

EXPLANATORY MEMORANDUM TO
THE BEAVERS (ENGLAND) ORDER 2022

2022 No. 858

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument varies the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) in order to add the Eurasian Beaver to Schedule 2 of the Habitats Regulations, listing the Eurasian beaver as a European protected species, in order to implement the UK’s obligations under the Convention on the Conservation of European Wildlife and Natural Habitats (“Bern Convention”).

2.2 This instrument also varies the Wildlife and Countryside Act 1981 in order to remove the Eurasian beaver from Part 1B of schedule 9 to that Act and add it to Part 1A of Schedule 9 to that Act. This variation will retain the requirement for a licence to be issued in order to release Eurasian beavers into the wild but will prevent species control orders being issued, which would conflict with the protected status provided for under Schedule 2 of the Habitats Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 to England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Bern Convention’ imposes obligations on Contracting Parties to protect listed species to ensure the conservation of endangered and vulnerable wild flora and fauna and their habitats. The UK is a Party to the Bern Convention. In England, the Bern Convention is implemented by the Habitats Regulations.

6.2 The Eurasian beaver is listed in Appendix III of the Bern Convention. Article 7 to the Bern Convention requires each Contracting Party to take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species in Appendix III, including regulating their exploitation and sale. Article 8 to the Bern Convention establishes restrictions with regards the capture and killing of wild fauna species in Appendix III.

- 6.3 Article 9 to the Bern Convention permits exceptions from the provisions of article 4 to 8, provided there is no other satisfactory solution, and the actions are not detrimental to the survival of the population concerned, for certain listed purposes.
- 6.4 This instrument varies Schedule 2 to the Habitats Regulations, to list the Eurasian beaver as a European protected species, to implement the UK's international obligations under the Bern Convention. It varies Schedule 9 to the Wildlife and Countryside Act 1981, to recognise that the Eurasian beaver is present in the wild.
- 6.5 Regulation 43 to the Habitats Regulations contains criminal offences for breach of protections flowing from the Bern Convention. Schedule 2 to the Habitats Regulations lists the species to which the offences will apply. Regulation 55 establishes a derogation from Regulation 43 for certain statutory purposes.
- 6.6 The Eurasian beaver is currently regulated under the control regime provided by section 14 and Schedule 9 to the Wildlife and Countryside Act 1981. This instrument maintains this control regime.

7. Policy background

What is being done and why?

- 7.1 The Eurasian beaver became extinct in the UK over 400 years ago. Consequently, the species is not protected in England. However, the species has recently been reintroduced to England. It is therefore necessary to provide the species with suitable protection to meet our international obligations under the Bern Convention.
- 7.2 This instrument will amend Schedule 2 to the Habitats Regulations to ensure that wild Eurasian beavers are protected in England
- 7.3 As Eurasian beavers are now present in the wild in England, it is necessary to amend Schedule 9 of the Wildlife and Countryside Act 1981, moving Eurasian beavers from Part 1B of Schedule 9 'Animals no longer normally present' to Part 1A of Schedule 9 'Native animals', to recognise this. This also prevents species control agreements and orders being issued for Eurasian beavers, which would conflict with the protected status provided for under Schedule 2 of the Habitats Regulations.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 Before the changes to be made by this instrument, under the Habitats Regulations it was an offence to be in possession of or to control, to transport, to sell or exchange, or to offer for sale or exchange a Eurasian beaver.
- 7.5 Eurasian beaver is listed in Schedule 6ZA of the Wildlife and Countryside Act 1982, meaning there are restrictions on certain methods that can be used to kill or take beavers, and in Part 1B of Schedule 9 'Animals no longer normally present' meaning that a licence is required for the release of beavers into the wild and that the species could be subject to species control agreements or orders.

Why is it being changed?

- 7.6 The Eurasian beaver has recently been reintroduced to England. The population is small and considered critically endangered so is vulnerable to the negative impacts of inappropriate management. It is therefore necessary to provide the species with suitable protection to meet our international obligations under the Bern Convention.

- 7.7 As Eurasian beavers are now present in the wild in England, it is necessary to amend Schedule 9 of the Wildlife and Countryside Act 1981 to move Eurasian beavers from Part 1B of Schedule 9 ‘Animals no longer normally present’ to Part 1A ‘Native animals’, to recognise this and to prevent species control agreements and orders being issued for this species, which would conflict with protection provided for under Schedule 2 of the Habitats Regulations.

What will it now do?

- 7.8 The amendment to Schedule 2 of the Habitats Regulations will make it an offence to deliberately capture, kill, disturb or injure beavers. It will also be an offence to damage or destroy breeding sites or resting places. In some cases, beaver activity may cause negative impacts which may need to be managed. Where the impact cannot be mitigated through permitted means, a licence, issued by Natural England, will be required to carry out certain otherwise prohibited activities.
- 7.9 The variation to Schedule 9 of the Wildlife and Countryside Act 1981 will retain the requirement for a licence to release beavers into the wild in England but will prevent species control agreements and orders being issued for Eurasian beavers.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 There will be no consolidation of legislation as a result of this instrument.

10. Consultation outcome

- 10.1 No consultation has been carried out as it would have no impact on our requirement to implement our obligations under the Bern Convention.

11. Guidance

- 11.1 Natural England will publish statutory guidance to reflect the amendment to Schedule 2 of the Habitat Regulations. It is intended that this guidance will be published before protection comes into force on 1 Oct 2022

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full impact assessment has not been prepared for this instrument because there is no, or no significant, impact and the costs associated with applying for a licence will be relatively small as few licences are anticipated.

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 Natural England will monitor and record the number of licenses granted. There will be a requirement for licensees to report any actions undertaken under the licence.

14.2 This instrument will be reviewed in 10 years.

15. Contact

15.1 Becky Price at Department for Environment Food and Rural Affairs Telephone: 02087 200 161 or email: Rebecca.price@defra.gov.uk can answer any queries regarding the instrument.

15.2 Richard Pullen, Deputy Director for National Biodiversity, at Department for Environment Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 George Eustice, Secretary of State, at Department For Environment Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.