

Explanatory Memorandum to the Wildlife and Countryside Act 1981 (Variation of Schedule 2) (Wales) Order 2020 to remove the 'Greenland White Fronted Goose' from Schedule 2

This Explanatory Memorandum has been prepared by the Biodiversity and Nature Conservation Branch 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 Wildlife and Countryside Act 1981 (Variation of Schedule 2) (Wales) Order 2020

I am satisfied that the benefits outweigh any costs.

Lesley Griffiths,

Minister of Energy, Environment and Rural Affairs

11 March 2020

1. Description

This Order amends Part 1 of Schedule 2 to the Wildlife and Countryside Act 1981 (“the 1981 Act”). It, in effect, impose a statutory ban on the shooting of Greenland White-fronted Geese (WfG) in Wales throughout the year (including in the ‘open season’). The statutory ban comes into force 21 days after the SI is laid.

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

These amendments are being introduced in view of the poor and declining global status of Greenland White-fronted Geese and the important populations of the geese which over-winter in Wales.

The legislation is amending the Wildlife and Countryside Act 1981 in relation to Wales only.

3. Legislative background

Section 1(1) of the 1981 Act sets out a general position that it is an offence to, amongst other things, kill any wild bird.

Section 2 of the 1981 Act provides exceptions to that general position. A person is not guilty of an offence under section 1 by reason of killing a wild bird if that bird is listed within Part 1 of Schedule 2 to the 1981 Act **and** the bird was killed outside the closed season for that bird.

WfG (*Anser albifrons*) is listed in Part 1 of Schedule 2 to the 1981 Act in relation to England and Wales (but not Scotland). As such, it is currently lawful to kill any WfG in England and Wales outside the closed season for that bird.

Section 22(1) of the 1981 Act is a power to amend the Schedules to that Act (including Schedule 2). Originally conferred on the Secretary of State, this function was, in relation to Wales, transferred to the National Assembly for Wales by virtue of Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (“GOWA”), those functions are now exercisable by the Welsh Ministers.

An Order under section 22(1) of the 1981 Act can be used to amend Part 1 of Schedule 2. This SI amends the entry for White-fronted Goose in that Schedule so that Greenland White-fronted Goose are exempt. The effect of this is be to make it an offence (under section 1(1) of the 1981 Act) to kill or take (or injure in the course

of attempt to kill) Greenland White-fronted Goose in any part of Wales outside of the close season for White-fronted goose.

This statutory instrument is subject to annulment of the Assembly (negative procedure). The Order does not amend any provision of an Assembly Act or Measure, but they do make minor amendments to the Wildlife and Countryside Act 1981. They are limited in scope to the protection of an endangered migratory species of goose.

4. Purpose & intended effect of the legislation

The EC Wild Birds Directive (Council Directive 79/409/EEC now codified in Directive 2009/147/EC) provides a mechanism for protecting all wild bird species naturally occurring in the European Union. It was adopted as a response to increasing concern about the declines in Europe's wild bird populations resulting from pollution, loss of habitats as well as their unsustainable exploitation. It sets broad objectives for a wide range of activities designed to protect wild birds.

Two types of White-fronted Geese (WfG) (*Anser albifrons*) occur in the UK. The Eurasian (or European) race (*Anser albifrons albifrons*) and the Greenland race (*Anser albifrons flavirostris*). The global population status of the two races is significantly different. Eurasian White-fronted Geese (EWfG) are very much more numerous whereas the global population of Greenland White-fronted Geese (GWfG) is categorised as “Endangered” using the IUCN’s (International Union for the Conservation of Nature) global Red List criteria.

Despite the current high conservation concern regarding the Greenland race, WfG were listed on Annex II, Part B of the Birds Directive 2009/147/EC meaning that, in respect of the UK, hunting of both races of WfG could be authorised under article 7(3) of the Directive. This part of the Directive is transposed into domestic law under section 2, and Part 1 of Schedule 2, of the 1981 Act. This means WfG may be killed or taken outside of the ‘Closed Season’ in England and Wales. The closed season being 1 February – 31 August each year or, in relation to wild ducks and wild geese, in or over any area below high-water mark of ordinary spring tides between 21 February – 31 August. This legislation means that it would be a criminal offence to take or kill GWfG in Wales at any time of the year.

This legislation recognises the difficulty of distinguishing the two races under field conditions, and would translate into law the British Association for Shooting and Conservation (BASC) voluntary moratorium on the shooting of WfG in Wales.

