



2011 CHAPTER 15

Biodiversity

Duty to conserve biodiversity

1.—(1) It is the duty of every public body, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.

(2) In complying with subsection (1), a public body must in particular have regard to any strategy designated under section 2(1).

(3) Conserving biodiversity includes—

- (a) in relation to any species of flora or fauna, restoring or enhancing a population of that species;
- (b) in relation to any type of habitat, restoring or enhancing the habitat.

(4) The Department must issue guidance containing recommendations, advice and information for the assistance of public bodies in complying with the duty under subsection (1).

(5) In this section “public body” means—

- (a) a Northern Ireland department;
- (b) a district council;
- (c) a statutory undertaker within the meaning of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#);
- (d) any other body established or constituted under a statutory provision.

The biodiversity strategy

2.—(1) The Department must designate one or more strategies for the conservation of biodiversity (whether prepared by the Department or by one or more other persons).

(2) The Department must publish any strategy so designated.

(3) A strategy so designated may include different provision for different cases or types of case.

(4) The Department must—

(a) not later than 5 years after the coming into operation of subsection (1), and

(b) at least once in every period of 5 years thereafter,

publish a report regarding the implementation of any strategy designated under that subsection.

Biodiversity lists

3.—(1) The Department must publish a list of the species of flora and fauna and types of habitat which in the Department's opinion are of principal importance for the purpose of conserving biodiversity.

(2) The Department must—

(a) keep under review any list published under this section;

(b) make such revisions of any such list as appear to the Department appropriate; and

(c) publish any list so revised as soon as reasonably practicable after revising it.

(3) Without prejudice to section 1(1) and (2), a public body must—

(a) take such steps as appear to the body to be reasonably practicable to further the conservation of the species of flora and fauna and types of habitat included in any list published under this section; or

(b) promote the taking by others of such steps.

(4) In this section “public body” has the same meaning as in section 1.

*Amendments to the Wildlife Order***Protection of nests of certain birds**

4.—(1) The Wildlife Order is amended as follows.

(2) In Article 4(1) (protection of wild birds, their nests and eggs) after subparagraph (b) insert—

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“(ba) at any other time takes, damages or destroys the nest of any wild bird included in Schedule A1; or

(bb) obstructs or prevents any wild bird from using its nest; or”.

(3) Before Schedule 1 insert—

“SCHEDULE A1

Article 4

BIRDS WHICH RE-USE THEIR NESTS

<i>Common name</i>	<i>Scientific name</i>
Eagle, Golden	<i>Aquila chrysaetos</i>
Eagle, White-tailed	<i>Haliaeetus albicilla</i>
Osprey	<i>Pandion haliaetus</i>
Owl, Barn	<i>Tyto alba</i>
Peregrine	<i>Falco peregrinus</i>
Kite, Red	<i>Milvus milvus</i> ”.

NOTE: The first column of this Schedule, which gives the common name or names, is included by way of guidance only; in the event of any dispute or proceedings, only the second column is to be taken into account.

Offences: recklessness

5.—(1) In each of the provisions of the Wildlife Order mentioned in subsection (2) (which create offences which require an intentional act) after “intentionally” insert “or recklessly”.

(2) The provisions are—

- (a) Article 4(1) and (6) (protection of wild birds, their nests and eggs);
- (b) Article 10(1) and (4) (protection of certain wild animals);
- (c) Article 14(1)(a) and (b) (protection of wild plants); and
- (d) Article 16(1)(a) (wildlife refuges).

Offences: causing or permitting unlawful acts

6.—(1) The Wildlife Order is amended as follows.

(2) In Article 4 (protection of wild birds, their nests and eggs) after paragraph (6) insert—

“(6A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this Article shall be guilty of an offence.”.

(3) In Article 7 (sale of birds, eggs, etc.) after paragraph (2) insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by paragraph (1) (a) or (2)(a) shall be guilty of an offence.”.

(4) In Article 10 (protection of certain wild animals) after paragraph (4A) (inserted by section 9) insert—

“(4B) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this Article shall be guilty of an offence.”.

(5) In Article 13 (sale of wild animals) after paragraph (2) insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by paragraph (1) (a) or (2)(a) shall be guilty of an offence.”.

(6) In Article 14 (protection of wild plants) after paragraph (3) insert—

“(3A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by paragraph (1) or (2)(a) shall be guilty of an offence.”.

(7) In Article 15 (introduction of new species) after paragraph (2) insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by paragraph (1) or (2) shall be guilty of an offence.”.

