

WILDLIFE AND NATURAL ENVIRONMENT ACT (NORTHERN IRELAND) 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Wildlife and Natural Environment Act (Northern Ireland) 2011 which received Royal Assent on 29 March 2011. They have been prepared by the Department of the Environment (“the Department”) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Act introduces new provisions and amends the Wildlife (Northern Ireland) Order 1985 No. 171 (N.I.2) (‘the Wildlife Order’) in order to reflect the increasing significance of protecting Northern Ireland’s biodiversity and the need to continue to deter wildlife crime.
4. The deregulation of systems that required anyone who hunted or traded game species to be licensed is also provided for in the Act. This means the repeal of provisions contained in the Miscellaneous Transferred Excise Duties Act (NI) 1972 (c.11) and the Game Act 1831 (c.32), and amendments to the Game Preservation Act (NI) 1928 (c.25).
5. The Act also amends the Environment (Northern Ireland) Order 2002 No. 171 (N.I.2) (‘the Environment Order’) in order to strengthen the regulatory regime for protecting Areas of Special Scientific Interest in Northern Ireland.

CONSULTATION

6. The Department conducted a public consultation process between February and July 2008. Approximately 80 responses were received and were broadly supportive of the policy changes proposed.

OVERVIEW

7. The Act consists of 42 Sections and 3 Schedules. Sections 1 to 3 and 38 are new statutory provisions. Sections 4 to 28 relate to amendments to the Wildlife (Northern Ireland) Order 1985. Sections 29 to 34 relate to amendments to the Environment (Northern Ireland) Order 2002. Sections 35 to 37 relate to changes to provisions contained in the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972, the Game Act 1831, the Game Preservation Act (Northern Ireland) 1928 and the Wildlife (Northern Ireland) Order 1985 relating to game species.

COMMENTARY ON SECTIONS

Section 1 - Duty to conserve biodiversity

This Section introduces a new statutory duty upon government departments and public bodies to take action to further the conservation of biodiversity so far as is consistent with the exercise of their functions. This supplements the commitment to protecting and enhancing biodiversity contained in the Northern Ireland Sustainable Development Strategy and aims to raise the profile and visibility of biodiversity as a natural part of decision-making in the public sector. In fulfilling this duty the public authorities are expected to have regard to the principles and actions contained in the Northern Ireland Biodiversity Strategy.

Section 2 - The Biodiversity Strategy

This Section places a duty on the Department of the Environment to designate and publish a strategy for the conservation of biodiversity. Northern Ireland's first Biodiversity Strategy was published in October 2000 and this will underpin that and future strategies. There is provision requiring the Department to publish reports about implementation of the strategy at least once every 5 years.

Section 3 - Biodiversity lists

This Section requires the Department of the Environment to publish lists of animal and plant species, and of habitats, which are considered to be of particular priority for conservation attention in Northern Ireland. These lists will be reviewed periodically and revisions published.

There is a particular onus placed on public bodies to take steps to further the conservation of such priority species and habitats, and to promote others to take such action.

Section 4 - Protection of nests of certain birds

This Section introduces new statutory protection for the nests of particular birds all year round. Certain bird species return to the same nest year after year, so it is important that those nests are not destroyed. The nests of the Golden Eagle, the White-tailed Eagle, the Osprey, the Peregrine, the Red Kite and the Barn Owl will be subject to such protection.

An offence is created for anyone who damages or destroys the nest of these birds at any time of the year.

Section 5 - Offences – recklessness

This Section amends a number of existing offences within the Wildlife Order which will mean that action which, when carried out recklessly, causes harm to wildlife, will be treated in the same way as action carried out intentionally to cause such harm. This will apply to the protection of wild birds, their nests and eggs, the protection of certain wild animals, the protection of wild plants and activities conducted within wildlife refuges.

Section 6 - Offences – causing or permitting unlawful acts

The Wildlife Order makes certain acts which cause harm to wild birds, animals and plants unlawful. This Section will mean that anyone who knowingly causes or allows someone else to carry out those acts will be committing an offence.

This will also apply to the unlawful introduction of ‘non native’ invasive animal or plant species.

