

# Additional advice to Welsh Government regarding the proposal to add common pheasant and red-legged partridge to Schedule 9 to the Wildlife and Countryside Act 1981, in Wales

## Considering the potential use of Stop Notices under the Regulatory Enforcement and Sanctions Act 2008

We recently submitted advice in relation to the proposal to add common pheasant and red-legged partridge to Schedule 9 to the Wildlife and Countryside Act 1981, as it applies to Wales. Much of that advice focussed on our assessment of responses received to our joint consultation in which we set out proposals for the future regulation of the intentional release of these two species.

In our advice, we referred to some consultees suggesting that the use of “stop notices” may be an alternative (or part of an alternative) to introducing new regulation. However, those consultees did not specify which provision they were referring to.

On page 14 of our advice, we said:

*“We have considered suggestions made about alternative approaches, including the use of “stop notices.” We assume that this is a reference to the provisions relating to Special Nature Conservation Orders in Regulations 27-31 of the Conservation of Habitats and Species Regulations 2017. We do not consider this to be a reasonable alternative to introducing a licensing provision by adding the species to Schedule 9. We have come to this view for two reasons. Firstly, these Orders can only apply to European sites. They cannot be used to manage risks of impacts from gamebird releases close to sites which are designated only as SSSIs, nor can they be used to protect those habitats and species identified and listed under section 7 of the Environment (Wales) Act 2016. Secondly, they are a something of a “last resort” mechanism intended to address a threat to a specific site where other means have failed, rather than a tool to manage a more general risk arising from a widespread activity”*

Since providing that advice, we have become aware that a stop notice under section 46 of the Regulatory Enforcement and Sanctions Act 2008 has previously been used in England in relation to gamebird releases. The use of such a stop notice was subject to review by

first-tier tribunal and upper tribunal in 2018 and 2019 respectively. The ruling of the upper tribunal is available here: [IN THE UPPER TRIBUNAL \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/671111/in-the-upper-tribunal.pdf).

We therefore consider that some or all references to stop notices in consultation responses may relate to this provision, rather than stop notices under the 2017 Regulations.

Looking at the provisions for stop notices under the 2008 Act, whilst unlike stop notices under the 2017 Regulations, they are not limited to being used for the protection of European sites, we do not consider they present a reasonable alternative to the regulatory approach we are proposing, for similar reasons.

Our view is that stop notices are somewhat of a last resort and a 'reactive' option to address an imminent or developing risk in a particular situation, rather than a proactive means for regulating a widespread activity. We also note that stop notices under the 2008 Act must be served on an individual and whilst we believe that they can specify the area of land to which they apply, they cannot be applied to any person carrying out the proscribed actions on that land.

We feel that relying on stop notices would do little to encourage wider adoption of good practice or to improve the data on the scale and location of releases near protected areas. We also anticipate that there could be practical difficulties using stop notices to manage potentially damaging gamebird releases. Notices would need to be served before the birds are released in order to have any effect. Therefore, we would need to be aware of a person's intention to release gamebirds well in advance of the act itself, in order to draw up and issue the notice. Furthermore, if the notice was served whilst the birds were still in their pens, prohibiting their release, it would be likely to lead to an animal welfare issue, as well posing a risk of exacerbating and prolonging any environmental impacts at the release pen.

One of the prerequisites of using such a notice is that *"the activity as likely to be carried on by that person will involve or will be likely to involve the commission of a relevant offence by that person"* (section 46 of the 2008 Act). In that context we feel it is unlikely that stop notices could be used to manage risk of harm to habitats and species listed under section 7 of the Environment (Wales) Act 2016. Whilst sections 6 and 7 of the 2016 Act place duties on Welsh Ministers and public bodies to maintain and enhance listed habitats and species they do not create any wider offences of damaging or destroying listed features.

Lastly, we are not aware that, at the present time, NRW has been empowered, in accordance with section 36 of the 2008 Act, to use stop notices for this purpose. However, we understand that initial representations have recently been made with regard to expanding the powers available to NRW to use Civil Sanctions under this Act.

8<sup>th</sup> November 2023