document.

There should be no impact on legitimate trade by small businesses because the measures are aimed at the prevention of illegal trade of birds. There is limited evidence of trade in birds illegally taken from the wild within the EC, but anecdotal evidence suggests that action should be taken quickly to block this apparent loophole.

## **7. Competition assessment**

Not applicable

## **8. Enforcement and Sanctions**

Offences under the Wildlife and Countryside Act 1981 are normally enforced by the Police. The incidence of this particular type of offence is not currently considered to be widespread and it is therefore not envisaged that this amendment will impose an additional burden upon the enforcement authorities.

## **9. Monitoring and Review**

The impact of changing the definition of wild bird under section 27(1) of the Wildlife and Countryside Act 1981 will be monitored by the Secretariat of the Partnership for Action against Wildlife Crime, provided by the Global Wildlife Division of Defra. Information will be gathered through their normal contacts with Police Wildlife Crime Officers. Home Office statistics of court cases will also be reviewed.

## **10. Consultation**

The National Assembly for Wales has co-authored the proposed amendments.

The following Government Departments have been consulted: Department of Trade and Industry, Home Office, HM Customs.

Public consultation will take place by means of a consultation letter and draft Statutory Instrument. Comments upon the amendment will be sought from all relevant stakeholders, including those from conservation and trade organisations. The required 12 week period of consultation will apply.



## **11. Summary and recommendation**

The amendment of the definition of “wild bird” under section 27(1) of the Wildlife and Countryside Act 1981 will enable the UK Government to comply with its international obligations, namely the requirements of the EC Wild Birds Directive (79/409 EEC) and the EC Treaty.

It is recommended that the amendment be made by means of Statutory Instruments made under section 2(2) of the European Communities Act 1972, and that a public consultation on the proposed amendment is undertaken at the end of January 2004.

## **12. Declaration**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

**Signed**        **Ben Bradshaw**

**Date**         **6<sup>th</sup> June 2004**

Ben Bradshaw, Parliamentary Under Secretary, Department for Environment, Food and Rural Affairs

### ***Contact point***

Chris Bear, Species Conservation and Marine Team, Defra, 1/08b Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB.  
Telephone: 0117 372 8027