

# ***Review of the Wildlife (Northern Ireland) Order 1985***

***Comments by***

**Northern Ireland Environment Link**

**6 June 2008**

Northern Ireland Environment Link is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 50 Full Members represent over 90,000 individuals, 255 subsidiary groups, have an annual turnover of £44 million and manage over 230,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment.

These comments are agreed by Members, but some members may be providing independent comments as well. If you would like to discuss these comments we would be delighted to do so.

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## Introduction

Northern Ireland Environment Link (NIEL) welcomes the publication of the consultation paper as part of the review of the Wildlife (Northern Ireland) Order 1985. We believe that biodiversity in Northern Ireland requires better protection and management. This was highlighted in the State of the Environment Report (DOE, April 2008), which detailed a worrying picture of continued decline in biodiversity in Northern Ireland. It notes that in 2004 over 50% of Northern Ireland's priority species were classed as declining.

An enhanced Wildlife Order will play an important role in addressing this decline but the Government must take a much more holistic and committed approach to biodiversity management and protection. This is particularly important at a time of unprecedented investment in Northern Ireland's infrastructure and when we are beginning to understand the severity of the threat of climate change. The introduction of a Statutory Duty to further the conservation of biodiversity is an essential step towards this but the Duty will only deliver its potential with governmental leadership and resources behind it. When government departments and other public bodies are preparing their biodiversity action plans advice on how they can contribute to biodiversity conservation should be offered and sought from Environment and Heritage Service (EHS), Northern Ireland Biodiversity Group (NIBG), Council for Nature Conservation and the Countryside (CNCC), environmental non-government organisations, etc.

The Northern Ireland Assembly must acknowledge and begin to act to meet the international agreement to halt biodiversity loss by 2010 (World Summit on Sustainable Development). Alongside the Wildlife Order, the Conservation (Habitats) Regulations, Environment Order and European and International designations provide the most specific protection to species and habitats and careful and integrated revision of all these policies is vital. However, to allow species to adapt to the effects of climate change, wider, landscape scale, policies must also be considered. We must promote opportunities for movement and adaptation of species within a landscape, and create new landscapes that make this possible.

Agri-environment schemes should continue but payments should be better linked to enhancement of habitats. Cross-compliance requirements should be used to ensure adequate environmental standards are being met. The planning system must also be better used to protect and enhance habitats (including designated sites, but also areas of ancient woodland and semi-natural sites). The purpose of delivering sustainable development must be strengthened in any future planning reform and the issue of an updated PPS 2 must be prioritised. The review of the Regional Development Strategy will allow planning and conservation experts to take a strategic view of the habitats in Northern Ireland and offer the opportunity to design plans and policies which will create the more ecologically coherent networks of protected and important sites that are required to increase the resilience in our biodiversity.

Northern Ireland Environment Link is concerned by the Department's failure to propose increased penalties for wildlife crimes. Enhanced powers, robust enforcement and meaningful penalties (including custodial sentences for serious offences) that will act as a deterrent are all essential if the Wildlife Order is to provide adequate protection to Northern Ireland's wildlife.

## **Response to Proposals**

**Proposal A:** *to place a statutory duty upon the Department to review the Schedules to the Wildlife Order every 5 years.*

The use of Schedules to apply a hierarchy of protection for species should continue. In order to provide clarity, reference should be made to the species afforded the higher tier of protection by being listed on the Habitats Regulations in materials describing the Wildlife Order.

Northern Ireland Environment Link supports the introduction of this statutory duty and feels that the 5 year review term is appropriate and the review should apply to all Schedules. However, there must be provisions within the legislation to allow timely revisions of the Schedules if scientific evidence suggests that it is necessary. Particular attention should be paid to the advice of statutory advisors when considering changes to the Schedules.