Section 7 - Defences in relation to offences under Article 4

Under Article 4 of the Wildlife Order a person shall not be guilty of an offence against wild birds if he shows that his action was not in contravention of the ‘relevant provisions’. Those ‘relevant provisions’ are amended so it will be an offence for anyone in Northern Ireland to be in possession of wild birds or their eggs taken illegally in any Member State of the European Union.

Under Article 5(6) of the Wildlife Order, an ‘authorised person’ (an owner or occupier) is entitled to rely on certain defences if he has taken action that has caused harm to wild birds, their nests or eggs. This Section means that in future it will be necessary for such persons, if they are to continue to rely on the defences provided, to show that there was no other satisfactory solution to their action or, in circumstances where they knew beforehand that the action would be necessary, that they had applied to the Department for a licence.

Section 8 - Disqualification for registration

This Section will disqualify anyone who is convicted of an offence under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 or the provisions within the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 concerning the protection of species, from applying for or retaining a registration from the Department (for the purposes of taxidermy, for example) within 5 years of such a conviction.

Section 9 - Protection of certain wild animals from disturbance

This Section creates a new offence for anyone to intentionally or recklessly disturb a basking shark, or a common or grey seal.

Section 10 - Snares

Snares are an important means of controlling ‘pest species’ in the countryside but they need to be used with care to avoid unnecessary suffering. This Section aims to strengthen controls over their use. The use of self locking snares, which by their nature do cause suffering, is outlawed, as is the possession of this type of snare, unless there is a reasonable excuse.

It will be an offence for anyone to set or otherwise use any other form of snare that is calculated to cause unnecessary suffering to any wild animal.

Anyone who sets a snare will be required to have it inspected at least once every day and release or remove any animal found caught during the inspection. Failure to fulfill either requirement will be an offence.

Any person who, without reasonable excuse, is in possession of or sets a snare on anyone else’s land without their authorisation, will be committing an offence.

The Department will have a power to introduce, by way of an Order, certain requirements as the Department may consider appropriate upon anyone who uses a snare and it will be an offence not to comply with such requirements.

Section 11 - Spring Traps

This Section regulates the use of spring traps to capture wild animals, other than wild animals included in Schedule 6 to the Wildlife Order, by making it an offence for anyone to use, sell or have in their possession any trap other than a trap of a type authorised by the Department. Authorised traps will be established by way of an Order made by the Department.

The use of ‘unauthorised’ spring traps may be permitted for research purposes but only under the authority of a licence issued by the Department.

Section 12 - Protection of wild plants

The purpose of this Section is to clarify that the offence of intentionally picking, removing, uprooting or destroying a protected wild plant also applies to its seeds or spores. It also clarifies that any reference in the Wildlife Order to a plant which is growing includes a reference to a bulb, corm or rhizome; and that ‘wild plant’ includes fungi.

Section 13 - Introduction of new species

Article 15 of the Wildlife Order is concerned with controlling the introduction of non-native invasive species. This Section applies those controls to hybrids of such species. Provision is included to give the Department a discretionary power to issue guidance (or approve guidance issued by others) for the purpose of controlling the introduction of such invasive species. Such guidance will be essential in promoting awareness among relevant sectors of the risks posed by the introduction of such species and will be available as evidence for the courts in any relevant proceedings.

Section 14 - Prohibition on sale, etc of invasive, non-native species

This Section gives the Department a power to make an Order that can prohibit anyone from selling any animal or plant species to which Article 15 of the Wildlife Order applies, which is specified in the Order. This will be an important means of preventing the entry into Northern Ireland of species that are considered to be of high risk. Anyone who does not comply with the provisions of such an Order or anyone who causes or permits such non-compliance, will be guilty of an offence unless they can show they took all reasonable steps and exercised due diligence to avoid committing an offence.

Section 15 – Possession of pesticides harmful to wildlife

This section creates an offence for anyone to be in possession of certain pesticides that the Department may prescribe by Order. A person will not be guilty of an offence if the person can show that the possession of the pesticide was for lawful purposes.

Section 16 - Licences under Article 18

Article 18 of the Wildlife Order permits activities that would otherwise constitute an offence to be carried out for particular purposes under licence. This Section amends those provisions and will permit licensed activity for additional purposes i.e. for research; for the re-population of an area or re-introduction into an area of wild birds; for conserving animals, wild birds or plant life; or for the protection of inland waters.

