

# SL(5)450 – The Humane Trapping Standards (England and Wales) Regulations 2019

## Background and Purpose

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The Humane Trapping Standards (England and Wales) Regulations 2019 make a technical correction to ensure the proper functioning of earlier amendments to the Wildlife and Countryside Act 1981 (“the 1981 Act”) made by the Humane Trapping Standards 2019 (S.I. 2019/22) (“the Regulations”).

The amendments in the Regulations replaced section 11(2) of the 1981 Act and prohibited the killing and taking of stoat unless under the authority of a licence. Section 16(3) of the 1981 Act contains the relevant licensing ground, and under section 16(3)(c) it is possible to issue a licence for the purpose of conserving wild animals. However, in this provision, “wild animals” does not include wild birds.

The primary purpose for killing and taking stoat in England and Wales is the conservation of ground nesting birds. This instrument inserts a new provision into section 16 of the 1981 Act, which provides that the licensing ground in section 16(3)(c) is read, insofar as it relates to the killing and taking of stoat prohibited under section 11(2), as including the conservation of wild birds.

## Procedure

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Negative.

## Technical Scrutiny

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The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

### 1. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh

- These Regulations has been made as a composite instrument, meaning the Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. As a result, the Regulations have been made in English only.
- The Explanatory Memorandum states as the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. The Explanatory Memorandum states that the Regulations were made on a composite basis to maintain the clarity, continuity, accessibility and transparency of the statute book for those required to comply with its provisions. Legal Advisers accept there are good reasons to make this Order on a composite basis, but we note the effect that has (i.e. there is no Welsh language version).

## Merits Scrutiny

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The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. **Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly**



- This Order is made under section 2(2) of the European Communities Act 1972 (the 1972 Act). The 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply to this Order. The negative procedure has been chosen on the basis that there were no factors indicating the use of affirmative procedure for this instrument, considering the technical and minor nature of the amendment, and the fact that it does not involve a policy change.
- The Legal Advisers accept that the choice of negative procedure is appropriate given these reasons.

## Implications arising from exiting the European Union

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These Regulations implement EU obligations in relation to the humane trapping of stoats under licence for the purpose of protecting nesting wild birds, and therefore the Regulations will form part of retained EU law after exit day.

## Government Response

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A government response is not required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**7 October 2019**

