



Llywodraeth Cymru  
Welsh Government

**From:**

Land Nature and Forestry Division

**Cleared by:**

Ceri Witchard

**Date:**

24 November 2020

## MINISTERIAL ADVICE

**For decision by: Minister for Environment, Energy and Rural Affairs**

<b>Subject</b>	Response to Wild Justice letter relating to release of gamebirds and position in Wales
<b>100 word summary</b>	You have been asked by Leigh Day Ltd (solicitors for Wild Justice) to set out the intentions for Wales in relation to the outcome of the Wild Justice v Secretary of State for Environment and Rural affairs court proceedings. This advice sets out options on the approach that could be taken in Wales and a draft response to Leigh Day for consideration.
<b>Timing</b>	Routine – Leigh day requested a response by 9 November. A holding letter was sent by officials indicating that a substantive response would be provided by the end of November. Leigh Day have confirmed that this is acceptable.
<b>Recommendation</b>	The Minister is asked to agree to: <ul style="list-style-type: none"><li>• The preparation of, and consultation on, an appropriate phased approach for the release of gamebirds in Wales with the view of implementing in 2022.</li><li>• The content and issuing of the response to the Leigh Day letter (representing Wild Justice) (Doc1)</li></ul>
<b>Risks</b>	<ul style="list-style-type: none"><li>• There is a risk of litigation which ever option is chosen.</li><li>• British Association for Shooting and Conservation (BASC) may take action if the Defra timetable is followed and Wild Justice if implementation is not until 2022.</li><li>• The recommended phased approach will help to mitigate the risk as described in paragraph 18.</li></ul>

**Decision report**

This decision does require a Decision Report, which may be published

## ADVICE

### Background

1. Legal services has provided you with regular updates while the case has been ongoing between Wild Justice and the Secretary of State for Environment, Food and Rural Affairs with Natural England and Others.
2. You agreed (MA-P-LG-0905-20) to the preparation of a Statutory Instrument to add common pheasant and grey legged partridge to the Wildlife and Countryside Act list of species requiring a licence for release for a trial period pending the outcome of the court proceedings.
3. As a result of the way this case ended, the urgency of a legal response is slightly reduced as we are not now subject to the judgment or direction of the court. However as Defra has indicated it intends to act in time to ensure a regime is in place by the 2021 release season (assumed to be June/July) there is an implicit acceptance on their part that the current circumstances are unlawful. This accords with the advice you previously received from officials and legal services.
4. Leigh Day (solicitors acting for Wild Justice) wrote to you on 2 November outlining the outcome of the claim made by Wild Justice against the Secretary of State for Environment, Food and Rural Affairs with Natural England and Others. Given that this decision only applies in England the letter specifically asks as to what steps you are now taking with regard to the release of gamebirds in Wales and their impact on European protected sites.
5. A holding reply has been issued to Leigh Day stating that a substantive response with regard to the approach that will be taken in Wales will be provided by the end of November once the full implications have been considered.
6. A draft reply (**doc 1**) is attached on the basis that you agree to the recommendation.
7. Since Defra announced the outcome of their gamebird review and approach that they would be taking in England, officials have been working with NRW to gain a better understanding of Defra approach and exploring options on the assumption that Wales will introduce similar legislation.

### Defra approach

8. To introduce a new interim licensing regime for the 2021 releases of common pheasant and red-legged partridge within European protected sites and within a 500m buffer zone around these sites.
9. Defra intend to both informally and formally consult on the legislation and licence conditions with stakeholders.

10. The review highlighted a need to gain a better understanding of how any localised impacts might be mitigated and existing arrangements strengthened. The introduction of an interim licensing regime for next year will enable Defra to manage any potential impacts while gathering more information where evidence gaps exist.
11. Defra has confirmed that they have no intention of extending the licencing regime to the wider SSSI network (Non EU protected sites).

### Options for Wales:

12. **Follow Defra approach / timetable** - To introduce a new interim licensing regime for the 2021 releases of common pheasant and red-legged partridge within European protected sites and within a 500m buffer zone around these sites. Issues to consider:
  - **Consultation** – a full consultation is required on both the legal mechanism and the conditions of any licencing regime. As NRW are responsible for the licencing regime they would undertake this exercise. The timetable is extremely tight to undertake such a consultation and NRW have advised that such additional work, especially if undertaken within a very short timescale, would impact on their ability to progress their existing Wild Bird Review (Review of NRW's Approach to the Shooting and trapping of Wild Birds) as it would likely fall to the same core group of staff with the necessary technical expertise.
  - **Timetable** – as well as the short window available to undertake the consultation, the introduction of the legislation would need to be prioritised to enable it to come into force in time taking into account the pre- election period.
  - **Is the Defra approach the right one for Wales?** – The Defra approach is to 'do the minimum' and the scale of bird releases in Wales is significantly different to that of rest of UK. It is estimated that only 3% of gamebirds are released in Wales. Evidence gaps exist in terms of where these birds are released, the numbers and the impact of those birds on the environment. Given the geography in Wales it may be better to consider options over and above what Defra are considering such as extending the licencing regime to cover non EU protected sites or even the whole of Wales.

