EXPLANATORY MEMORANDUM TO

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULE 9) (ENGLAND) (NO. 2) (AMENDMENT) ORDER 2024

2024 No. 1342

1. Introduction

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

2. Declaration

2.1 Baroness Hayman, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Sarah Swash, Deputy Director – Head of National Biodiversity, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jon Taylor at the Department for Environment, Food and Rural Affairs Telephone: 0758 4004119 or email: GLenquiries@defra.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to amend S.I. 2021/548 The Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) Order 2021 ("the 2021 Order") which amends Part 1 of Schedule 9 to the Wildlife and Countryside Act 1981 (c. 69) ("the 1981 Act") to remove the expiry date of 30th May 2025.

4.2 The 2021 Order added common pheasant and red legged partridge to the list of non-native animals which are established in the wild which may not be released or allowed to escape into the wild unless authorised by a licence. This is applicable to areas in England that are European sites or within 500 metres of the boundary of such a site. The removal of the expiry date means releases of common pheasant or red legged partridge, or allowing these species to escape into the wild in these geographic areas, will continue to be prohibited without a licence.

Where does the legislation extend to, and apply?

4.3 The territorial extent of this instrument is England and Wales.

4.4 The territorial application of this instrument is areas of England that are European sites at the time of the instrument coming into force or within 500 metres of the boundary of such a site.

5. Policy Context

What is being done and why?

5.1 The Department is gathering further evidence to improve our understanding of the impacts of releasing gamebirds on European Protected Sites and has commissioned a gamebird research programme (GRP) consisting of seven research projects being undertaken over a 3-year period. The GRP will cover the 2022, 2023 and 2024 release seasons with the majority of final reports expected by the end of March 2025.

5.2 The GRP is not expected to give Defra a full understanding of the ecological impacts of gamebird release. As such, further research is expected to be required to gather the additional evidence needed to inform future policy decisions for gamebird release beyond 30th May 2025 when the 2021 Order is due to expire.

5.3 As required by Article 3 of the 2021 Order, the Department has carried out a review of the effectiveness of that order and the interim licensing regime and set out the conclusions in a report which has been published.1

5.4 The report recommends that the application of the 2021 Order be extended until such time as Defra can either conclude that unregulated gamebird release will not have a significant effect on the conservation objectives of a European site, or alternative viable options for monitoring and regulating gamebird release become available. The licensing regime has proved to be adaptable in the face of changing risk.

5.5 Removal of the 30th May 2025 expiry date in the Order means the licensing regime will continue to regulate the density of gamebird released on and within 500m of European protected sites. Since the prohibition was introduced, general licences have been issued permitting a limited density of common pheasants and red-legged partridge to be released on or near European protected sites. Licence users do not need to apply for the general licence but must be able to comply with all licence conditions. If a practitioner cannot comply with the conditions of the general licence, they can apply for a bespoke individual licence instead.

5.6 Licence users have had to report information around release activity to Defra or Natural England. That reporting condition has enabled gamebird release data to be gathered and allowed Defra and Natural England to carry out checks on compliance with licence conditions. Compliance checks have typically consisted of desk-based checks on each release report along with site visits to an agreed percentage of licence users by a Wildlife Inspector, to check records and view activity on site, detailing this in a written report. Penalties may be enforced for misuse of the licence.

What was the previous policy, how is this different?

5.7 The licensing regime was intended to be an interim measure to have effect only until a satisfactory alternative is in place that meets the legal obligations in the 2017 regulations. The 2021 Order has an expiry date of 30th May 2025.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is being laid to remove the 30th May 2025 expiry date from the 2021 Order. Therefore continuing to prohibit releasing or allowing to escape into the wild common pheasants and red-legged partridges on areas in England that are European

[1] https://www.legislation.gov.uk/ukia/2024/143/pdfs/ukia_20240143_en.pdf

sites or within 500 metres of the boundary of such a site, unless this is permitted by a licence issued under section 16(4) of the 1981 Act.

Why was this approach taken to change the law?

6.2 The Government is required, under its obligations under the Conservation of Habitats and Species Regulations 2017 (the "2017 Regulations"), as amended, to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species on European sites as well as significant disturbance of the species for which the sites have been designated.

6.3 In order to ensure compliance with these legal obligations, the Secretary of State for Defra introduced an interim licensing regime from 2021 for the releases of common pheasants and red-legged partridges on and within 500m of European sites.

7. Consultation

Summary of consultation outcome and methodology

7.1 A targeted consultation with interested stakeholders in the shooting sector and conservation organisations, was launched on 14 August 2024 for two weeks, seeking views on removal of the expiry date in the 2021 Order.

7.2 The consultation received five responses from the shooting sector, with all respondents supporting removal of the expiry date from the order before the gamebird research programme concludes, thereby continuing with the licensing regime, and giving certainty to the sector for the 2025 release season and beyond.

8. Applicable Guidance

8.1 The document 'A copy of the Register of European sites, which is maintained by the Secretary of State in relation to European sites by virtue of regulation 17(1)(a) of the Conservation of Habitats and Species Regulations 2017, as at 31st May 2021' lists the European sites to which this Order applies.[2]

8.2 An illustrative map showing the sites listed on this document and their 500 metre buffer zones is published on Gov.UK.[3]

8.3 Details of the licence regime will be published on Gov.UK.[4]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the 2024 cost to the gamebird release and shooting sector is estimated at around £0.9 million per year. A De Minimis Assessment (DMA) has been produced, copies of which are available from Defra.

[2] https://www.gov.uk/government/publications/copy-of-register-of-european-sites-in-england-as-at-31-may-2021
[3] https://www.gov.uk/government/publications/european-sites-and-500-metre-buffer-zones-in-england-on-31-may-2021
[4] https://www.gov.uk/guidance/gamebirds-licences-to-release-them

Impact on businesses, charities and voluntary bodies

9.2 The impact on business of this instrument will primarily be felt by the shooting industry; specifically, those shoots that release common pheasant and red-legged partridge on, or within 500m of European sites.

9.3 The legislation applies to activities that are undertaken by small businesses. This will include shoots employing up to 50 people. The policy objective and benefits cannot be achieved without impact to small businesses.

9.4 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to take the least burdensome approach where possible; for example, we propose that the release of common pheasant and red-legged partridge on areas in England that are European sites at the time of the instrument coming into force or within 500 metres of the boundary of such a site be permitted via a general licence, subject to conditions.

9.5 The impact on the public sector is related to the costs associated with maintaining the licensing regime. The level of public interest in the policy is low overall.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The licensing regime will be reviewed once further evidence from the GRP is received on the impact of gamebird release on European sites.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Baroness Hayman, Parliamentary Under-Secretary of State (Lords Minister) at the Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) (Amendment) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does not relate to the withdrawal of the United Kingdom from the European Union.