Defences in relation to offences under Article 4

7.—(1) In Article 4 of the Wildlife Order (protection of wild birds, their nests and eggs) for paragraph (4) substitute—

“(4) In paragraph (3) “the relevant provisions” means the provisions of—

- (a) this Part and of orders made under it,
- (b) the Wild Birds Protection Acts (Northern Ireland) 1931 to 1968 and of orders made under those Acts,
- (c) any other legislation which implements either of the Wild Birds Directives and extends to any part of the United Kingdom, to any area designated in accordance with section 1(7) of the Continental Shelf Act 1964, or to any area to which British fishery limits extend in accordance with section 1 of the Fishery Limits Act 1976, and
- (d) the law of any member State (other than the United Kingdom) implementing either of the Wild Birds Directives.

(4A) For the purposes of paragraph (4) “the Wild Birds Directives” are—

- (a) Council Directive [79/409/EEC](#) on the conservation of wild birds; and

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(b) Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds.”.

(2) In Article 5 of the Wildlife Order (exceptions to Article 4) at the end add—

“(7) An authorised person shall not be regarded as showing that any action of his was necessary for a purpose mentioned in paragraph (6) unless he shows that, as regards that purpose, there was no other satisfactory solution.

(8) An authorised person shall not be entitled to rely on the defence provided by paragraph (6) as respects any action taken at any time if it had become apparent, before that time, that that action would prove necessary for the purpose mentioned in that paragraph and either—

(a) a licence under Article 18 authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent; or

(b) an application by him for such a licence had been determined.”.

Disqualification for registration

8. In Article 7(5) of the Wildlife Order (sale of wild birds, eggs, etc.) after sub-paragraph (a) insert—

“(aa) within 5 years of his having been convicted of an offence under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (other than an offence under Regulation 9 of those Regulations); or

(ab) within 5 years of his having been convicted of an offence under Regulation 34 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995; or”.

Protection of certain wild animals from disturbance

9. In Article 10 of the Wildlife Order (protection of certain wild animals) after paragraph (4) insert—

“(4A) Subject to the provisions of this Part, if any person intentionally or recklessly disturbs any wild animal included in Schedule 5 as—

(a) a common seal (*phoca vitulina*),

(b) a grey seal (*halichoerus grypus*), or

(c) a basking shark (*cetorhinus maximus*),

he shall be guilty of an offence.”.

Snares

10.—(1) Article 12 of the Wildlife Order (prohibition of certain methods of killing or taking wild animals) is amended as follows.

(2) In paragraph (1)(a) after “position” insert “or otherwise uses”.

(3) In paragraph (1) after sub-paragraph (a) insert—

“(aa) sets in position or otherwise uses any other type of snare which is either of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any wild animal coming into contact with it;”.

(4) After paragraph (2) insert—

“(2A) Any person who sets a snare in position or who knowingly causes or permits a snare to be so set must, while it remains in position, inspect it or cause it to be inspected at least once every day at intervals of no more than 24 hours.

(2B) Any person who, while carrying out such an inspection, finds an animal caught by the snare being inspected must, during the course of the inspection, release or remove the animal (whether live or dead).

(2C) Any person who—

(a) without reasonable excuse, contravenes paragraph (2A), or

(b) contravenes paragraph (2B),

shall be guilty of an offence.

(2D) Any person who, without reasonable excuse, is in possession of a snare which is capable of operating as a self-locking snare shall be guilty of an offence.

(2E) Any person who, without reasonable excuse—

(a) while on any land, has in his possession any snare without the authorisation of the owner or occupier of the land, or

(b) sets any snare in position on any land without the authorisation of the owner or occupier of the land,

shall be guilty of an offence.

(2F) Any person who—

(a) uses a snare otherwise than in accordance with such requirements as may be specified in an order made by the Department, or

(b) knowingly causes or permits any other person to do so,

shall be guilty of an offence.”.

Spring traps

11.—(1) After Article 12 of the Wildlife Order insert—

“Spring traps

12A.—(1) Subject to the provisions of this Part, any person who—

- (a) for the purpose of killing or taking any wild animal other than one included in Schedule 6, uses or permits the use of any spring trap other than an approved trap or uses or permits the use of an approved trap in circumstances or for wild animals for which it is not approved, or
- (b) sells, or exposes or offers for sale, any spring trap other than an approved trap with a view to its being used for a purpose which is unlawful under sub-paragraph (a), or
- (c) has in his possession any spring trap for a purpose which is unlawful under this paragraph,

shall be guilty of an offence.

(2) Paragraph (1) does not apply to traps of any description specified by order of the Department as being adapted solely for the destruction of rats, mice or other small ground vermin.