The Department will be required to be satisfied, before it issues licences allowing any activity that will affect wild birds, or their nests or eggs, that there is no other satisfactory solution and that licences issued for certain purposes are only issued on a selective basis and in respect of small numbers of birds. Any licence which permits the killing of wild birds will be required to specify certain conditions.

There is provision for the Department to issue licences to permit, for the purpose of development, the disturbance or destruction of any structure a protected animal uses for shelter or protection. Typically this would apply to badger setts.

Section 17 - Shooting of certain deer

This Section will permit the shooting of certain species of deer, namely muntjac deer and Chinese water deer, with smaller calibre firearms and ammunition that otherwise would be unlawful. Due to their diminutive stature, the use of smaller calibre weapons would allow a more humane form of dispatch.

Section 18 - Licences relating to deer

Section 18 is concerned with the management of the wild deer population in Northern Ireland and is intended to mitigate the impacts from deer in certain circumstances by giving the Department broader powers to issue licences to kill, injure or take any (fallow, red or sika) deer during the close season. It will allow licenses to be issued for the purposes of preserving public health or safety, conserving the natural heritage or preventing serious damage to property. Before granting such licences, the Department will be required to be satisfied about

a number of matters in order to ensure that there is no other satisfactory solution and that the reasons for the application for licence are given due consideration. Licences will need to state a number of requirements.

An applicant for a licence is required to have a right of entry onto the land to which the application applies.

Section 19 - Offences: possession of articles for purposes of committing offences

This Section will make it an offence for anyone to be in possession of any article that is to be used for committing an offence under the Wildlife Order, for example, persons with spades and dogs in the pursuit of badger baiting.

Section 20 - Enforcement

Section 21 - Powers of constable in connection with samples

The police play an important role in enforcing the provisions for the Wildlife Order and it is important that they have sufficient powers to do so. Sections 20 and 21 enhance the powers available to the police in a number of ways.

Section 20 replicates existing controls while enhancing the stop and search powers available to police officers where they believe that they will obtain evidence of an offence. There is provision for entry to premises under the authority of warrant issued by a lay magistrate to investigate any offence under Parts 2 and 3 of the Wildlife Order.

Provision also permits a police officer who enters upon any land to be accompanied by other persons and to take any equipment or other material onto that land, and to take samples of anything found on that land and remove them.

Controls are included i.e. a police officer must produce his authority, if requested, and there is a duty upon any officer entering the land to leave it in the same secure manner as when it was entered.

The ability to obtain evidence of the committing of offences by taking samples from specimens, whether alive or dead or their derivatives, has become increasingly important, for example, to prove the identity or ancestry of a bird or animal. Section 21 gives police officers powers to take samples from specimens found by them in the exercise of their duties where it is suspected that an offence may have been committed. There is provision to require the person who has possession of the specimen to assist the sampling process. Any failure to do so is an offence.

Controls require that only a veterinary surgeon can take a sample from a live bird or animal and that a person taking a sample must be reasonably satisfied that no harm will be caused to the specimen concerned.

Section 22 - Enforcement: wildlife inspectors

Section 22 strengthens the powers available to the Department's Wildlife Inspectors.

It gives powers of entry to investigate whether certain offences involving wildlife have been committed, but this does not permit entry to a dwelling house. Power of entry to any premises including a dwelling house is permitted in order to facilitate the processing of applications for licences and to check for on-going compliance with licence conditions. A wildlife inspector may be accompanied by a veterinary surgeon if it is believed such a person will be needed for the purpose of taking samples. A wildlife inspector must produce evidence of his authority, if asked to do so.

It is an offence for any person to impersonate a wildlife inspector or to obstruct a wildlife inspector undertaking inspections.

There is provision to give wildlife inspectors powers to take samples, similar to the powers available to the police under Section 21. The same controls also apply.

Section 23 - Time limit for prosecution of summary offences

This Section makes the time limit for bringing court proceedings for all offences under the Wildlife Order the same i.e. 6 months, beginning from the date on which sufficient evidence to justify a prosecution is known to the Department. This does not apply to any offence committed before the provision comes into operation.

Section 24 - Penalties

The maximum level of penalty for the majority of offences under the Wildlife Order is made the same. Provision is made to give the courts the power to impose custodial sentences up to a maximum of 6 months, except for some lesser offences.

