

Explanatory Memorandum to the Ringing of Certain Captive-bred Birds (England and Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister for Environment's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Ringing of Certain Captive-bred Birds (England and Wales) Regulations 2017.

Hannah Blythyn

Minister for Environment, under authority of the Cabinet Secretary for Energy, Planning and Rural Affairs

7 December 2017

1. Description

These Regulations, which apply in England and Wales, have been made for the purpose of section 6(5)(b) of the Wildlife and Countryside Act 1981 (the '1981 Act'). They revoke the Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982 under that section (S.I. 1982/1220).

The Regulations provide for the ringing of birds bred in captivity and included in Part I of Schedule 3 to the 1981 Act. The Regulations set out the requirements for ringing those birds depending on where the bird is hatched.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument is being made on a composite basis with the Parliamentary under Secretary of State for DEFRA. The 1981 Act transposes Directive 2009/147/EC on the conservation of wild birds (the Wild Birds Directive) into the law in England and Wales and it is desirable to have a common England-Wales regulatory regime covering transposition. Maintaining a consistent approach in Wales with England is considered beneficial for those individuals and organisations wishing to possess and trade captive bred birds and the relevant law enforcement agencies. Furthermore, the policy in Wales on this specific matter is identical to that in England and as such one instrument rather than two with identical (or very similar) text is considered more coherent. A composite instrument removes the potential for confusion that having two separate statutory instruments producing the same legal effect may cause.

As this instrument will be subject to both the National Assembly for Wales and UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. The instrument is not amending earlier bi-lingual legislation.

Schedule 2 of the Regulations sets out the maximum permitted ring sizes for the species listed and ringed in accordance with regulation 2. These ring sizes, which vary from those specified in S.I. 1982/1220 were agreed in the 1990s between the UK Government and the specified suppliers and have been used ever since. The new sizes ensure close rings are of a size which poses the least welfare risks to captive-bred birds, while also minimising the potential for rings to be fitted on to birds taken unlawfully from the wild. The specification of maximum ring sizes is a technical standard within the scope of the EU Technical Standards Directive (the "TSD").

These Regulations have been notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p 1).

3. Legislative background

Section 6(1) of the 1981 Act makes it an offence to sell, offer or expose for sale, possess or transport for the purpose of sale, any wild live bird other than a bird included in Part 1 of Schedule 3 to that Act. For the purpose of section 6, Part 1 of Schedule 3 birds are to be captive-bred and ringed or marked in accordance with regulations made by the Secretary of State (see section 6(5)(b) and 6 (5B)). Functions of the Secretary of State under section 6, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999. These functions now vest in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

The procedure for making this statutory instrument is prescribed in section 26(2) of the 1981 Act. It is to be subject to the negative procedure.

4. Purpose & intended effect of the legislation

In 2011 the European Commission (“the Commission”) raised concerns regarding an alleged restriction on the free movement of goods by the UK (contrary to Articles 34-36 of the Treaty on the Functioning of the European Union (TFEU)) in respect of the trade in captive-bred wild birds.

The purpose of these Regulations is to implement changes to ensure that requirements for trading captive bred birds are consistently achievable, regardless of whether the bird was hatched in England, Wales or imported from another EU member State. They ensure a consistent regime in Wales in relation to the trade in captive-bred birds included in Part I of Schedule 3 to the 1981 Act in a manner that continues to meet the requirements of the Wild Birds Directive. The effect, therefore, ensures Part I, Schedule 3, birds imported from other countries can be traded in the same manner as those birds that are bred in England and Wales, in so far as they meet the terms of these Regulations.

Specifically, these Regulations provide for the ringing of birds bred in captivity and included in Part I of Schedule 3 to the 1981 Act. The Regulations set out the requirements for ringing those birds depending upon where the bird is hatched.

These Regulations do not change the way in which Part I Schedule 3 birds hatched in England and Wales are regulated, but it will now be easier for imported birds to comply with these Regulations and thus come within section 6(5) of the 1981 Act.

This instrument will affect anyone wishing to trade captive-bred birds included in Part I of Schedule 3 to the 1981 Act in Wales

Failure to implement these changes to the Regulations could result in infraction proceedings by the European Commission due to the principles of EU legislation, which include the "free movement of goods.

5. Consultation

A joint England, Scotland and Wales public consultation was held titled "Captive bred birds: changing how we regulate trading in England, Scotland and Wales". The consultation was launched on 28 January 2015 and was open for views until 24 March 2015.