(3) In paragraph (1) any reference to an approved trap is a reference to a trap of a type and make for the time being specified by an order of the Department, either generally or subject to conditions as to the circumstances in which or the wild animals for which it may be used, and any reference to the circumstances or wild animals for which a trap is approved shall be construed accordingly.”.

(2) In Article 18 of the Wildlife Order (power to grant licences) after paragraph (4) insert—

“(4A) Article 12A(1)(a) does not apply to anything done for the purpose of enabling a spring trap to be developed or tested with a view to its being approved under Article 12A(3) if it is done under and in accordance with a licence granted by the Department.”.

Protection of wild plants

12.—(1) The Wildlife Order is amended as follows.

(2) In Article 14(1)(a) (protection of wild plants) after “Schedule 8” insert “or any seed or spore attached to any such wild plant”.

(3) In Article 2(2) (general interpretation), in the definition of “wild plant”, after “any plant” insert “(including fungi)”.

(4) In Article 3 (interpretation of Part 2) at the end add—

- “(3) Any reference in this Part to a plant which is growing—
- (a) includes a reference to a bulb, corm or rhizome;
 - (b) does not include a reference to a seed or spore.”.

Introduction of new species

13.—(1) Article 15 of the Wildlife Order (introduction of new species) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) after “wild state” insert “or is a hybrid of any animal of that kind”;

(b) in sub-paragraph (b) after “Schedule 9” insert “or is a hybrid of any animal included in that Part”.

(3) In paragraph (2) after “Schedule 9” insert “or is a hybrid of any plant included in that Part”.

(4) At the end add—

“(7) The Department may issue guidance (or approve guidance issued by others) for the purpose of providing persons with recommendations, advice and information regarding—

(a) any animal mentioned in paragraph (1),

(b) any plant mentioned in paragraph (2),

and may issue revisions of any guidance issued by it (or approve revisions of guidance issued by others).

(8) A person who fails to comply with any guidance issued or approved under paragraph (7) is not by reason of that failure liable in any criminal or civil proceedings.

(9) But any such guidance is admissible in evidence in such proceedings and a court may take account of any failure to comply with it in determining any questions in the proceedings.”.

Prohibition on sale, etc. of invasive, non-native species

14. After Article 15 of the Wildlife Order insert—

“Prohibition on sale, etc. of invasive, non-native species

15A.—(1) This Article applies to—

(a) any animal mentioned in Article 15(1)(a) or (b) which is specified in an order made by the Department for the purposes of this Article;

(b) any plant included in Part 2 of Schedule 9 which is specified in such an order;

(c) any hybrid of an animal or plant specified as mentioned in sub-paragraph (a) or (b).

(2) Subject to the provisions of this Part, any person who—

- (a) sells, offers or exposes for sale or has in his possession or transports for the purpose of sale any animal or plant to which this Article applies, or
- (b) publishes, or causes to be published, any advertisement likely to be understood as conveying that the person buys or sells, or intends to buy or sell, any such animal or plant,

is guilty of an offence.

(3) Paragraphs (3) and (4) of Article 15 (defence of due diligence, etc.) apply to an offence under paragraph (2) as they apply to an offence under paragraph (1) or (2) of that Article.

(4) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by paragraph (2) (a) shall be guilty of an offence.

(5) An order under paragraph (1) may be made in relation to a particular area or a particular time of year.”

Possession of pesticides harmful to wildlife

15. After Article 15A of the Wildlife Order (inserted by section 14) insert—

“15B Possession of pesticides harmful to wildlife

(1) A person who is in possession of a pesticide containing a prescribed ingredient shall be guilty of an offence.

(2) A prescribed ingredient is one which is prescribed for the purposes of this Article by an order made by the Department; but the Department may not make an order under this Article unless it is satisfied that it is necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm.

(3) A person shall not be guilty of an offence under this Article if the person shows that the possession of the pesticide was for the purposes of doing anything in accordance with—

- (a) regulations made under section 16(2) of the Food and Environment Protection Act 1985;
- (b) provision made by or under the Poisons (Northern Ireland) Order 1976;
- (c) the Biocidal Products Regulations (Northern Ireland) 2001 or any regulations amending or replacing those regulations; or
- (d) the Plant Protection Products Regulations (Northern Ireland) 2005 or any regulations amending or replacing those regulations.

(4) In this Article “pesticide” means—

- (a) a pesticide as defined by section 16(15) of the Food and Environment Protection Act 1985; and
- (b) anything to which Part 3 of that Act applies, by virtue of section 16(16) of that Act, as if it were a pesticide.”.

Licences under Article 18

16.—(1) Article 18 of the Wildlife Order (licences) is amended as follows.

