

EXPLANATORY MEMORANDUM TO
THE WILDLIFE AND COUNTRYSIDE (REGISTRATION, RINGING AND MARKING
OF CERTAIN CAPTIVE BIRDS) (ENGLAND) REGULATIONS 2015

2015 No. 618

1. This Explanatory Memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the Instrument**
 - 2.1 The Regulations make provision about the registration, ringing and marking requirements applicable to birds included in Schedule 4 to The Wildlife and Countryside Act 1981 (“the Act”) for the purpose of section 7(1) of the Act. Section 7(1) provides that a person who keeps in captivity a bird included in Schedule 4 of the Act that has not been registered and ringed or marked in accordance with regulations commits an offence. The Regulations consolidate and revoke previous regulations, namely The Wildlife and Countryside (Registration and Ringing of Certain Captive Birds) Regulations 1982 (SI 1982/1221) (“the 1982 Regulations”) and the subsequent amending instruments (SI 1991/478, 1994/1152, 2004/640 and 2008/2357) in relation to England only.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The consolidation of the 1982 Regulations is being undertaken as part of the Government’s Red Tape Challenge, to reduce and simplify the regulatory landscape in England.
 - 4.2 Section 7(1) of the Act requires certain species of birds, if kept in captivity, to be ringed or marked and registered in accordance with regulations made by the Secretary of State. Schedule 4 to the Act lists the species to which this obligation applies. Schedule 4 has been amended in England on two occasions, in 1994¹, when several species were removed and a new provision including hybrids of listed species was introduced. This requirement was removed in 2008², when a number of other species were also removed from the Schedule.
 - 4.3 The 1982 Regulations set out in detail the registration and ringing requirements referred to in section 7 of the Act. The Regulations have been amended four times

¹ SI 1994/1151; The Wildlife and Countryside Act 1981 (Variation of Schedule 4) Order 1994.

² SI 2008/2356; The Wildlife and Countryside Act 1981 (Variation of Schedule 4) (England) Order 2008.

since 1982³, such amendments including the removal of the need to re-register specimens every three years in England and a provision enabling the Secretary of State to waive the ringing for birds that are appropriately marked in accordance with European Regulations 338/97 865/2006⁴ which implement paragraph 7 of Article VI of the Convention on International Trade in Endangered Species (CITES).

- 4.4 These Regulations consolidate the 1982 Regulations and amending instruments in relation to England only.
- 4.5 The Regulations require the Secretary of State to maintain a register of addresses where Schedule 4 birds are kept. On receiving an application for registration the Secretary of State must not add the bird to the register unless satisfied that the bird has been ringed or marked in accordance with the Regulations. An application for registration must be on a form obtained from the Secretary of State and must be made by the bird's keeper or prospective keeper.
- 4.6 The Regulations provide that specimens of peregrine falcon (*Falco peregrinus*) and merlin (*Falco columbarius*) that have been issued with an appropriate certificate (by the UK CITES Management Authority, which is the Secretary of State for Defra) under EC Regulations that implement CITES, namely, Article 10 of EC Regulation 338/97⁵ (a "CITES certificate"), will continue to be registered for the purposes of the Regulations and section 7(1) of the Act if they are listed in a register maintained by the Secretary of State ("the CITES register") of birds which have such certificates.
- 4.7 The Regulations provide that registration and ringing requirements of specimens that are marked in accordance with European Regulations implementing paragraph 7 of Article VI of CITES⁶ ("a CITES marking"), continue to be considered marked for the purposes of the Regulations. Such specimens will not require separate marking or a waiver from the Secretary of State indicating they are suitably marked.

5. Territorial Extent and Application

- 5.1 The Regulations extend to England and Wales and apply in relation to England only.

³ SI 1991/478; SI 1994/1152; SI 2004/640; SI 2008/2357.

⁴ O. J. L166, 19.6.2006 p.

⁵ OJ L 161, 3.3.1997, p. 1.

⁶ The European regulation that currently implements the relevant provision in CITES is Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation 338/97 on the protection of species of wild fauna and flora by regulating the trade therein (OJ L166/1, 19.6.2006).