Greater penalties apply to offences in connection with unlawful activity relating to the release, spread or sale of non-native invasive species.

The revised penalties do not apply to any offence committed before the provision comes into operation

Section 25 - Application to the Crown

This Section applies the provisions of Parts 2 and 3 of the Wildlife Order, and any Regulations or Orders made under those parts, to the Crown. A court may declare any contravention of the requirements of those parts unlawful.

Section 26 - Review of Schedules to the Wildlife Order

Schedules 1 to 8 to the Wildlife Order list certain species of bird, animal and plant which receive particular protection due to their conservation status and it is important that the level of protection remains appropriate. This Section places a duty on the Department to review those Schedules, together with new Schedule A1, every 5 years.

Section 27 - Amendments to Schedules 1 to 9 of the Wildlife Order

This Section gives effect to Schedule 1 which amends the lists of bird, animal and plant species contained in Schedules 1 and 2, and 4 to 9 to the Wildlife Order.

Section 28 - Reduction in close seasons for female deer

The close season for female deer, which gives protection from taking and killing, is shortened and changed to begin on 1st April each year.

Section 29 - Public body: duties in relation to authorising operations

This Section places an obligation on public bodies, when granting consent to someone to carry out an operation, to require that the operation is carried out in such a way so as to minimise any possible damage to the designated features of an Area of Special Scientific Interest in Northern Ireland (ASSI) or require the operator to take reasonable action to restore the ASSI to its former condition where damage does occur.

Section 30 – Management agreements

This Section amends Article 43(1) of the Environment Order (NI) 2002 by extending the powers available to the Department to enter into voluntary management agreements with the owners of land outside an ASSI for the purpose of conserving the protected features of an ASSI.

Section 31 - Offences in connection with ASSI

This Section introduces two new offences in relation to measures for protecting ASSIs. Public bodies, when authorising or permitting anyone to undertake an operation which may damage any of the features of an ASSI, are under an obligation to inform the Department of the Environment beforehand and, where appropriate, how it has taken into account any advice received from the Department before permitting an operation. Any public body which fails to do so will be committing an offence. Provision is made for defences, for example, where the operation was required in an emergency.

A new third party offence is committed by anyone who intentionally or recklessly damages any feature of an ASSI. Unlike an existing offence, it is not a defence to claim that the person committing the damage did not know it was occurring within an ASSI. Hence, a lesser penalty applies.

Section 32 - Notification of change of owner or occupier

This Section places a requirement on the owners of land within an ASSI to notify the Department of change of ownership or occupation of the land. The notification should include details of the date of change and the new owner or occupier.

Failure to comply with the obligation will be an offence.

Section 33 - Notices and signs relating to ASSIs

Provision gives the Department power to erect notices and signs on land within ASSIs. Signs are an important means of providing information and increasing awareness of ASSIs and the intrinsic value of their features.

Anyone who damages, destroys or removes such notices or signs will commit an offence.

Section 34 - Effect of failure to serve certain notices in connection with ASSI

When designating ASSIs or issuing other notifications affecting ASSIs, the Department will make every effort to inform all owners of land within the ASSI, but sometimes this is not possible. This Section will mean that those declarations and notices will not be invalidated in the event that an owner has not been identified.

Section 35 - Abolition of game licences and game dealers licences

This Section revokes systems that required anyone who hunted game species or traded game species to be licensed. These systems, which dated back to the 19th century, are now considered archaic and do not serve any useful purpose, and were identified for deregulation. As a consequence, the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 is repealed.

Section 36 - Sale of game

The intention of this Section is also deregulatory in nature and removes provisions contained in the Game Act 1831, the Game Preservation Act (Northern Ireland) 1928 and the Wildlife Order that restricted the trade of game including deer to certain times of the year. Such restrictions are no longer considered necessary given modern refrigeration facilities and food safety standards. As a consequence, provision that requires the conspicuous marking of packages which contain game when in transit is also removed.

There is provision to make it an offence to sell any game which that person knows or believes has been taken or killed unlawfully.

Section 37 - Special protection for game

This Section gives the Department a power to give, by way of an Order, special protection to any game bird during the hunting season for a period up to a maximum of 14 days. This power will allow such protection during extended periods of extreme cold weather.