(2) In paragraph (1)(a) after “scientific” insert “, research”.

(3) After paragraph (2)(a) insert—

“(aa) for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds, including any breeding necessary for those purposes;

(ab) for the purpose of conserving flora or fauna;”.

(4) In paragraph (2)(g) for “or fisheries” substitute “, fisheries or inland waters”.

(5) After paragraph (2) insert—

“(2A) The Department—

(a) shall not grant a licence for any purpose mentioned in paragraph (1) or (2) in relation to a wild bird unless it is satisfied that, as regards that purpose, there is no other satisfactory solution; and

(b) shall not grant a licence for any purpose mentioned in paragraphs (1)(b) or (2)(d) to (f) otherwise than on a selective basis and in respect of a small number of birds.”.

(6) In paragraph (3)(b) after “wild animals” insert “, wild birds”.

(7) After paragraph (3) insert—

“(3A) Article 10(4) does not apply to anything done for the purpose of any development if it is done under and in accordance with the terms of a licence granted by the Department.”.

(8) In paragraph (6)(a) after head (i) insert—

“(ia) the circumstances in which, and the conditions subject to which, such birds may be killed;”

(9) At the end add—

“(8) In this Article—

“development” has the meaning given in Article 11 of the Planning (Northern Ireland) Order 1991;

“re-population” and “re-introduction”, in relation to wild birds, have the same meanings as in the Directive of the Council of the

European Communities dated 2nd April 1979 (No. [79/409/EEC](#)) on the conservation of wild birds.”.

Shooting of certain deer

17. In Article 20 of the Wildlife Order (exceptions to Articles 12 and 19) after paragraph (8) insert—

“(8A) An authorised person shall not be guilty of an offence under Article 19(3)(a) if he uses for the purpose of taking or killing or injuring any Chinese water deer (*hydropotes inermis*) or muntjac deer (*muntiacus reevesi*)—

- (a) a rifle having a calibre of not less than .220 inches and a muzzle energy of not less than 1,000 foot pounds (1,356 joules); and
- (b) a soft-nosed or hollow-nosed bullet weighing not less than 50 grains (3.24 grammes).”.

Licences relating to deer

18. In Article 21 of the Wildlife Order (licences for purposes of Article 19) for paragraph (2) substitute—

“(2) Article 19(1) does not apply to anything done for the purpose of—

- (a) preserving public health or public safety,
- (b) conserving the natural heritage, or
- (c) preventing serious damage to property,

if it is done under and in accordance with the terms of a licence issued by the Department.

(3) Before granting a licence under paragraph (2) in relation to any land the Department must be satisfied that—

- (a) in the case of a licence required for the purpose of preserving public health or public safety, there is a serious risk of deer of the species and description to which the application relates putting public health or public safety at risk;
- (b) in the case of a licence required for the purpose of conserving the natural heritage, there is a serious risk of deer of the species and description to which the application relates causing deterioration of the natural heritage;
- (c) in the case of a licence required for the purpose of preventing serious damage to property, property on the land has been seriously damaged in the year preceding the licence application;
- (d) to achieve the purpose in question there is no satisfactory alternative to taking and killing the deer of the species and

description to which the application relates during the close season prescribed by Schedule 10; and

(e) the applicant has a right of entry to the land for the purpose of taking or killing deer under the licence.

(4) A licence under this Article must state—

(a) the purpose for which it is granted;

(b) the land to which it relates;

(c) the species and descriptions of deer to which it relates;

(d) the period, not exceeding two years, for which it is valid; and

(e) in the case of a licence under paragraph (2), the method by which the licensee may take or kill deer.

(5) A licence under this Article—

(a) may be subject to compliance with any specified conditions; and

(b) may be modified or revoked at any time by the Department.

(6) The Department may charge fees for the consideration of applications for licences under this Article.

(7) In this Article “the natural heritage” means flora and fauna, geological or physiographical features or the natural beauty and amenity of the countryside.”.

Offences: possession of articles for purposes of committing offences

19. After Article 24 of the Wildlife Order insert—

“Possession of articles for purposes of committing certain offences

24A.—(1) Any person who, for the purposes of committing an offence under Part 2 or 3 (the relevant offence), has in his possession anything capable of being used for committing the relevant offence shall be guilty of an offence and punishable in the same manner as for the relevant offence.

(2) References in Articles 25 to 27 to an offence under Part 2 or 3 include references to an offence under this Article committed by reference to such an offence.”.