This proposal also reflects legislation in Scotland and Northern Ireland where WfG are fully protected at all times by Wildlife and Countryside Act 1981 (as amended) and by the Wildlife (Northern Ireland) Order 1985.

This proposal also reflects the status of GWfG as listed under Table 1, Column 2A* of the African-Eurasian Waterbirds Agreement (AEWA) Action Plan; it is a legal requirement for the UK to give protection to GWfG.

The UK Government have made their own Order, the Wildlife and Countryside Act 1981 (Variation of Schedule 2) (England) Order 2020 (“the England Order”) in relation to England to introduce the ban in England. The England Order will come into force ahead of this Order, however has no practical effect as both Orders will be made and will come into force during the close season, which runs until 1 September 2020. By removing the references to England in Part 1 of Schedule 2 of the Wildlife and Countryside Act 1981 (as inserted by the England Order), the Wales Order ensures that the ban will apply across England and Wales. This approach is the minimum necessary to achieve the desired aim here and satisfy the concerns of the AEWA.

5. Consultation with Joint Nature Conservation Committee (JNCC)

A full consultation with the JNCC (statutory consultee) was undertaken in 2016 to seek views on different options to impose a statutory ban on the shooting of White-fronted Goose (WfG) in Wales throughout the year (including in the ‘open season’), as well as on an option to continue to support the current voluntary shooting ban. No response was received.

A further consultation took place in October 2019 and JNCC confirmed they were content with our approach.

REGULATORY IMPACT ASSESSMENT

Options

Option 0

Do nothing. Maintain non-statutory voluntary moratorium on shooting of GWfG

Option 1

Ban shooting of GWfG in the parts of Wales that they use.

Option 2

Ban shooting of all WfG in all or specified parts of Wales throughout the year (including in the 'open season').

Option 3

Remove GWfG from the list of birds that may be shot in the open season.

Costs and Benefits

Option 0: Do nothing. Maintain non-statutory voluntary ban on shooting of GWfG

Costs:

This option would mean that Welsh Minsters would not address the AWEA complaint and would be out of step with Defra provision in England. Although the voluntary restraint on the shooting of GWfG is appreciated and deemed to be a responsible approach, AEWA does not believe that a continuation of a voluntary ban provides adequate, sustainable provision for the management of GWfG. Reputational damage and litigation (e.g. JR) could follow.

Benefits:

No additional costs for businesses or individuals over and above current commitments. There are currently no legal consequences to wildfowlers should they decide not to comply with the voluntary moratorium on shooting GWfG.

Risk high

Option 1: Ban shooting of GWfG in the parts of Wales that they use.

Costs:

WG considered this approach previously but GWfG are now known to range more widely than was previously believed.

Benefits:

Shooting of the plentiful EWfG is accepted by AEWA as a component of the revenue-generating shooting industry. This option would allow shooting of EWfG to continue across Wales and would therefore not impact on these shooting interests. Although this option would allow shooting of EWfG to continue and would therefore not impact on shooting interests, officials have been advised that it is very difficult to distinguish between the two species in flight.

Risk medium

Option 2: Ban shooting of all WfG in all or specified parts of Wales throughout the year (including in the 'open season').

Costs

Shooting of the plentiful EWfG is accepted by AEWA as a component of the recreational, revenue-generating shooting industry. Officials have not received any advice to indicate that EWfG are under threat from shooting activities. Risk of alienating wildfowlers who currently contribute considerably to monitoring and conservation effort re GWfG

Benefits

None. Such a measure could be seen as a disproportionate response with regards to wildfowl management.

Risk high

Option 3: Remove GWfG from the list of birds that may be shot in the open season. This would be achieved by changing the entry "Whitefronted goose to European Whitefronted Goose in the list of birds that may be shot.

Costs

Under the existing voluntary moratorium shooters do not target GWfG, but are able to shoot EWfG in the 'open season'; in practice this option would represent 'no change' to compliant, responsible wildfowlers. The challenge of differentiating between the two races of WfG would fall on shooters in the field, with consequent risk of breaking the law. However quarry identification is a familiar and integral part of wildfowling, and is widely applied to a range of species. The two different races of WfG use different areas in the 'open season' with little overlap, so the risk of and informed shooter mis-identifying and shooting in error is low. Change of wording of the WCA list is minor.

Benefits

In combination with continuing the voluntary moratorium, this would provide a high level of protection against mortality of GWfG caused by shooting, whilst adding little further constraint to wildfowlers.

Risk Low

Preferred - Option 3