

EXPLANATORY MEMORANDUM TO

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULE 9) (ENGLAND) (NO. 2) ORDER 2021

2021 No. 548

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend Part 1 of Schedule 9 to the Wildlife and Countryside Act 1981 (c 69) (“the 1981 Act”), which lists non-native animals which are established in the wild which may not be released or allowed to escape into the wild unless this is authorised by a licence.
- 2.2 It adds common pheasant and red legged partridge to Part 1 of Schedule 9, but only in relation to areas in England that are European sites at the time of the instrument coming into force or within 500 metres of the boundary of such a site. This means releases of these species, or allowing these species to escape, into the wild in these geographic areas will be prohibited without a licence.

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 areas of England that are European sites at the time of the instrument coming into force or within 500 metres of the boundary of such a site.

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 9) (England) (No. 2) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being laid in order to prohibit releasing or allowing to escape into the wild common pheasants and red-legged partridges on areas in England that are European sites at the time of the instrument coming into force or within 500 metres of the boundary of such a site unless this is permitted by a licence issued under section 16(4) of the 1981 Act.
- 6.2 The Government is required, under its obligations under the Conservation of Habitats and Species Regulations 2017 (the “2017 Regulations”), as amended, to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species on European sites as well as significant disturbance of the species for which the sites have been designated. .
- 6.3 Defra commissioned a review, which concluded in October 2020, that considered the legislative arrangements around the release of the common pheasant and red-legged partridge on and around the relevant sites. On the basis of the review’s conclusions, and in order to ensure compliance with the legal obligations contained in the 2017 Regulations, the Secretary of State proposed to introduce an interim licensing regime for the releases of common pheasants and red-legged partridges on and around the relevant sites. This was set out in a witness statement to the court in October 2020 and was also published online.

7. Policy background

What is being done and why?

- 7.1 Following the review described above, and in order to take a precautionary approach, the Secretary of State committed to put in place an interim licensing regime for the June 2021 releases of common pheasant and red legged partridge within European sites and within a 500m buffer zone around the sites. All existing regulatory protections for European sites, including Natural England’s Sites of Special Scientific Interest (SSSI) consenting regime, remain in place. The interim licencing regime is to provide an additional, precautionary layer of protection whilst we improve our understanding of the impacts of releases and improve our understanding of the impacts of releases and consider the wider regulatory framework for avoiding detrimental impacts to these sites. The licensing regime is currently being finalised following a public consultation but will include permission to release pheasants and red-legged partridges provided that the conditions of the general licence are met. These conditions will include limits on the density of birds being released as well as requirements to ensure birds are not encouraged onto the protected site from the buffer zone and to supply information on the release to Natural England.
- 7.2 This instrument is required to make it an offence to release the relevant species in the relevant areas and therefore trigger the need for a licensing regime.
- 7.3 The licensing regime is intended to be interim in nature. To demonstrate government's very clear intention that this is an interim measure rather than the long-term criminalisation of releasing gamebirds on and around European sites, this instrument will expire four years from the date of its coming into force. There will also be a review against our policy objective within three years of this instrument coming into force which may indicate that it is appropriate to remove these species from Part 1 of Schedule 9 at an earlier stage. The policy objective is for this interim licencing regime (and, by extension, the amendment to Part 1, Schedule 9 of the Wildlife and

Countryside Act 1981 introduced by this instrument) to have effect only a satisfactory alternative is in place that meets the legal obligations in the 2017 regulations.’

7.4 The level of public interest in the policy is low overall. There has been some national media coverage of the judicial review launched against Defra. This has primarily been factual coverage. There has been trade and industry press commentary from shooting and conservation organisations.

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

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Consolidation is not appropriate.

10. Consultation outcome

10.1 In accordance with the requirements of section 26(4) of Wildlife and Countryside Act 1981, the Secretary of State sought objections or representations of any local authority affected and any other person affected by the proposal to add the common pheasant and red-legged partridge to Part 1 of Schedule 9 of the 1981 Act 1981 in respect of releases on the relevant sites and a 500m buffer zone only.

10.2 Following informal consultation with stakeholders in the shooting industry and conservation organisations, a public consultation on the Interim Gamebird Release Licence in England was launched on the 23rd February 2021 for 3 weeks.

10.3 Respondents were asked to comment on the proposed conditions and recommendations of the general licence, the prospect of individual licences for specific sites, the inclusion of sunset and review clauses and data collection.

10.4 The consultation received a total of 2192 responses. Approximately almost 44% of which were part of a campaign by a single environmental NGO. Responses were largely polarised, with participants supporting either the shooting industry, suggesting the regime was too restrictive, or eNGOs, suggesting the proposed regime will not adequately protect sites from damage.

11. Guidance

11.1 The document 'A copy of the Register of European sites, which is maintained by the Secretary of State in relation to European sites by virtue of regulation 17(1)(a) of the Conservation of Habitats and Species Regulations 2017, as at 31st May 2021' lists the European sites to which this Order applies. This is published at <https://www.gov.uk/government/publications/copy-of-register-of-european-sites-in-england-as-at-31-may-2021>.

11.2 An illustrative map showing the sites listed on this document and their 500 metre buffer zones is published at <https://www.gov.uk/government/publications/european-sites-and-500-metre-buffer-zones-in-england-on-31-may-2021>.

11.3 Details of the interim licence regime will be published on the gov.uk website in due course.

12. Impact

- 12.1 The impact on business of this instrument will primarily be felt by the shooting industry; specifically, those shoots that release common pheasant and red-legged partridge on, or within 500m of European sites. The impact on the public sector is related to the costs associated with maintaining the interim licensing regime.
- 12.2 The total economic impact is for an overall total cost estimated at £2.4m (present value over four years, best estimate). The low to high range is £1.4m-5.4m.
- 12.3 The Regulatory Policy Committee is currently considering a copy of the Regulatory Impact Assessment. The final equivalent annual net cost to business figure is subject to final validation by the Regulatory Policy Committee. The cleared Regulatory Impact Assessment will be published on the gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. This will include shoots employing up to 50 people. The policy objective and benefits cannot be achieved without impact to small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to take the least burdensome approach where possible; for example, we propose that the release of common pheasant and red-legged partridge on areas in England that are European sites at the time of the instrument coming into force or within 500 metres of the boundary of such a site be permitted via a general licence, subject to conditions.

14. Monitoring & review

- 14.1 A statutory review clause is included in the Order.

15. Contact

- 15.1 Tom Fuller at the Department for Environment, Food and Rural Affairs Telephone: 0208 415 2770 or email: GLteam@defra.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Anna Sargeant, Deputy Director for General Licensing and Gamebird Review, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rebecca Pow MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.