



Llywodraeth Cymru
Welsh Government

From:

Landscape, Nature & Forestry
Division

Cleared by:

Alice Teague

Date:

17th February 2022

MINISTERIAL ADVICE

For decision by: Julie James MS, Minister for Climate Change

Copied to: Lee Waters MS, Deputy Minister for Climate Change

Subject	Gamebird Review extension request
100 word summary	<p>The former MEERA agreed in MA/LG/3822/20 to the preparation of, and consultation on, an appropriate phased approach for the release of gamebirds in Wales with the view of implementing in 2022. NRW have subsequently advised that there are insufficient resources to progress this area of work to meet the intended 2022 implementation. Consequently it is necessary to request an extension to allow time to develop a new regime to be implemented by 2023, and taking effect in time for the 2024 season.</p>
Timing	<p>Routine – NRW and interested parties will need to be informed as soon as is practicable in order to plan and prepare for the new time table.</p>
Recommendation	<p>The Minister is asked to agree:</p> <ul style="list-style-type: none">• To extending the timetable to allow NRW sufficient time for the preparation of, and consultation on, an appropriate phased approach for the release of gamebirds in Wales with implementation in 2023 and take effect in time for the 2024 season• To provide up to £196,000 additional funding for NRW to be able to progress the development work in 2022/23 and in principle a further £76,000 in 2023/24• To agree in principle to fund NRW £100K per annum to implement from 2023-24
Decision report	<p>This decision does require a Decision Report, which may be published at any time.</p>

Background

1. The former MEERA agreed (MA-P-LG-0905-20) to the preparation of a Statutory Instrument to add common pheasant and red legged partridge to the Wildlife and Countryside Act list of species requiring a licence for release. This was in anticipation of the outcome of the court case between Wild Justice and the Secretary of State for Environment, Food and Rural Affairs with Natural England and Others. In that case it was agreed between Defra and the Claimant that release of gamebirds could constitute a plan or project within the meaning of the Conservation of Habitats and Species Regulations 2017 (2017 Regs.).
2. Although the case was resolved by consent and so the court did not make a ruling on the Claimant's case that the law required there to be such control over gamebird releases as were necessary to allow the 2017 Regulations to be applied. Defra implicitly accepted that the current circumstances were unlawful by its indicated intention to ensure a regime was in place by the 2021 release season. This accords with the advice the MEERA previously received from officials and legal services on the matter.
3. It was not possible for NRW to review and implement in time for the 2021 season as NRW didn't have sufficient resources available. The core team of staff with the necessary technical expertise to carry out this work were already prioritising work to progress their existing Wild Bird Review (Review of NRW's Approach to the Shooting and trapping of Wild Birds). Nonetheless, NRW gave WG officials sufficient reassurances that the process could be completed and implemented in time for the 2022 season.
4. As a consequence the former MEERA agreed in MA/LG/3822/20 to the preparation of, and consultation on, an appropriate phased approach for the release of gamebirds in Wales with the view of implementing in 2022.
5. This would involve Welsh Ministers consulting on adding pheasants and red-legged partridges to Schedule 9 of the Wildlife and Countryside Act 1981, and Natural Resources Wales (NRW) consulting on the appropriate conditions for the general and specific licences that arise from that addition. The intention was that there would be an appropriate process in place for releases of pheasants and red-legged partridges in Wales in the 2022 season (assumed to be June/July) which would be both appropriate for the circumstances in Wales, and allow for the 2017 Regulations to be applied to gamebird releases when necessary. This was formally communicated to representatives of Wild Justice.
6. Defra duly introduced 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. However Wild Justice have challenged the basis of this new regime, and it is not clear at present what the

conclusion of that challenge and its potential ramifications for the process in Wales will be.

Advice

7. Following high level discussions with NRW, including the WG Director and NRW CEO, NRW now advise that it is not possible to progress this area of work to meet the intended 2022 implementation without impacting on other priorities. This is primarily due to the complexity and resource requirements in relation to the ongoing Wild Bird review NRW are undertaking, which is seen as a top priority within NRW.
8. In view of this NRW has requested a delay to the timetable, and additional funding (£350k) to undertake this development work and implement the licencing regime (£100k) once it comes into force. Officials recognise that the development work could be seen as additional to NRW core functions, but feel that the staffing costs for this phase are excessive. Further discussion will be required with NRW with regard to the implementation phase once a new regime is in place.
9. Officials have asked NRW to review the budget request in line with the ongoing baseline exercise and are awaiting a response. There is provision within the draft budget for 2022/23 to support the additional staff resource required for the development phase of this work. NRW has estimated this to be £196k for 22/23 and a further £76k for 23/24. Should you approve the development work, the implementation costs (£100k per annum from 23/24 – in perpetuity) will be covered from the biodiversity, evidence and plant health budget line (BEL 2825) if NRW are unable to cover this cost. We would be hopeful that NRW are able to allocate its resources to fund this, however, you will be aware that NRW face challenging GiA settlement and the decision whether or not to prioritise this work will be subject to future budget discussions. NRW are in the process of recruiting a project manager for this work.
10. With additional resource NRW would be able to undertake the development of the new licencing regime in 2022 with a view to implementing in 2023 and taking effect for the 2024 season. It will not be possible to have a new regime in place in time for the 2023 season. NRW has advised that it will take 12 months to develop a new regime and so will miss the October key date when birds need to be ordered for the future season.
11. While unwelcome this delay would allow:
 - Full engagement with stakeholders and industry to get views on best way to approach in Wales building on the existing industry guidelines.
 - The avoidance of confusion from stakeholders with regard to the process around the introduction of any new licencing regime coming into force as part of the Wild Birds Review.
 - To work with industry to ensure existing guidelines are being met for the 2022 /23 releases

