

NRW's proposed approach to regulating the release of gamebirds (common pheasant and red-legged partridge) in Wales

Consultation Document

March 2023

Annex 1: Our proposed approach to addressing statutory protected sites requirements

Introduction

The following assumes that common pheasant and red-legged partridge (hereafter referred to as gamebirds) will be added to schedule 9 of the Wildlife and Countryside Act 1981 as it applies in Wales, thus making their intentional release anywhere in Wales an offence, unless it is done under the terms of a licence granted by NRW under section 16 of the Act.

Any decision by NRW to grant such a licence, insofar as it could affect a European site (Special Area of Conservation or Special Protection Area) will be subject to Habitats Regulations Assessment (HRA) under Regulation 63 of the Conservation of Habitats and Species Regulations 2017. As matter of Welsh Government policy, Ramsar sites (wetlands of international importance) are afforded the same protection as European sites. References to European sites in this Annex should be taken to include Ramsar sites. Meanwhile a decision to grant a licence which could affect an SSSI will be subject to consideration under section 28I of the 1981 Act.

In proposing the licensing arrangements set out in this consultation paper, we have therefore anticipated how HRA requirements, and the equivalent provisions relating to SSSI, would be applied.

Identification of sensitive protected sites

We propose that all SSSIs and European sites in Wales are categorised as either 'sensitive' or 'non-sensitive' to impacts from the activity of releasing captive-reared gamebirds. This categorisation would be on the basis of expert judgement as to whether types of designated features are capable of being negatively impacted via any of the potential impact pathways arising from an increase in the presence (numbers or density) of gamebirds, such as through predation, competition, nutrient enrichment or disease transmission. We propose to take a precautionary approach to this exercise, in that a site will only be considered 'non-sensitive' if negative impacts on all its designated features can be confidently ruled out. For example, all SSSIs which are notified only for their geological or geomorphological interest will be categorised as non-sensitive.

Licensing regime applicable to all land in Wales which is not within a sensitive protected site or a buffer zone around it

As described in this consultation document, we propose to grant an annual general licence for the release of gamebirds which applies to the whole of Wales, except within sensitive protected sites and a buffer zone around them (our approach to buffer zones is described below). The general licence will include a list of the protected sites which have been assessed as non-sensitive and where the licence can be relied upon, together with a means for licence users to access information on the location of those protected sites (and their buffers) which are considered sensitive and are excluded from the general licence.

Consideration of the potential impact of operations authorised by the general licence on protected sites:

- In relation to **non-sensitive** protected sites, any negative impacts from gamebird releases can by definition be ruled out, based on the precautionary approach to be taken to identifying such sites. More specifically, in the context of Regulation 63 of the Habitats Regulations, the grant of the general licence will be able to be screened out of the requirement for HRA as 'not likely to have a significant effect'. Similarly, in the context of section 281 of the 1981 Act, the grant of the general licence can be determined as not 'likely to damage' any SSSI features.
- In relation to **sensitive** protected sites, in determining that the grant of the general licence is not likely to have a significant effect on any European site (under Habitats Regulation 63), and not likely to damage any SSSI (under section 281 of 1981 Act), we propose to rely on the fact that the general licence will not authorise any action within those sites, or within a suitable buffer zone around them. We consider that a buffer zone is necessary because of the potential for gamebird releases taking place outside protected site boundaries to impact on sensitive features within the sites.

As described in this consultation paper, any gamebird releases in the areas covered by the general licence but which would not conform with the general licence terms and conditions, would require a specific licence, including individual consideration of any potential impacts on protected sites.

Buffer zones around sensitive protected sites

Without a buffer zone (an area around each sensitive protected site where the general licence does not apply), the general licence would authorise gamebird releases up to the boundary of any sensitive protected site. Unless conditions could be devised and included in the general licence so as to prevent released birds moving into sensitive protected sites at potentially damaging numbers/densities, the HRA of the general licence, and the corresponding assessment under section 281 of the 1981 Act, would be unable to rule out negative impacts with sufficient confidence.

Available evidence shows that although the adverse impacts of gamebirds (on habitats and other species) is concentrated in and in the immediate vicinity of release pens, impacts can and do occur at distance from release pens. Key factors influencing the potential for negative impacts are the dispersal behaviour, mortality and survival rates and density of gamebirds at different distances, and the nature of the habitat.