Enforcement

20. For Article 25 of the Wildlife Order (enforcement) substitute—

“Enforcement: constables

25.—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part 2 or 3, the constable may without warrant—

- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
- (b) search for, search or examine any animal or thing which that person may then be using or may have used, or may have or have had in his possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that animal or thing;
- (c) seize and detain for the purposes of proceedings under this Order any thing which may be evidence of the commission of the offence or may be liable to be forfeited under Article 27.

(2) If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part 2 or 3, he may enter any land other than a dwelling house for the purpose—

- (a) of exercising the powers conferred by paragraph (1); or
- (b) of arresting a person under Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 for that offence.

(3) If a lay magistrate is satisfied on a complaint in writing that—

- (a) there are reasonable grounds for suspecting that an offence under Part 2 or 3 has been committed, and
- (b) that evidence of the offence may be found on any premises,

the lay magistrate may grant a warrant to any constable to enter those premises, if necessary using reasonable force, and search them for the purpose of obtaining that evidence.

(4) A warrant under paragraph (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable authorised under this Article to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.

(6) A constable who enters any land in the exercise of a power under this Article—

- (a) may—
 - (i) be accompanied by any other persons, and

- (ii) take any machinery, other equipment or materials on to the land,
for the purpose of assisting the constable in the exercise of that power,
 - (b) may take samples of any articles or substances found there and remove the samples from the land.
- (7) A power specified in paragraph (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.
- (8) A constable leaving any land which has been entered in exercise of a power under this Article, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.
- (9) Where, under paragraph (1)(c), a constable seizes and detains any animal or any bird, egg or nest, he shall as soon as may be convenient produce that animal or that bird, egg or nest to a magistrates' court and the court may order the animal or bird, to be sold, liberated or destroyed, or the nest or egg to be sold or destroyed.
- (10) Where, in relation to any animal or any bird, egg or nest sold under paragraph (9), the person from whom that animal or that bird, egg or nest was seized—
 - (a) is convicted of an offence under Part 2 or 3, the proceeds of the sale shall be added to and dealt with in the same manner as any fine imposed in respect of the offence;
 - (b) is not so convicted, the proceeds of the sale shall be handed over to him.
- (11) A constable who, in pursuance of an order under paragraph (9), sells, liberates or destroys any animal or any bird, egg or nest seized under paragraph (1)(c), shall not be liable to legal proceedings for any such sale, liberation or destruction or for any loss caused by such sale, liberation or destruction.”.

Powers of constable in connection with samples

21. After Article 25 of the Wildlife Order insert—

“Powers of constables in connection with samples

25A.—(1) A constable who suspects with reasonable cause that a specimen found by him in the exercise of powers conferred by Article 25 is one in respect of which an offence under Part 2 is being or has been committed may require the taking from it of a sample.

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(2) A constable who suspects with reasonable cause that an offence under Part 2 is being or has been committed in respect of any specimen (“the relevant specimen”) may require any person to make available for the taking of a sample any specimen (other than the relevant specimen) in that person’s possession or control which—

(a) is alleged to be, or

(b) the constable suspects with reasonable cause to be,

a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

(3) Where a sample from a live bird or other animal is to be taken pursuant to a requirement under this Article, any person who has possession or control of the specimen must give the person taking the sample such assistance as he may reasonably require for that purpose.

(4) A person is guilty of an offence if he—

(a) fails without reasonable excuse to make available any specimen in accordance with a requirement under paragraph (2); or

(b) fails without reasonable excuse to give any assistance reasonably required under paragraph (3).

(5) No sample may be taken by virtue of this Article from a live bird or other animal except by a veterinary surgeon.

(6) No sample may be taken by virtue of this Article from a live bird, other animal or plant unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen.

(7) In this Article—

“sample” means a sample of blood, tissue or other biological material;

“specimen” means—

(a) any bird, other animal or plant, or

(b) any part of, or anything derived from, a bird, other animal or plant.”.

Enforcement: wildlife inspectors

22. After Article 25A of the Wildlife Order (inserted by section 21) insert—

“25B Power of wildlife inspector to enter premises

(1) In this Article and Article 25C—

“wildlife inspector” means a person authorised in writing under this Article by the Department;

“relevant offence” means an offence under Article 7, 8, 9, 13, 14(2), 15 or 15A.

(2) An authorisation under paragraph (1) is subject to any conditions or limitations specified in it.

(3) A wildlife inspector may, at any reasonable time, enter and inspect any premises—

(a) for the purpose of ascertaining whether a relevant offence is being or has been committed on the premises;

(b) for the purpose of—

(i) verifying any statement or representation made, or document or information supplied, by an occupier in connection with an application for, or the holding of, a licence or registration under this Order, or

(ii) ascertaining whether any condition to which a licence under this Order was subject has been complied with.

(4) Nothing in paragraph (3)(a) confers power to enter a dwelling house.

(5) A wildlife inspector must, if required to do so, produce evidence of his authority before entering any premises under this Article.

(6) A wildlife inspector entering premises under this Article may take with him a veterinary surgeon if the inspector has reasonable grounds for believing that such a person will be needed for the exercise of powers under Article 25C.

(7) Any person who, with intent to deceive, falsely pretends to be a wildlife inspector is guilty of an offence.

(8) A person is guilty of an offence if he intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by paragraph (3).

25C Power of wildlife inspector to examine specimens and take samples

(1) A wildlife inspector may, for the purpose of ascertaining whether a relevant offence is being, or has been, committed in respect of any specimen, require any person who has the specimen in his possession or control to make it available for examination by the inspector or a veterinary surgeon.

(2) A wildlife inspector may, for the purpose of ascertaining whether a relevant offence is being or has been committed, require the taking of a sample from a specimen found by him in the exercise of powers conferred by Article 25B in order to determine its identity or ancestry.

(3) A wildlife inspector may, for the purpose of ascertaining whether such an offence is being or has been committed in respect of any specimen (“the relevant specimen”), require any person to make available for the

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taking of a sample any specimen (other than the relevant specimen) in that person's possession or control which—

- (a) is alleged to be, or
- (b) which the inspector suspects with reasonable cause to be,

a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

(4) Where, pursuant to a requirement under this Article—

- (a) a live bird or other animal is to be examined, or
- (b) a sample is to be taken from a live bird or other animal,

a person who has the bird or animal in his possession or control must give the person making the examination or taking the sample such assistance as he may reasonably require for that purpose.

(5) No sample may be taken by virtue of this Article from a live bird or other animal except by a veterinary surgeon.

(6) No sample may be taken by virtue of this Article from a live bird, other animal or plant unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen.

(7) A person is guilty of an offence if he—

- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by paragraph (2), or
- (b) fails without reasonable excuse to make available any specimen in accordance with a requirement under paragraph (1) or (3), or
- (c) fails without reasonable excuse to give any assistance reasonably required under paragraph (4).

(8) In this Article—

“sample” means a sample of blood, tissue or other biological material;

“specimen” means—

- (a) any bird, other animal or plant, or
- (b) any part of, or anything derived from, a bird, other animal or plant.”.

Time limit for prosecution of summary offences

23.—(1) Article 26 of the Wildlife Order (summary prosecutions) is amended as follows.

(2) Omit paragraph (1).

(3) In paragraph (2) for “Summary proceedings for an offence to which this Article applies” substitute “Proceedings for a summary offence under this Order”.

(4) This section does not apply in relation to an offence committed before this section comes into operation.

Penalties

24.—(1) In Article 27 of the Wildlife Order (penalties) for paragraphs (1) to (6) substitute—

“(1) Subject to paragraph (7), a person guilty of an offence under—

- (a) any of Articles 4 to 14,
- (b) Article 15B,
- (c) Article 16,
- (d) Part 3,
- (e) Article 24, or
- (f) Article 25B(7),

shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

(2) A person guilty of an offence under Article 15 or 15A shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(3) Except in a case falling within paragraph (4), a person guilty of an offence under Article 25A(4), 25B(8) or 25C(7) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under Article 25B(8) or 25C(7)(a) in relation to a wildlife inspector entering premises to ascertain whether an offence under Article 15 or 15A is being or has been committed shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.”.

(2) This section does not apply in relation to an offence committed before this section comes into operation.

Application to the Crown

25. In the Wildlife Order after Article 27 insert—

“Application to the Crown

27A.—(1) Subject as follows, Parts 2 and 3 and regulations and orders made under those Parts bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) No contravention by the Crown of any provision of this Order makes the Crown criminally liable; but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.

(3) Despite paragraph (2), this Order applies to persons in the public service of the Crown as it applies to other persons.”.

Review of Schedules to the Wildlife Order

26. In Article 28 of the Wildlife Order (power to amend Schedules to that Order) at the end add—

“(8) The Department shall—

- (a) not later than 5 years after the coming into operation of section 26 of the Wildlife and Natural Environment (Northern Ireland) Act 2011, and
- (b) at least once in every period of five years thereafter,

review Schedules A1, 1, 2, 5 and 8 and determine whether it should exercise any power under this Article in relation to any of those Schedules.”.

Amendments to Schedules 1 to 9 to the Wildlife Order

27. Schedule 1 (which amends the lists in Schedules 1 and 2 and 4 to 9 to the Wildlife Order) has effect.

Reduction in close seasons for female deer

28. In Schedule 10 to the Wildlife Order (close seasons for deer) for “1st March” in each of the three places where it occurs substitute “1st April”.