- Collation of 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
- To work With APHA to improve the registration process (area also identified by Defra)
- Undertake full legislative and licence regime consultation.
- Reduced pressure on NRW (and WG) already limited resources, including the proposed provision of additional budget for NRW to carry out this exercise and the wider Wild Bird Review review.
- Time to fully consider the ramifications of the latest WJ challenge to Defra on the details of their interim licensing regime introduced for the 2021 gamebird releases, with a view to understanding how it may influence our approach including the potential implications on the Welsh process and parameters for implementation

12. A delay would also help ensure that the regime that is put in place is not rushed and is ultimately the right one for Wales. This approach would help achieve a better longer term workable outcome for Wales.

Risks

13. There is an obvious risk that Wild Justice will threaten litigation in an attempt to force Wales to comply with its current stated timetable, indeed their legal team has been explicit that further delay would lead to them instigating Judicial Review proceedings.
14. However, as there will be a clear timetable for implementation of the changes and a clear commitment to ensure this process is carried out in full compliance with public law principles, the risk they will succeed in such a challenge would be substantially reduced. In fact, it may be arguable that their claim would be academic as it is unlikely to succeed in bringing effective changes forward by a year.
15. It should also be borne in mind (and should also be obvious to Wild Justice) that BASC (British Association for Shooting and Conservation) and other representative land based organisations would be able to challenge, disrupt and delay the implementation of the proposed regime in Wales if a full consultation is not undertaken. At present, it is understood that although they dispute the necessity of a licencing regime, if they consider the terms of such a regime are fair they are unlikely to challenge it. It will only be possible to persuade them of the fairness of the changes after the full consultation process and consideration of all the evidence has been followed.
16. There remains a distinction between the implementation of a licencing regime and the terms of the licences arising from such a regime when it comes to the interests of stakeholders. On a balance of risk, in consideration of potential reputational damage of not following consultation protocols and established good governance practices, a delay poses less risk than to push ahead with a curtailed consultation and policy not supported by scientific evidence.

17. Ultimately WG have shown their clear intent to introduce a new licencing regime for the release of gamebirds in Wales. Whilst this delay would frustrate Wild Justice, it would be hoped that they could be persuaded that a delay of this nature would ultimately be in the long term best interests of all concerned. A balanced and pragmatic regime that serves and benefits nature and the natural environment, while respecting the concerns and impacts on shooting and rural communities.
18. There is a risk that NRW are unable to fund the implementation of this work through GIA or reprioritising following the development work. In this eventuality the implementation would need to be funded from the biodiversity budget from 23/24 onwards subject to sufficient funds being available.

Recommendation

19. The Minister is asked to agree:
 - To extending the timetable to allow NRW sufficient time for the preparation of, and consultation on, an appropriate phased approach for the release of gamebirds in Wales with a view of being ready to implement in 2023 and take effect in time for the 2024 season.
 - To provide up to £196,000 additional funding for NRW to be able to progress the development work in 2022/23 and in principle a further £76,000 in 2023/24.
 - To agree in principle to fund NRW £100K per annum to implement from 2023-24

Programme for Government

20. This decision and outcome of this work will contribute to the PfG commitment of enhancing green spaces as will further help safeguard our protected sites. This will also contribute to helping tackle the nature emergency. It does not fall within the cooperation agreement.

Legal implications/issues

21. Legal services have been fully consulted in the development of this MA.

Communication

22. It will be necessary to communicate any revised timetable for the review and the introduction of a new licensing regime to all stakeholders. Given the risk of potential Judicial Review any communications will require careful handling .

Financial implications

23. If agreed the following will be required:
 - Up to £196k will need to be allocated to NRW from the biodiversity BEL 2825 in 2022/23 to progress the development work. This has been planned for as part of the draft budget process for 2022/23.
 - To provide in principle up to an additional £76k additional funding for NRW to be able to progress the development work in 2023/24 from BEL 2825.

An additional £100k / annum in principle from 2023/24 for implementation which will be funded from the biodiversity BEL 2825 should NRW be unable to cover.

24. Given Cabinet's agreed fiscal approach as part of the 2022-23 Draft Budget, there are extremely low levels of reserves over the next three financial years. On this basis, any additional costs will need to be met from within existing MEG allocations. It also cannot be assumed that any additional funding will be forthcoming from the UK Government (again, this will depend on timing as circumstances may change at the next UK fiscal event in March), so we should formulate our plans accordingly.

Annex 1: ASSURANCE AND COPY RECIPIENTS

CLEARANCE TRACKING

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Group Finance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	EERA/172 /21
	Cleared by Budget & Government Business Division?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Legal	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"/>	
Governance	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 checked="" type="checkbox"/>	<input type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, Alice Teague, 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: