

Explanatory Memorandum for subordinate legislation

Explanatory Memorandum to the Humane Trapping Standards (England and Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government 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's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Humane Trapping Standards (England and Wales) Regulations 2019.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

30 September 2019

PART 1

1. Description

The Humane Trapping Standards (England and Wales) Regulations 2019 (“this instrument”) 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”).

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

This instrument is being made on a composite basis with the Secretary of State for DEFRA and makes a technical correction to a composite instrument. This instrument is being 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.

As this instrument will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

This instrument is being made subject to the negative procedure.

There is a choice of procedure in relation to instruments made under section 2(2) of the European Communities Act 1972. 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.

3. Legislative background

The Welsh Ministers make this instrument in relation to Wales pursuant to powers in section 2(2) European Communities Act 1972. For the purposes of section 2(2), the Welsh Ministers are designated in relation to “wild animals”, by virtue of article 2 of the European Communities (Designation) (No. 2) Order 2014.

The Regulations amended the 1981 Act in order to implement, in Great Britain, requirements contained in the Agreement on International Humane Trapping Standards between the European Community, the Government of Canada and the Government of the Russian Federation (“the Agreement”). In doing so, the Regulations also implemented the equivalent standards contained in the bilateral Agreed Minute between the European Community and the United States of

America. The UK, as a Member State, was obliged to implement the trapping standards through domestic legislation.

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 the 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 (see section 27 of the 1981 Act).

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 to be read, insofar as it relates to the killing and taking of stoat prohibited under section 11(2), as including the conservation of wild birds.

The Regulations satisfy the UK’s obligation as a Member State to implement the Agreement to raise welfare standards for certain commonly-trapped species. The Regulations prohibit the use of traps for these species that do not meet humaneness standards. Of the 19 species covered by the Agreement, five occur in the wild in parts of the UK (badger, beaver, otter, pine marten and stoat), of which stoat is the only species commonly trapped.

Following the amendments introduced by the Regulations, from 1 April 2020 it will only be possible to lawfully kill or take stoat in England and Wales under the authority of a licence issued under section 16(3) of the 1981 Act. However, it is not possible under that section to issue a licence for the purpose of conserving wild birds, which is the primary purpose for which stoat are controlled. Not controlling stoat for this purpose would have adverse conservation and economic impacts.

This instrument uses the power under section 2(2) of the European Communities Act 1972 to make a further amendment to the 1981 Act to ensure that it is possible to issue licences under section 16(3) permitting the killing and taking of stoat for the purpose of conserving wild birds. This amendment will come into force on 1 April 2020 (the same day as the amendments under the Regulations take effect for stoat), ensuring that there is no impact on current stoat control activities

No change in policy will occur as a result of this instrument. The changes being made are technical in nature in order to ensure that the Regulations function as intended and do not impact on current stoat control activities.

4. Purpose and intended effect of the legislation

This instrument will amend section 16 of the 1981 Act by introducing provision to provide that the licensing ground under section 16(3)(c) relating to the conservation of wild animals, is to be read, insofar as it relates to the killing and taking of stoat prohibited under section 11(2), as including the conservation of wild birds.

The [Regulations amended the 1981 Act so as to prohibit](#), from 1 April 2020, the killing and taking of stoat unless done under the authority of a licence. The amendment introduced by this instrument allows such a licence to be granted for the purpose of conserving wild birds. This is the primary purpose for which stoat are controlled and an inability to control stoat for this purpose would have adverse conservation and economic impacts.

The amendments made by this instrument will ensure that stoat control activities can continue under licence, as intended, once the Regulations take effect in relation to stoat.

5. Consultation

No change in policy will occur as a result of this instrument. The changes being made are technical in nature in order to ensure that the Regulations function as intended and do not impact on current stoat control activities.

Stakeholders' views on the Regulations were captured as part of a six-week, UK-wide consultation and have been taken into account in the development of this instrument. This instrument is consistent with the proposals put forward in that consultation.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared for this instrument because it further implements the Agreement by making a minor amendment to the 1981 Act to ensure that amendments introduced by the Regulations operate as intended.