The consultation sought views on a number of proposed changes to the way the trade in captive-bred birds is regulated in Britain. The options were designed to implement changes to ensure that requirements for trading captive bred birds are consistently achievable, regardless of whether the bird was hatched in Britain or imported from another EU Member State.

The consultation put forward a key proposal; captive-bred birds may be traded in Britain provided they meet the following conditions:

- a) They are of a species that may currently be traded under section 6 of the 1981 Act (i.e. Part I Schedule 3 species) or under a General Licence (unless other conditions/exceptions are specified);
- b) They are ringed in accordance with the requirements of the country in which they were hatched; and
- c) They are fitted with rings that meet the minimum standard for rings as described in the Convention on the International Trade in Endangered Species (in many cases this is likely to be the same ring as required by the Member State).

Views were sought on three options to achieve the key proposal;

- Option One: Amend regulation 3 of the Wildlife and Countryside (Ringling of Certain Birds) Regulations 1982 (SI 1982/1220) ("the Ringling Regulations") to include the proposed new definition of permitted rings
- Option Two: Amend the Wildlife and Countryside Act 1981 so that trade is only permitted through a licensing system
- Option Three: Expand the exception in Section 6 of the Wildlife & Countryside Act 1981 to allow trade in all captive-bred birds currently permitted to be traded under General Licences

A total of 39 responses were received from individual members of the public, non-government organisations, delivery bodies such as Natural England, representative/membership organisations, and small to medium sized businesses.

The majority of respondents, 66%, preferred Option One.

In addition to the Key Proposal, views were welcomed on five further issues that had previously been raised by stakeholders. One of these issues was the maximum ring sizes set out in the Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982.

There has been a history of dissatisfaction around the maximum ring sizes specified in the 1982 Regulations. When the 1982 Ringing Regulations were introduced (containing the maximum ring sizes) they were considered by some to be too small for some species and raised concerns about welfare.

In 1990-92, the (then) Department of the Environment (DoE) and the authorised ring suppliers agreed to trial an interim increase in maximum allowable ring sizes for these species. It was intended that this trial would assess any increased risk to wild specimens of these species being captured unlawfully, ringed, and then sold on as captive-bred as a result of the increased ring sizes. It was anticipated that Schedule 2 to the Ringing Regulations would then potentially be amended, depending on the findings of the research.

However, the validity of the field trials was questioned by conservation bodies, therefore the DoE said it would undertake further research to assess the potential for the larger ring sizes to be fitted to wild birds, before the increased sizes would be enshrined in legislation. This was intended to take place in 1994, but was delayed. The research was subsequently never taken forward, and the legislation never amended.

Therefore for some of these species, the approved ring suppliers have been issuing rings larger than the maximum sizes specified in the 1982 Ringing Regulations, following the agreement of the interim measures to ensure close rings are of a size which poses the least welfare risks to captive-bred birds, while also minimising the potential for rings to be fitted on to birds taken unlawfully from the wild.

Two options were presented in the consultation regarding amending maximum ring sizes:

- Option A – Amend the maximum allowable ring sizes to reflect the ‘interim’ maximum sizes currently being used by the authorised ring suppliers (in line with the approach agreed in 1993) for Part I of Schedule 3 species.
- Option B – Introduce a more general definition of appropriately-sized rings which relies on a form of wording which ensures that rings are small enough that they must be fitted within the first few days of a bird’s life and cannot be removed once the bird has grown, but large enough that they do not cause welfare issues when the bird has fully matured.

The majority of consultation respondents (69%) did not raise any issues or concerns with the interim sizes currently in use. The Government Response in the summary of consultation responses document explained that Welsh

Government intended to pursue Option A – to amend the maximum allowable ring sizes to reflect the sizes as agreed in the interim measures.

A summary of consultation responses has been published on gov.uk, with a link from the Welsh Government consultation webpages ahead of this instrument being laid before the National Assembly for Wales.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509610/captive-bred-birds-consult-sum-resp.pdf

All respondents have been notified of the publication of the summary document and outcome.

6. Regulatory Impact Assessment (RIA)

Having considered the Welsh Ministers' code of practice, a Regulatory Impact Assessment has not been prepared for these Regulations. No impact on the private, public or voluntary sectors is foreseen separate to that already covered by the substantive provisions of the 1981 Act.