**Proposal B:** *amend the Schedules to the Wildlife Order as detailed in Annex 1.*

We agree that a revision of the Order Schedules is overdue, that additions and deletions should 'have an underlying rationale that is scientifically and logically robust', and in general we would support the changes suggested. However, we do have the following comments.

We support the suggested changes to Schedule 1, and in particular the addition of the curlew. The removal of the curlew from Schedule 2 is also a positive move. The RSPB has raised concerns over 'rapidly declining breeding waders in Northern Ireland' and 'the impact of shooting on the population status of golden plover, woodcock, jack snipe and snipe', which should also be carefully considered.

The additions to Schedule 5, 6 and 7 are welcome. The inclusion of additional marine species on the lists is long overdue and, with recent surveys discovering new and previously unrecorded in Northern Ireland species, further additions may be necessary before the next review.

Northern Ireland Environment Link supports the inclusion of the Irish Hare in Schedule 5 of the Wildlife Order if it can be shown to be a distinct species. However, this should not preclude the Department pursuing other measures, such as specific agri-environment prescriptions. Further research on the Irish Hare's genetic distinctiveness, conservation status and management requirements should be conducted.

The addition of 18 animals and a number of plants to Schedule 9 is necessary and highlights the importance of keeping close watch on invasive species. The threat from invasive species is severe, but not uniform across the various species. Therefore, there should be a risk-based approach adopted for their management with a mechanism developed for communicating the level of risk to the public. Statutory advisory councils have a particular role to play here and the Department should also have clear lines of communication with colleagues in Britain and the Republic of Ireland. The work of the Invasive Alien Species Forum is a positive step and is resulting in action in both educational/ awareness and practical fronts.

While we agree with the changes proposed for the common and grey seal, and the pine marten, we believe the potential for confusion demonstrated in this case highlights the need for clear and shared guidance on species protection measures in Northern Ireland.

NIEL does not see that there is no justifiable reason why foxes, dead or alive, should be bought or sold; therefore, it should remain on Schedule 7.

**Proposal C:** *place a statutory duty upon government and public bodies to further the conservation of biological diversity in the exercise of their functions. Place a statutory requirement on the Department to designate a Biodiversity Strategy, to arrange reports on progress every 3 years; to maintain lists of species and habitats of principal conservation importance and support/promote their conservation.*

Northern Ireland Environment Link strongly supports these proposals. The statutory duty to further the conservation of biodiversity is essential and should apply to the Executive, departments, the agencies of departments, councils, government companies and any other body carrying out statutory functions. The duty must be clearly defined, including its legislative basis and opportunities for challenge, and should be extended to require the restoration and enhancement of species' populations and habitats. Guidance should be issued on what is expected from departments and public bodies. Advice issued to departments and public bodies from the statutory nature conservation advisors and the NIBG on how to further, restore and enhance biodiversity should be considered carefully and noted within departmental and public bodies' biodiversity action plans. The Department of the Environment should also act as a lead in ensuring there is the cross departmental (and public body) cooperation that will be necessary to deliver the strategic action required if Northern Ireland is to meet its legal commitments.

The duty to designate a Biodiversity Strategy is important but must be supported by adequate resources. The Strategy should include up-to-date Biodiversity Action Plans for priority species and habitats. The progress reports to be issued every 3 years should be validated and commented upon by an independent body such as the CNCC and/or the NIBG and should include reports on departments' and public bodies' actions to further, restore and enhance biodiversity during the review period.

**Proposal D:** *give the police additional stop and search powers, and powers of entry, but with appropriate safeguards.*

Enhanced powers, robust enforcement and penalties that will act as effective deterrents (including custodial sentences for serious offences) are all essential if the Wildlife Order is to provide adequate protection to Northern Ireland's wildlife. Further guidance on who will qualify as an 'assistant' should be issued. The additional stop and search powers, and powers of entry, are also to be welcomed.

**Proposal E:** *to enhance the powers available to Wildlife Inspectors, including powers of entry and powers to take blood or tissue samples.*

We agree that the police should remain the primary enforcement authority but believe that Wildlife Inspectors play an important role in verifying compliance with licences and ascertaining whether an offence is being committed. Therefore, we support the proposal to enhance their powers. Additional resources should be made available to support the work of enforcement officers.

**Proposal F:** *reckless action that harms wildlife listed on Schedules 1, 5 and 8 should be an offence.*

We support the proposal that reckless action that harms threatened species should be treated in the same way as intentional action to harm wildlife. We believe that 'acting with due care' is the minimum that can be expected when people are engaged in potentially damaging activities and, therefore, we propose that 'reckless action' should be treated the same for all species and species features (nests, roosts, etc.).

**Proposal G:** *make it an offence for a person to cause or permit another person to carry out certain acts against wildlife.*

We agree with the creation of this offence, and would add that any benefits accrued from such action should be recoverable in addition to any penalty issued and that this recovery of benefit should apply regardless of the ability to prove the person's knowledge/involvement of the other person's action.

**Proposal H:** *amend the wording of the offence for a person to use or set in position certain articles and devices where these are 'calculated or likely' to cause injury to wild birds or wild animals.*

We agree with this amendment.

**Proposal I:** *create an offence for anyone to commit wildlife offences.*

We agree that this is an important and beneficial addition to the Wildlife Order.

**Proposal J:** *set the limit for bringing prosecutions for all offences under the Wildlife Order at 6 months from the date on which sufficient evidence comes to the knowledge of the prosecutor.*

We agree with the extension of the limit.

NIEL believes that, contrary to paragraph 86, increased penalties, including custodial sentences for the most serious offences, should be introduced to the Wildlife Order.

**Proposal K:** *qualify the circumstances requiring the Department to be sure, when issuing a licence in relation to wild birds, there was no other satisfactory solution and, for certain activities, that the licence is on a selective basis and in respect of a small number of birds, and place a similar restriction in respect of wild animals and plants. In addition add a qualifier that an authorised person should seek to apply for a licence in the first instance if possible.*

Northern Ireland Environment Link supports revisions to the Wildlife Order which will result in the full transposition of the Wild Birds Directive.

**Proposal L:** *make it an offence to intentionally or recklessly disturb or harass basking sharks.*

We agree with the creation of this offence, which better reflects marine ecology, and we also support its extension to seals, cetaceans and turtles. The Department should train local tourist operators to ensure they are acting responsibly and within the law.

**Proposal M:** *enhance regulation to the risks posed by non-native species including:*

- *Prohibit the release of certain mammals onto offshore islands;*
- *Give the Department power to prohibit the sale of any species it may specify in the Order;*
- *Provide a discretionary general power for the Department to take actions to control, contain or eradicate invasive non-native species and provide associated powers of entry;*
- *Give the Department power to produce Codes of Practice about invasive non-native species;*
- *Give courts the power to issue 'restoration orders' to persons convicted of offences under Article 15; and*
- *Extend existing offences to cover hybrids of a species*

We support these proposals with the following clarifications:

-  The proposals should apply to certain native species too - for example, foxes on Rathlin Island.

- The legislation should prohibit intentional, deliberate or reckless introduction of species.
- Penalties should be calculated using 'polluter pays' principles and the full costs of restitution
- There should be powers, in cases of emergency, to establish all-Northern Ireland eradication programmes.

**Proposal N:** *make the provisions of the Wildlife Order applicable to the Crown and all public bodies that are part of the Crown*

Northern Ireland Environment Link does not accept that crown immunity should apply to environmental law, therefore, we support this proposal.

**Proposal O:** *make a number of changes to the regulation of the use/possession of snares including making it an offence to possess (without reasonable excuse) a self locking snare and make it an offence for anyone to set a snare on any land without the owner/occupiers permission.*

Northern Ireland Environment Link supports the prohibition of self-locking snares, and believes that other snares should only be used under licence and with a 12 hour inspection regime.