Consequently, if a general licence which covered land up to the boundary of sensitive protected sites was proposed and subject to HRA, we consider that it would need to be screened in as 'likely to have a significant effect'. A site-by-site appropriate assessment of the impact of that general licence would then be necessary. It would need to identify particular locations where gamebird release would or would not be of concern. This would be likely to result in so many site-specific conditions or exclusions being necessary, that the general licence itself would become overcomplex and unworkable. To overcome that problem, we would need to extend those restrictive conditions – many or all of which would only be needed to apply to certain protected sites – to all users of the general licence wherever they are located, thus resulting in an unnecessarily restrictive general licence.

Therefore, we consider that applying a buffer zone around sensitive protected sites is a key component of our approach, which enables us to grant a general licence which applies to most of Wales, and which complies with HRA and SSSI requirements.

The size of the buffer zone around sensitive protected sites is critical to the HRA and section 28I assessment of the general licence. Provided a sufficiently wide buffer is applied, it will be possible to rule out any impact on any sensitive protected sites from operations authorised by the general licence.

Furthermore, in the interests of the terms of the general licence being clear and practical for users, we consider that the buffer distance should be the same for all sites excluded from the general licence, and sufficiently precautionary to rule out negative impacts on the most at risk or sensitive features. The alternative would be to vary the buffer distance, but we do not consider that the available evidence about the sensitivity of species and habitats to impacts from gamebird releases, is sufficiently differentiated to support that approach. Even if there was sufficient evidence, varying the buffer distance according to different degrees of sensitivity of protected site features, would risk overcomplicating and confusing the definition of the geographic scope of the general licence, and of course the geographic scope of the licensing regime applicable inside the buffer. We consider that the approach we are proposing is in accordance with our Regulatory Principles.

We therefore propose to use a standard buffer distance around all sensitive protected sites where the general licence will not apply. We further propose that the size of the buffer should be 500 metres from the boundary of any sensitive protected site.

Annex 2 describes our rationale for adopting this distance in light of available evidence.

Licensing regime within sensitive protected sites and buffer zones

Since the general licence would not apply in these areas, release of gamebirds listed on schedule 9 of the 1981 Act would require applications for specific licences, which would be determined in accordance with section 16 of the Act.

As with any other form of authorisation issued by NRW with the potential to affect statutory protected sites, our determination of applications for specific licences to release gamebirds would be subject to section 28I of the 1981 Act (consideration of operations likely to damage SSSI features) and Regulation 63 of the Habitats Regulations (in relation to European sites). In most cases those assessments would only need to consider the potential impacts on the protected site in the immediate vicinity of the application, and any conditions necessary to rule out negative impacts would be included in the licence.

Any gamebird release inside the boundary of an SSSI which was duly authorised by a specific licence would not need to have SSSI consent under section 28E of the Act, because operating under the terms of the licence would provide a reasonable excuse for not obtaining SSSI consent. However, section 28E consent may be needed for ancillary activities associated with the release, which are not expressly authorised by the section 16 licence.

Consideration of other licensing options within protected sites and buffer zones

We considered whether instead of specific licences, we could grant a different form of general licence, including possibly a 'class licence', authorising the release of gamebirds in sensitive protected sites and/or their buffer zones. When we refer to a 'class licence' we mean a type of general licence that requires users to comply with mandatory registration or reporting.

The starting point for considering this option would be that the general licence proposed to apply to most of Wales would not contain sufficiently restrictive conditions to enable us to rule out negative impacts on sensitive protected sites.

If a second general licence, or class licence, was made available for use within sensitive protected sites and their buffers, it would need to include sufficiently restrictive conditions to enable us to rule out negative impacts on any protected site feature. In theory this could be achieved either by applying the conditions considered necessary to protect the most sensitive site/feature, to all licence users in any location, or spatially differentiating a detailed set of conditions devised according to the sensitivities of different designated features of hundreds of sensitive protected sites.

We consider that neither of those two options would represent a satisfactory solution, as one would result in an unnecessarily restrictive licence applicable to all sensitive protected sites, and the other would require a disproportionate investment of time and result in an overly complex and unworkable licence.

We therefore consider that the appropriate regulatory approach for the release of gamebirds in and around sensitive protected sites is to require applications for specific licences.