

**EXPLANATORY MEMORANDUM TO**  
**THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULES 5**  
**AND 8) (ENGLAND AND WALES) ORDER 2011**

**2011 No. 2015**

**1.** This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and the Welsh Government. It is laid before Parliament by Command of Her Majesty. It is also laid before the National Assembly for Wales.

**2. Purpose of the instrument**

2.1 The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011 adds four new animals to Schedule 5 of the Wildlife and Countryside Act 1981 (WCA) and removes two existing entries from protection. The Order also extends the protection afforded to two animals and decreases the level of protection afforded to two animals. The Order also adds two new plant entries to Schedule 8 and removes four existing plant entries. Schedule 5 lists animals protected under section 9 of the Act. Schedule 8 lists plants protected under section 13 of the WCA. These Schedules are amended under section 22 of the Act.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**Matters of special interest to the Constitutional and Legislative Affairs Committee**

3.2 This Order is made following representations by the GB Conservation bodies through the Joint Nature Conservation Committee. It is made on a composite basis to ensure consistency of application between England and Wales.

**4. Legislative Context**

4.1 The WCA protects all wild birds, certain wild animals and certain wild plants. Under Section 9 species listed in Schedule 5 to the Act are afforded certain protection. Depending on the protection detailed it can be an offence amongst other things, to: intentionally kill, injure or take any such wild animal, to have any such wild animal in one's possession or control, intentionally to damage or destroy any structure or place used for shelter or protection, or to sell or expose for sale any such wild animal (and in certain circumstances, things deriving from any such animal).

4.2 Section 13 affords particular protection to plants listed in Schedule 8, and makes it an offence, amongst other things, (a) intentionally to pick, uproot or destroy, or (b) sell or expose for sale, or have in one's possession for sale, any such wild plant.

4.3 Under Section 24 of the WCA the JNCC is required to review Schedules 5 and 8 every five years and to advise the Secretary of State and the Welsh Ministers whether, in the collective opinion of the conservation agencies, any animal or plant should be added to or removed from the Schedules.

4.4 The Secretary of State's and the Welsh Ministers' powers to vary the Schedules are set out in section 22 of the Act.

4.5 Part 1 of the WCA applies in relation to the territorial waters of Great Britain: 12 nautical miles from the baseline (usually the low water mark around the coast). The WCA does not apply in relation to the offshore marine area or international waters.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales, and is being made on a composite basis with the Welsh Ministers.

## **6. European Convention on Human Rights**

6.1 Parliamentary Under Secretary of State Richard Benyon has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Wildlife and Countryside Act 1981 are compatible with the Convention rights.

## **7. Policy background**

7.1 Defra's new business plan, which was launched in November 2010, incorporates the Department's Structural Reform Plan which includes among its three key priority areas 'enhance the environment and biodiversity to improve quality of life'. The Welsh Government's *Living Wales* Programme initiated in September 2010 seeks to secure a more integrated approach to managing the natural environment to ensure that Wales has increasingly resilient and diverse ecosystems that deliver a range of social, environmental and economic benefits. The programme will deliver a new Natural Environment Framework that is compatible with the Welsh Government's Sustainable Development and biodiversity duties.

7.2 In keeping with both policy positions these amendments aim to promote the protection of vulnerable species and the protection the public's interest in relation to biodiversity. There is a variety of reasons as to why the existence of native species is being threatened. These include impacts from human activity, non-native species and climate change. Many native plants and animals have become extinct as a result of one or

more of the above impacts and more species are in danger of the same fate. The Wildlife and Countryside Act 1981 is one part of the strategic approach to the protection of endangered species. We use this to ensure that there is an appropriate legal protection. Where this is not appropriate or possible we have other measures we can use such as providing informed advice and guidance where necessary, encouraging cooperation and promoting best practice.

7.3 During 2008 the JNCC carried out a public consultation in which it sought views on the addition of species to, or removal of species from, Schedules 5 and 8 to the WCA. It also asked whether existing protections should be adjusted. Once the JNCC had summarised the responses to this consultation and evaluated these, it made recommendations to Defra and the Welsh Government in December 2008. After considering these recommendations, Defra and the Welsh Government published a public consultation in January 10 and took into account the responses from this exercise when making final decisions on amendments to Schedules 5 and 8 of the WCA.

## **8. Consultation outcome**

### Responses on the Marine Species

8.1 Generally, there was support for listing the proposed marine species for the following reasons:

- A. There has been significant decline of the species in UK waters.
- B. Protection would prohibit targeted fishing and protection from possession and trade.
- C. Protection would require the return of any by-catch individuals to the sea (because possession would be an offence) and if done quickly, survival rates in these cases would be high.
- D. Protection would prevent targeted recreational fishing.
- E. Protection would positively progress the Species Action Plan targets for these species.

8.2 The overriding reason given for not supporting the listing of proposed marine species was that the species is/are already protected under the CFP, and if there were any change to the CFP Total Allowable Catch (TAC), UK fishermen would be disadvantaged.

### Responses on other animal species

8.3 There was strong support for JNCC recommendations regarding the proposed scheduling of other animal species. For example, of the seven respondents who replied on the shad species, five agreed with JNCC's recommendation to increase protection of allis under 9(4)(c) and to increase protection for twaite under 9(1) and 9(4)(c) in England and Wales. Furthermore, all respondents who commented on the pool frog agreed with the JNCC recommendation to protect under 9(4)(b) and (c) for England only.

## Plant species

8.4 There was strong support for JNCC recommendations regarding the proposed addition and removal of certain plant species. For example, all consultees who commented on the Long-leaved Thread-moss agreed with JNCC's recommendation to remove protection. Both respondents who commented on Tree Lungwort agreed with JNCC's recommendation to protect from sale under 13(2) only.

## **9. Guidance**

9.1 Further information regarding amendments to Schedules 5 & 8 of the Wildlife and Countryside Act 1981 can be found on either the Defra website at: <http://www.defra.gov.uk/wildlife-pets/wildlife-management/rare-exploited-species/> , or on the Joint Nature Conservation Committee website at: <http://jncc.defra.gov.uk/default.aspx?page=4630> or the Welsh Government's website at: [www.wales.gov.uk/environment](http://www.wales.gov.uk/environment) .

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is expected to be minimal. Groups whose trade may be affected by the protection of particular marine species include fishermen, collectors of species and Chinese medicine suppliers. Local authorities may also be affected in terms of higher insurance payments.

10.2 The impact on the public sector is expected to be negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The Impact Assessment indicated that any costs to businesses would be negligible.

## **12. Monitoring & review**

12.1 Section 24 of the Wildlife & Countryside Act 1981 requires the GB conservation bodies of Natural England, the Countryside Council for Wales and Scottish Natural Heritage, acting through the Joint Nature Conservation Committee (JNCC), to review Schedules 5 and 8 of the Act every five years and to recommend any changes to the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales.

## 13. Contact

13.1 Matt Ashton at the Department for Environment, Food and Rural Affairs, tel: 0117 372 3611 or email: [matthew.ashton@defra.gsi.gov.uk](mailto:matthew.ashton@defra.gsi.gov.uk).