**Proposal P:** *give the Department power to issue licences for the disturbance of animal's shelters or movement of rare plants (but excluding European Protected Species) for the purposes of development, amend Article 18 (3) (c) to permit licensed activity to conserve wild birds, and make it an offence to contravene the conditions of a licence issued under Article 18 of the Wildlife Order.*

Northern Ireland Environment Link accepts that there may be limited occasions when the disturbance of an animal's place of shelter may be acceptable for the purposes of development. It should be explicit in the Order that such licences would only be granted when an over-riding public benefit can be demonstrated. However, this must only be allowed under licence and should have conditions attached which limit the impact of this disturbance, for example, the disturbance should not be allowed during the breeding season and should only be allowed if there is an alternative shelter site suitable for the animal close by. The cost of survey and relocation work should be at the developers' expense.

The amendment of the Order to permit licensed activity to conserve wild birds is appropriate. NIEL also supports the creation of an offence to contravene conditions of a licence.

**Proposal Q:** *amend the definition of 'wild plant' to include fungi and non-vascular plants; to clarify that protection afforded to Schedule 8 species extends to all stages of their biological cycle.*

We support this proposal.

**Proposal R:** *to make a number of changes relating to the protection of deer including:*

- *provide a clearer distinction between farmed deer and those in the wild;*
- *give the Department power to issue licences for the purposes of the management of deer populations;*
- *qualify Article 19(3)(b) so that it only applies whilst the engine is running or the vehicle is in motion*

NIEL supports the sustainable management of deer populations and understands that managers of populations of non-native species may require additional control measures. However, we believe that additional measures allowing taking or killing of deer should be

strictly controlled by licence that should only be issued after other management options have been exhausted.

***The proposal to make the provision to protect the nests of certain bird species all year round*** - the nests and nest sites of some species may be targeted to prevent successful breeding. The creation of this offence will prohibit such action and would be a welcome addition to the Wildlife Order.

***The proposal to create a new offence of possessing certain pesticides*** - NIEL supports this proposal.

***Proposal S: prohibit someone from becoming or remaining registered for the purpose of selling dead wild birds or animals if they have committed an offence in relation to the trade in internationally endangered species.***  
We support this proposal.

***Proposal T: abolish the requirement for anyone hunting game to need a licence, abolish the requirement for anyone dealing in game to need a licence, and permit the sale of game all year round but make it an offence to sell game taken out of season.***  
We believe that 'shoots' rather than individuals should be licensed. Shoots should adhere to a set of commonly agreed standards, including compliance with the Wildlife Order. Failure to adhere to agreed standards would result in courts having the option to withdraw a shoot's licence to operate.

***Proposal U: provide an alternative lesser offence for undertaking unauthorised activities on land within an ASSI which could result in damage, make it an offence for competent authorities to fail to notify EHS of permissions given for any operation that might damage an ASSI, give the Department power to issue temporary stop notices and associated provisions, give the Department power to issue reinstatement notices and associated provisions, require owner/occupiers to inform EHS of change of ownership/tenancy of land in ASSIs, amend the process for notifying owner/occupiers, clarify when it is a reasonable excuse to carry out an operation which would otherwise be an unlawful act***  
We welcome the Department's decision to use the review of the Wildlife Order to also make changes to the Environment (NI) Order. We support the proposal to create a new criminal offence of third party damage to an ASSI and believe it should apply to actions carried out on an ASSI and to actions that have been conducted away from the ASSI but which have resulted in damage to the ASSI.

We support the creation of an offence for competent authorities to fail to notify EHS of permissions given for any operation that might damage an ASSI and believe that 'temporary stop notices' and 'reinstatement notices' are useful tools for the Department.

The 'reasonable excuse' defence has been used inappropriately in some instances, therefore, we welcome efforts to tighten its definition and limit its application. We look forward to the opportunity to comment on the Department's proposed amendments to the relevant provisions.