

EXPLANATORY MEMORANDUM TO
THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULE 2)
(ENGLAND) ORDER 2019

2020 No. 245

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends Part I of Schedule 2 to the Wildlife and Countryside Act 1981 (“the 1981 Act”), which lists birds that may be killed or taken outside the close season (a period of the year during which the hunting of a particular type of animal is illegal) for that bird. This Order excludes Greenland White-fronted Goose from Part I of Schedule 2 in England so that it can no longer be killed outside of the close season and therefore cannot be killed at any time of year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint 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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

“In my view the provisions of the Wildlife and Countryside Act 1981 (Variation of Schedule 2) (England) Order 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The 1981 Act, as amended, transposes the provisions of Council Directive 2009/147/EC on the conservation of wild birds.

- 6.2 Under section 1 of the 1981 Act it is an offence to kill, injure or take any wild bird. However, any bird listed in Part I of Schedule 2 to that 1981 Act can be killed outside of the close season for that bird without this constituting an offence under section 1.
- 6.3 In order to ensure compliance with international obligations under the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), this Order amends the list of birds in Part 1 of Schedule 2 so that the Greenland White-fronted Goose sub-species of White-fronted Goose can no longer be killed in England outside of the close season and to do so would be an offence.

7. Policy background

What is being done and why?

- 7.1 This Order excludes Greenland White-fronted Goose (GWfG) from Part I of Schedule 2 of the 1981 Act so that it can no longer be killed outside of the close season and therefore cannot be killed at any time of year. This is being done to meet the UK's legal obligations in relation to the AEWA.
- 7.2 GWfG is a UK bird of conservation concern due to climate change and increasing competition with Canada geese at breeding sites in Greenland. The majority of GWfG overwintering in the British Isles do so in Ireland and western Scotland with west Wales and Northern England being at the very edge of the GWfG range. While hunting is prohibited in Scotland and Northern Ireland, there is no legal protection for GWfG from hunting in England and Wales. A voluntary moratorium operates successfully in Wales. Defra had committed to work with shooting organisations to expand the existing voluntary moratorium in Wales to England.
- 7.3 On 29th June 2018 the AEWA Standing Committee confirmed in writing that the proposals for a non-legislative approach to ending the killing of Greenland White-fronted Goose in England and Wales were not compliant with the legal requirements of the AEWA.
- 7.4 Nature conservation is a devolved matter, so deciding what birds may be killed or taken is the responsibility of the individual administrations: England, Scotland, Wales and Northern Ireland. The Welsh Government chose not to undertake a joint consultation with England on removing the White-fronted Goose from Part 1 of Schedule 2 as it had already carried out two consultations in recent years.
- 7.5 Part 1 of Schedule 2 of the 1981 Act only refers to the White-fronted Goose and does not differentiate between the Greenland and European sub-species. The entry for White-fronted Goose is now amended to exclude the Greenland sub-species and meet our international obligations.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This instrument makes only a minor amendment to the 1981 Act and consolidation is not appropriate at this time.

10. Consultation outcome

- 10.1 Under section 26 of the 1981 Act, before making an Order to amend Part I of Schedule 2, the Secretary of State shall give to any local authority affected and any other person affected by such means as he may think appropriate, an opportunity to submit objections or representations with respect to the subject matter of the order.
- 10.2 The Secretary of State identified those persons that may be affected and a limited consultation of 27 organisations expected to be affected was held.
- 10.3 A total of 10 responses were received from non-government organisations, delivery bodies such as Natural England, and representative/membership organisations.
- 10.4 The majority of respondents favoured the option being taken forward by this Order. Consultation respondents did not raise any major issues apart from questioning the need for a legislative solution to the problem, and raising concerns over misidentification between the two sub-species of White-fronted Goose.
- 10.5 All respondents have been notified of the outcome via letter.
- 10.6 In accordance with legal requirements, the Secretary of State at the time, Theresa Villiers, consulted with the advisory body she felt best able to advise her as to whether the order should be made, in this case the Joint Nature Conservation Committee (JNCC). The JNCC confirmed they were content with the order being made.

11. Guidance

- 11.1 It is not considered that guidance is required in respect of this instrument. This is because:
 - a) A voluntary moratorium is already in place therefore shooters will already be familiar with identifying and discerning between sub-species; and
 - b) It is the shooter's responsibility to make sure they are complying with the law and there are sufficient sub-species guides available on the market as well as written and internet resources to correctly identify species.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because in line with Better Regulation Framework guidance, the net impact on businesses has been assessed as being below the +/- £5 million equivalent annual net direct cost to business which requires the completion of an Impact Assessment. A Regulatory Triage Assessment has been carried out.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that it is not proportionate to make provisions for review due to the minimal impact of this instrument.

- 14.2 The regulation does not include a statutory review clause. In line with the requirements of the Small Business, Enterprise and Employment Act 2015 Rebecca Pow MP Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs has made the following statement:

“Having had regard to the Small Business, Enterprise and Employment Act 2015, I have decided that it is not appropriate to make a provision for review in this instrument because there is not expected to be a significant annualised net impact on business (greater than +/- £5 million net annualised). It would also be inappropriate to do so as this instrument is formalising a current moratorium on killing and or taking Greenland White-fronted Geese outside the close season in order to meet the UK’s legal obligations under the Agreement on the Conservation of African-Eurasian Migratory Waterbirds therefore there is no scope for change.”

15. Contact

- 15.1 Simon Mackown at the Department for Environment, Food and Rural Affairs, Telephone: 02080266900 or email: simon.mackown@defra.gov.uk can answer any queries regarding the instrument.
- 15.2 Richard Pullen, Deputy Director for Wildlife, International, Climate and Forestry, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this explanatory Memorandum meets the required standard.