The Section also provides for Special Protection Orders made under Section 7C of the Game Preservation Act 1928 to prohibit anyone from possessing any game species mentioned in that Order.

Section 38 - Hare coursing

This Section prohibits hare coursing. It will be an offence for anyone to participate in, attend or knowingly facilitate a hare coursing event or permit his land to be used for the purposes of such an event. It will also be an offence for any person to enter or permit a dog to be entered for a hare coursing event, or for any person to control or handle a dog in the course of or for the purposes of a hare coursing event. Additionally, anyone who nets, transports or holds hares for the purpose of a hare coursing event, will also be committing an offence.

A hare coursing event is defined as a competition in which the skill of dogs in hunting hares is assessed.

Any person guilty of an offence relating to hare coursing will be liable on summary conviction to a fine up to a maximum of the standard scale.

Section 39 - Minor and consequential amendments and repeals

This Section provides that the minor and consequential amendments and repeals set out in the Schedules 2 and 3 to the Act will have effect.

Section 40 - Commencement

Provisions of the Act will be brought into operation on such day or days as the Department may appoint, by Order, which may contain any transitional or saving provisions which the Department considers appropriate.

Section 41 - Interpretation

This Section defines certain terms used.

Section 42 – Short title

This Section cites the title of the Act. This is the title by which the Act will be known.

Schedule 1 - Amendments to Schedules to the Wildlife Order

The Schedule amends Schedules 1 and 2, and 4 to 9 of the Wildlife Order with additions and deletions.

Schedule 2 - Amendments

The Schedule contains consequential amendments to the Game Preservation Act (Northern Ireland) 1928 and the Wildlife (Northern Ireland) Order 1985.

Schedule 3 - Repeals

Part 1 of the Schedule repeals certain provisions contained in the Welfare of Animals Act (Northern Ireland) 1972, the Wildlife (Northern Ireland) Order 1985, the Police and Criminal Evidence (Northern Ireland) Order 1989 and the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007.

Part 2 repeals the Games Act 1831 and the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972, and certain provisions contained in the Game Preservation Act (Northern Ireland) 1928, the Game Preservation (Amendment) Act (Northern Ireland) 2002, Criminal Justice (Northern Ireland) Order 1980, the Magistrates' Courts (Northern Ireland) Order 1981, the Wildlife (Northern Ireland) Order 1985 and the Forestry Act (Northern Ireland) 2010.

Part 3 repeals references to hare coursing contained in a number of different statutes as a consequence of the introduction of the ban on hare coursing.

HANSARD REPORTS

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction to the Assembly	30 November 2009
Second Stage debate	12 January 2010
Committee Stage – Evidence from Department of the Environment	7 January 2010
Committee Stage – Evidence from the Royal Society for the Protection of Birds, Queens University of Belfast and Countryside Alliance Ireland	18 February 2010
Committee Stage – Evidence from the Ulster Farmers Union, the Ulster Wildlife Trust and Northern Ireland Environment Link	25 February 2010
Committee Stage – Evidence from Northern Ireland Local Government Association, Northern Ireland Biodiversity Group, Talnorty Avian Care Trust and Department of the Environment	4 March 2010

*These Notes refer to the Wildlife and Natural Environment Act (Northern Ireland) 2011 (c.15)
which received Royal Assent on 29 March 2011*

Committee Stage – Evidence from Premier Woodlands Trust and Department of the Environment	11 March 2010
Committee Stage – Initial consideration of Sections 1 to 20	11 March 2010
Committee Stage – Initial consideration of Sections 21-26, 31-36 and Schedule 1	15 March 2010
Committee Stage – Initial consideration of Sections 27-30 and Schedules 2 and 3, and formal consideration of all Sections and Schedules (Sections 1,2,4,9,10,15,25,26 & 28 and Schedules 1 & 2 referred for further consideration)	18 March 2010
Committee Stage – Consideration of Sections 1,2,4,9,10,15,25,26 & 28 and Schedules 1 & 2	25 March 2010
Committee Stage – Agreement of content of report	15 April 2010
Committee’s report on the Act – report number 50/09/10R	15 April 2010
Consideration Stage in the Assembly	22 June 2010
Further Consideration Stage	7 February 2011
Final stage	1 March 2011
Royal Assent	29 March 2011

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