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 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 species of bird listed on Schedule 4 to the Act, if kept in captivity, to be ringed or marked and registered with the Secretary of State. This is more commonly known amongst bird keepers as “the bird registration scheme”.
- 7.2 Although the scope of the Birds Directive does not extend to captive bred birds⁷, this was not clear in 1981 and the Act included the bird registration scheme to help deter illegal take from the wild for keeping or commercial gain. Since 1981, the populations of many of the species originally listed on Schedule 4 have improved, as have techniques of captive breeding of commonly kept species.
- 7.3 The function of bird registration was devolved in 1999, and the Scottish Executive and the Welsh Assembly Government became responsible for the legislation governing bird registration in their respective administrations, although it was agreed that Defra would continue to administer the scheme for England, Scotland and Wales.
- 7.4 In November 2006 Defra consulted on whether the regulatory burden imposed by bird registration could be reduced, without compromising the conservation status of wild bird populations. The consultation was undertaken in England, Wales and Scotland with the intention of having the same system in place in all three administrations. 131 responses to the consultation were received (nine were submitted by consultees residing in Scotland and six from consultees residing in Wales).
- 7.5 After the consultation closed in February 2007, the international situation for the commercial trade in birds changed because of avian influenza. In July 2007 imports of wild birds from outside the European Union were prohibited, except in exceptions outlined in the Commission Regulation⁸, for disease control reasons. In light of this prohibition, Defra considered that the need to retain non-native species to Europe on Schedule 4 or the addition of further non-native species was unnecessary when the trade in non-European wild taken specimens in Europe was effectively ended. Defra concluded that bird registration should only be targeted at native species where taking from the wild within Great Britain would affect their conservation status; thereby balancing the conservation threat against the

⁷ ECJ Case C-149/94

⁸ Commission Regulation 318/2007

proportionality of the regulatory approach. As a result Schedule 4 was revised by removing 50 species and all hybrids from the Schedule⁹.

- 7.6 As commercial use of the birds listed on Schedule 4 to the Act is also covered by CITES controls a keeper previously had to complete several pieces of paperwork, duplicating information already supplied. A further amendment of the 1982 Regulations means keepers that have specimens of peregrine falcon and merlin, that have been issued with the relevant “CITES certificate” and which are listed on the “CITES register”, are no longer required to register those specimens separately with the Secretary of State. Also, species that are marked with a “CITES marking” do not require a waiver from the Secretary of State¹⁰.
- 7.7 These Regulations consolidate the 1982 Regulations and amending instruments. They do not change the policy approach for Schedule 4 birds. Under these Regulations the Secretary of State is required to keep a register of Schedule 4 birds kept in England (this is to include birds registered under the 1982 Regulations and those that have made a valid application under these Regulations). The Regulations provide that registration ceases if the bird is moved from its registered address unless the Secretary of State is notified in writing of the new address before the bird is moved. However, to minimise bureaucracy this does not apply if the bird is temporarily kept away from its registered address for up to three weeks (i.e. to provide for instances when a bird may be taken to a display) and when another person, i.e. not the registered keeper, looks after the bird at its registered address for up to six weeks. This is to allow for periods when a registered keeper may be away i.e. on holiday or in hospital.
- 7.8 As Defra, through the Animal and Plant Health Agency (APHA), administers the bird registration scheme for England, Scotland and Wales all Schedule 4 birds in Great Britain are registered centrally. Meaning that the register kept by the Secretary of State can include addresses of Schedule 4 birds registered in England, and subsequently moved to Scotland or Wales.
- 7.9 Anyone keeping a bird listed on Schedule 4 must register it and failure to do so could result in a fine and/or prison sentence. Those specimens of peregrine falcons and merlins which have been issued with the appropriate CITES certificate by the UK Management Authority and whose details are listed on a register kept for that purpose will be sufficiently registered for the purposes of section 7 of the Act.

8. Consultation Outcome

- 8.1 A formal consultation has not been undertaken as the Regulations do not alter the effect of the bird registration regime as set out in the 1982 Regulations. No impact on individuals or businesses that keep birds listed on Schedule 4 of the Act is anticipated.

⁹ SI 2008/2356; The Wildlife and Countryside Act 1981 (Variation of Schedule 4) (England) Order 2008.

¹⁰ 2008/2357.

8.2 The Animal and Plant Health Agency (APHA), who administers the bird registration scheme on behalf of Defra, will notify keepers that have birds currently registered in England of the consolidation made by these Regulations through their website. The relevant enforcement authorities will also be informed that these Regulations are coming in to force.

9. Guidance

9.1 Guidance on how to register a bird listed on Schedule 4 of the Wildlife and Countryside Act is available on the Government's website at:
<https://www.gov.uk/bird-registration>

10 Impact

10.1 An Impact Assessment has not been prepared and the impact on the private, public and voluntary sector is considered to be minimal. A full Impact Assessment was attached to the Explanatory Memorandum for SI 2008/2357.

11 Regulating small business

11.1 The legislation applies to small business

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is to do no more than consolidate the existing regulations and to add no new or additional requirements.

11.3 No consultation was carried out for the reasons given in paragraph 8.1 and therefore no small businesses were consulted

12. Monitoring and Review

12.1 The predecessor regulations are well established and, as this consolidation will make no change to their content, a further review is not needed at this stage.

13 Contact

13.1 Kate Fouracre at Defra Tel: 0117 372 3661 or e-mail: Kate.Fouracre@defra.gsi.gov.uk can answer any queries regarding the instrument.