As things stand we cannot take this option forward. The timetable would be tight even with adequate resources being available – policy, legal and NRW expertise. In the current situation there is no available resource in any of these areas and, if the Minister is minded to consider this approach, we would need a steer as to which aspects of the current biodiversity work could be stopped and agreement that NRW no longer pursue work on general licences. We believe that the likelihood of

challenge in relation to stopping work on general licences is higher than in setting out a slightly longer timetable to deal with gamebird releases.

**13. Prepare and consult on an appropriate phased approach for the release of gamebirds in Wales with a view of implementing in 2022**

**(recommended)**– given the issues highlighted in the Defra approach this option would allow sufficient time (18 months) to:

- Fully engage with stakeholders and industry to get views on best way to approach in Wales building on the existing industry guidelines.
- Work with industry to ensure existing guidelines are being met for the 2021 release
- Collate additional evidence on impact of gamebird releases on habitats in Wales to better inform options to be considered including the findings of the NRW Wild Bird Review, and reviews by RSPB, the Game and Wildlife Conservation Trust and BASC
- Work With APHA to improve the registration process (area also identified by Defra)
- Undertake full legislative and licence regime consultation.
- Reduce pressure on NRW (and WG) already limited resources.

This options would ensure that regime that is put in place is not rushed and is the right one for Wales. This approach would help achieve a better longer term outcome for Wales and we hope will be sufficient to deter parties on all sides from pursuing legal action as we can demonstrate that we are clearly committed to a resolution.

**Recommendation** – officials recommend that you agree to:

14. The preparation of and consultation on an appropriate phased approach for the release of gamebirds in Wales with the view of implementing in 2022.
15. The content and issuing of the response to the Leigh Day letter (representing Wild Justice) (Doc1)

**Risks**

16. Experiences with the parties (BASC et al. in particular) in previous litigation suggests that this is a situation in which a challenge from one direction or the other can be anticipated no matter what the approach taken.
17. BASC may take action if the Defra timetable is followed and Wild Justice if implementation is not until 2022.
18. The recommended phased approach will help to mitigate these risks and meet the expectations of all stakeholders ensuring that all viewpoints are considered and the evidence base strengthened before any regime is implemented. This is consistent with the RSPB view of 18 months being a realistic timetable to implement any new proposals as set out in their own recent gamebird review.

## **Legal Implications**

19. Legal services have been fully involved in the preparation of this advice.
20. The deadline of the end of November negotiated with the Claimant's legal team is not legally binding, however they have now been explicit that further delay would lead to them instigating Judicial Review proceedings. If this was to happen a response to their initial letter would be required within 14 days in any event.
21. Given that Defra have committed to bringing a scheme into force in time for the 2021 releases there is an obvious (although hopefully manageable) risk that the claimant will attempt to force Wales to comply with a similar timetable through the threat of litigation. A clear response with an explanation of why we cannot properly achieve this until 2022 (if you agree to the recommended option) will mitigate that risk (see Doc 1). It should also be borne in mind that BASC et al. will be provided with an open door to challenge and disrupt the implementation of the proposed regime in Wales if a full consultation is not undertaken.

## **Communication**

22. In addition to the Wild Justice letter we have received a number of enquiries asking what our approach will be in Wales.
23. Once a decision is made we will look to communicate this to stakeholders through appropriate communication channels.

**Annex 1: ASSURANCE AND COPY RECIPIENTS**

**CLEARANCE TRACKING**

Aspect	Tracking	Yes	No	N/A	Clearance no.
<b>Finance</b>	Financial implications over £50,000?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Strategic Budgeting?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Legal</b>	Legal issues?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Governance</b>	Novel and contentious issues?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Corporate Governance Centre of Excellence?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

**DEPUTY DIRECTOR, STATEMENT OF ASSURANCE**

In clearing this MA, I confirm that I, Ceri Witchard have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account and that the actions and decisions take account of regularity, propriety and value for money.

**COPY LIST**

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice: