

Explanatory Memorandum to the Wildlife and Countryside (Registration, Ringing and Marking of Certain Captive Birds) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for the Environment and Sustainable Development and is laid before the National Assembly for Wales in accordance with Standing Order 27.1.

(i) Description

The Wildlife and Countryside (Registration, Ringing and Marking of Certain Captive Birds) (Wales) Regulations 2011 (“the 2011 Regulations”) make provision about the registration and ringing or marking requirements applicable in respect of birds listed in Schedule 4 to the Wildlife and Countryside Act 1981 (“the Act”) for the purposes of section 7(1) of the Act. Section 7(1) of the Act provides that a person who keeps, has in their possession or under their control, any bird included in Schedule 4 that has not been registered and ringed or marked in accordance with regulations commits an offence.

(ii) Matters of special interest to the Constitutional and Legislative Affairs Committee

The Wildlife and Countryside (Registration, Ringing and Marking of Certain Captive Birds) (Wales) (Amendment) Regulations 2009 received negative comment from the then Subordinate Legislation Committee. The committee reported that, in amending the Wildlife and Countryside (Registration, Ringing and Marking of Certain Captive Birds) (Wales) 2003 Regulations, some references to ‘The National Assembly for Wales’ had been amended to ‘Welsh Ministers’, whereas others had not, and that this gave rise to the potential for misunderstanding. The Committee further suggested that consolidation rather than amendment may have been a more appropriate approach

The Government, while accepting these points, argued that legal certainty was achieved by the Regulations, and that those affected would be in no doubt. The Committee accepted the Government’s response.

The 2011 regulations will address this issue by referring exclusively to Welsh Ministers where appropriate.

(iii) Legislative Background

The power to make these regulations is contained in sections 7(1) and (2) of the Act and includes the power to impose requirements which must be satisfied in relation to a bird included in Schedule 4 to the Act before it can be registered in accordance with the regulations; and to make different provision for different birds or different descriptions of birds. On its face, the Act

provides that the power to make regulations is exercisable by the Secretary of State. The Secretary of State's powers, so far as exercisable in relation to Wales under section 7 of the Act, transferred to the National Assembly for Wales as a result of the operation of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672). These powers were then transferred to Welsh Ministers as a result of the operation of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The 2011 Regulations are subject to the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

Policy Background

Part I of the Act implements the EC Council Directive on the conservation of wild birds (79/409/EEC) ("the Birds Directive"). In relation to Wales, section 7 of the Act requires birds included in Schedule 4, if kept in captivity, to be ringed or marked and registered with the Welsh Ministers in accordance with the Wildlife and Countryside (Registration, Ringing and Marking of Certain Captive Birds) (Wales) Regulations 2003. This is more commonly known amongst bird keepers as "the bird registration scheme". Animal Health, an executive agency of the Department for environment food and rural affairs (Defra) administers the bird registration scheme on behalf of the Welsh Ministers.

Although the scope of the Birds Directive does not extend to captive bred birds, the Act included registration of certain birds kept in captivity as a mechanism to help deter illegal take from the wild of birds whose populations were threatened. As part of the review of Schedule 4 to the Act, the Joint Nature Conservation Committee carried out an assessment of the populations of the birds in the wild and this indicated an improvement in the levels of many of the species included in Schedule 4.

Commercial use of all wild birds is regulated by section 6 of the Act and additionally many of the birds listed under Schedule 4 to the Act are also covered by Control in Trade of Endangered Species (CITES) controls which is managed by Defra for the whole of the UK. The existence of both bird registration and CITES controls may mean that a keeper has to fill in several pieces of paperwork, duplicating information already supplied for one specimen.

The 2003 Regulations were amended in 2009 with a view to reducing the administrative burden on keepers of birds that have a CITES certificate, following requests from the National Audit Office and service users

Objective

The 2011 Regulations will revoke and replace both the 2009 amending regulations and the original 2003 regulations. This will consolidate all previous regulations and provide greater clarity in relation to keepers of birds with CITES certificates.

(v) Implementation

It is intended that the 2011 Regulations should come into force on 1 August 2011

Parallel legislation is already in place in England and Scotland.

(vi) Consultation

The 2011 Regulations consolidate previous regulations and address technical issues. No consultation is considered appropriate.

Regulatory Impact Assessment

The 2011 Regulations consolidate previous regulations made under section 7 of the Act and address technical issues. As the 2011 Regulations do not increase or decrease the regulatory burden, a Regulatory Impact Assessment has not been produced.