*Areas of special scientific interest***Public body: duties in relation to authorising operations**

29.—(1) Article 40 of the Environment Order (public bodies: duties in relation to authorising operations) is amended as follows.

(2) In paragraph (6) before sub-paragraph (a) insert—

“(aa) shall, in granting permission, impose conditions sufficient to ensure that the requirements set out in paragraph (6A) are complied with;”.

(3) After paragraph (6) insert—

“(6A) The requirements are—

- (a) that the operations are carried out in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest; and
- (b) that the site will be restored to its former condition, so far as is reasonably practicable, if any such damage does occur.”.

Agreements concerning land adjacent to an ASSI

30. In Article 43(1) of the Environment Order (agreements concerning land adjacent to an ASSI) for “adjacent to” substitute “which is not within”.

Offences in connection with ASSI

31.—(1) Article 46 of the Environment Order (offences) is amended as set out in subsections (2) to (4).

(2) After paragraph (5) insert—

“(5A) A public body which, in the exercise of its functions, permits the carrying out of an operation which damages any of the flora, fauna or geological or physiographical features by reason of which an ASSI is of special interest—

- (a) without first complying with Article 40(2), or
- (b) where relevant, without first complying with Article 40(4) or (6),

is, unless there was a reasonable excuse for permitting the carrying out of the operation without complying, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(5B) For the purposes of paragraph (5A), it is a reasonable excuse in any event for a public body to permit the carrying out of an operation without first complying with Article 40(2), (4) or (6) if the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to the Department as soon as practicable after the permission was given.”.

(3) After paragraph (6) insert—

“(6A) A person (other than a public body acting in the exercise of its functions) who without reasonable excuse—

- (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which land is of special scientific interest, or
- (b) intentionally or recklessly disturbs any of those fauna,

Status: This is the original version (as it was originally enacted).

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

(4) In paragraph (7) after “(6)” insert “or (6A)”;

(5) In Article 47 of the Environment Order (restoration following offence under Article 46), in paragraph (1)(b), after “46(6)” insert “or (6A)”.

Notification of change of owner or occupier

32. After Article 46 of the Environment Order insert—

“Notification of change of owner or occupier

46A.—(1) This Article applies where the owner of land included in an ASSI—

- (a) disposes of an interest in the land; or
- (b) becomes aware that it is occupied by an additional or a different occupier.

(2) If this Article applies, the owner shall send a notice to the Department before the end of the period of 28 days beginning with the date on which he disposed of the interest or became aware of the change in occupation.

(3) The notice is to specify the land concerned and—

- (a) in a case falling within paragraph (1)(a), the date on which the owner disposed of the interest in the land, and the name and address of the person to whom he disposed of the interest; or
- (b) in a case falling within paragraph (1)(b), the date on which the change of occupation took place (or, if the owner does not know the exact date, an indication of when to the best of the owner’s knowledge it took place), and, as far as the owner knows them, the name and address of the additional or different occupier.

(4) A person who fails without reasonable excuse to comply with the requirements of this Article is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) For the purposes of paragraph (1), an owner “disposes of” an interest in land if he disposes of it by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other way except by way of mortgage.”.

Notices and signs relating to ASSIs

33.—(1) After Article 46A of the Environment Order (inserted by section 32) insert—

“46B Notices and signs relating to ASSIs

(1) The Department may, on any land included in an ASSI, put up and maintain notices or signs relating to the site.

(2) The Department may remove any notice or sign put up under paragraph (1).

(3) Any other person who intentionally or recklessly and without reasonable excuse takes down, damages, destroys or obscures a notice or sign put up under paragraph (1) is guilty of an offence.

(4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

(2) In Article 44(1) of the Environment Order (powers of entry) after subparagraph (1) insert—

“(la) to put up, maintain or remove notices or signs under Article 46B;”.

Effect of failure to serve certain notices in connection with ASSI

34. After Article 48 of the Environment Order insert—

“Effect of failure to serve certain notices

48A.—(1) This Article applies where the Department—

(a) has (whether before or after the commencement of this Article) taken all reasonable steps to ensure that, under any provision listed in paragraph (2), notice is served on every owner and occupier of any land to which the notice relates, but

(b) has failed to do so.

(2) The provisions are—

(a) Article 28(3)(b) (declaration of ASSI);

(b) Article 28(6)(c) (confirmation or rescission of declaration of ASSI);

(c) Article 29(3)(b) (variation of ASSI);

(d) Article 29(5)(c) (confirmation or rescission of variation of ASSI);

(e) Article 30(4)(b) (declaration of additional land to be included in ASSI);

(f) Article 30(7)(c) (confirmation or rescission of declaration of additional land);

(g) Article 31(1)(b) (denotification);

(h) Article 31(4)(c) (confirmation or rescission of denotification).

(3) The validity of the notice is not affected by the failure to serve it on every owner and occupier of the land.

(4) For the purposes of this Part, the time when the notice is to be treated as having been served is the time when the Department took the last of the steps referred to in paragraph (1)(a).

(5) If the Department becomes aware of its failure to serve a notice on an owner or occupier, it must serve a copy of the notice on that owner or occupier.

(6) Nothing in paragraph (3) or (4) renders the owner or occupier liable—

(a) in relation to anything done or omitted to be done before the coming into operation of this Article, or

(b) under Article 46(1) or 46A(4) in relation to anything done or omitted to be done before the copy of any relevant notice is served under paragraph (5).”.

Game

Abolition of game licences and game dealers’ licences

35. Part 4 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 (c. 11) (game licences and game dealers’ licences) shall cease to have effect.

Sale of game

36.—(1) In the Game Preservation Act (Northern Ireland) 1928 (c. 25) after section 7 insert—

“7AA Sale of game taken unlawfully

(1) A person is guilty of an offence if he sells or offers or exposes for sale or has in his possession or transports for the purposes of sale any game—

(a) which has been taken or killed in circumstances which constitute an offence under this Act, any of the enactments listed in the Schedule or the Wildlife (Northern Ireland) Order 1985; and

(b) which that person knows or has reason to believe has been so taken or killed.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.”.

(2) In the Game Act 1831 (c. 32), section 4 (offence of buying, selling or possessing birds of game after 10 days after expiration of season for killing, etc.) shall cease to have effect.

(3) In the Game Preservation Act (Northern Ireland) 1928 (c. 25), the following provisions shall cease to have effect—

(a) section 5 (marking of game in transit);

(b) section 7(4) (offence to buy or sell game during close season).

(4) In the Wildlife Order, Article 23(1) (dealing in venison by unlicensed person) shall cease to have effect.

Special protection for game

37.—(1) The Game Preservation Act (Northern Ireland) 1928 is amended as follows.

(2) In section 7 (close seasons) after subsection (3) insert—

“(3A) If it appears to the Department expedient that any game birds should be protected during any period outside the close season for those birds, the Department may make an order with respect to the whole or any specified part of Northern Ireland declaring any period (which shall not in the case of any order exceed 14 days) as a period of special protection for those birds.

(3B) This section shall have effect as if any period of special protection declared under subsection (3A) for any game birds formed part of the close season for those birds.

(3C) Before making an order under subsection (3A) the Department shall consult a person appearing to the Department to be a representative of persons interested in the shooting of game birds of the species proposed to be protected by the order.”.

(3) In section 7C(1) (special protection order for game) after “purchase” insert “or possession”.

Hare coursing

38.—(1) A person commits an offence if he—

(a) participates in a hare coursing event,

(b) attends a hare coursing event,

(c) knowingly facilitates a hare coursing event,

(d) permits land which belongs to him to be used for the purposes of a hare coursing event,

(e) nets hares for the purpose of a hare coursing event,

- (f) transports hares for the purpose of a hare coursing event, or
 - (g) holds hares for the purpose of a hare coursing event.
- (2) Each of the following persons commits an offence if a dog participates in a hare coursing event—
- (a) any person who enters the dog for the event,
 - (b) any person who permits the dog to be entered, and
 - (c) any person who controls or handles the dog in the course of or for the purposes of the event.
- (3) A “hare coursing event” is a competition in which dogs are, by the use of live hares, assessed as to skill in hunting hares.
- (4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Supplementary

Minor and consequential amendments and repeals

- 39.**—(1) The statutory provisions set out in Schedule 2 have effect subject to the minor and consequential amendments specified in that Schedule.
- (2) The statutory provisions set out in Schedule 3 are repealed to the extent specified in the second column of that Schedule.

Commencement

- 40.**—(1) The preceding sections of this Act (and the Schedules) come into operation on such day or days as the Department may by order appoint.
- (2) An order under subsection (1) may contain such transitional or saving provisions as the Department thinks appropriate.

Interpretation

41. In this Act—

- “the Department” means the Department of the Environment;
- “the Environment Order” means the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#);
- “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 ([c. 33](#));
- “the Wildlife Order” means the [Wildlife \(Northern Ireland\) Order 1985 \(NI 2\)](#).

Short title

42. This Act may be cited as the Wildlife and Natural Environment Act (Northern Ireland) 2011.