

FROM THE PRESIDENT



The Committee for the Environment,
Parliament Buildings,
Stormont Estate,
Belfast,
BT4 3XX

5th February 2010

To: The Environment Committee

Wildlife and Natural Environment Bill

Thank you for the opportunity to comment on the above. The Ulster Farmers' Union (UFU) represents approximately 11,000 rural families and therefore fully recognises the important interaction between wildlife and rural areas. Farmers are already making a significant contribution of protecting Northern Ireland's biodiversity, through their active involvement in various agri-environment schemes e.g. Countryside Management Scheme.

We have responded to past consultations on this matter.

Clause 4 - Protection of nests of certain birds and Clause 5- Offences-recklessness, referring to Articles- 4, 10, 14 and 16 of the bill

Making it an offence to damage or destroy the nest of particular birds at any time of the year.

'action which, when carried out recklessly, causes harm to wildlife, will be treated in the same way as action carried out intentionally to cause such harm.'

The UFU would have concern with these provisions as they are too broad and open to inconsistent interpretation. A person may not be aware of the presence of certain wildlife or plants therefore may unknowingly cause unintentional damage. For example, a farmer cutting silage or a contractor carrying out work for a farmer/landowner e.g. hedge cutting, drainage etc, could unintentionally damage nests of certain birds, particularly if the nest is uninhabited. As it currently exists, the bill may class this as reckless behaviour and a farmer could face the same penalty as an intentional offender. The UFU feel this would be unfair.

If harm to wildlife occurs the UFU would query if a farmer takes all reasonable measures to mitigate against any wildlife harm (e.g. conducting field checks) prior to conducting an agricultural activity, could this still be considered as recklessness? All landowners in receipt of Single Farm Payment must comply with all Statutory Management Requirements of Cross Compliance regulations. SMR 1 and SMR 2 specifically relate to the conservation of wild birds and habitats and specify 'deliberate' harm to wildlife. Also, landowners/farmers already have to comply with existing closed periods for hedge cutting that aim to protect nesting birds. Indeed the UFU question whether this will apply to hedges/road verges being cut for road safety reasons.

The UFU consider that these proposals conflict with, and duplicate existing requirements.

Clause 6- Offences- causing or permitting unlawful acts, referring to Article 4 of the bill

'...anyone who knowingly causes or allows someone else to carry out those acts will be committing an offence.'

The UFU want to highlight that landowners often sign gun licence agreements allowing certain people access to their land to shoot. Permitted people may access this land without necessarily needing to inform the landowner. The landowner therefore has little control over what the gun user shoots and we feel it would be unfair if this example could be considered a case where the landowner has 'allowed someone else to carry out these acts'. The UFU seek clarification on this issue.

Clause 12- Introduction of new species and Clause 13- Prohibition on sale, etc of invasive, non-native species, referring to Article 15 of the bill.

The UFU would support this Article, provided it acknowledges the responsibility of the public sector and other bodies. Farmers are already required to control certain invasive species and any new guidance should be consistent with existing guidance. Many invasive species are noxious to animals/humans and are removed/controlled as part of farm management activities.

The UFU would stress the need for all relevant sectors to play their part in controlling the spread and introduction of invasive species. We would suggest two areas where we feel this is particularly relevant and feel that more needs to be done.

1. During Road Maintenance/Development

If road verges are left undisturbed for long periods of time, e.g. during periods of road development. Certain species of invasive plants may take hold, if allowed these species quickly spread to neighbouring land and can become rife. We feel more onus should be placed on DRD and those contracted by DRD, or other public departments to carry out road improvements on their behalf, and other public departments, to take proper action to control the spread of invasive species.

2. Control at entry points to Northern Ireland e.g. ports and airports

Some countries, such as Australia, conduct stringent checks on passengers/vehicles/luggage entering the country. This significantly limits the introduction and continued spread of invasive plant and animal species. We feel that the same level of checks should be conducted at all entry points to Northern Ireland.

There must be a degree of leeway in the interpretation of this requirement. It is impossible to totally prevent the spread of invasive species. We feel that a person should be able to demonstrate that they are utilising all appropriate mitigation measures.

Clause 16- Licences relating to deer, referring to Article 21 of the bill

'...giving the Department broader powers to issue licences to kill, injure or take away any (fallow, red or sika) deer during the close season.'

The UFU would support this addition and stress that in order to be effective this must also apply to the public sector. The UFU would highlight that proposals contained in the new DARD Forestry Bill permits Forestry Service, in the event of damage to trees by wild animals, to cull such wild animals (e.g. deer) at any time. These proposals also include protection from prosecution for persons authorised for control of wild animals, citing the NI Wildlife Order 1985. The Forestry proposals extend this provision to allow them to enter neighbouring lands. We feel it would be unacceptable for everyone else, other than Forestry Service, to have to comply with the requirements of the Wildlife and Natural Environment Bill as it would significantly inhibit the objective of the bill.

Clause 17 – Offences: possession of articles for purposes of committing offences, referring to Article 24 of the bill

Making it an 'offence for anyone to be in possession of any article that is to be used for committing offence under the Wildlife Order.'

The UFU would have concern about this provision and seek assurance and further clarification that this will not implicate innocent individuals conducting genuine agricultural duties. For example, using the situation cited in the explanatory memorandum of persons with spades and dogs in the pursuit of badger baiting. During field inspections farmers may have spades and dogs necessary as part of maintenance (e.g. clearing drains) and farming duties. The UFU would suggest that the bill specifically clarifies what types of articles and breeds of dogs that may be questionable.

Clause 19- Powers of constable in connection with samples, referring to Article 25 of the bill

'Provision for entry to premises under the authority of warrant issued by a lay magistrate to investigate any offence under Parts 2 and 3 of the Wildlife Order.'

The UFU query the use of a lay magistrate and feels that the warrants should be issued by a magistrate fully qualified in this area under scrutiny.

'Provision also permits a police officer who enters upon any land to be accompanied by other persons and to take any equipment or other material onto that land, and to take samples of anything found on that land and remove them.'

The UFU feels that this would increase the risk of bio security breaches as well as having implications for health, welfare and safety. The bill should stipulate necessary checks and precautions to be adhered to.

The UFU acknowledge the Review's stipulation that police officers will ensure that when leaving premises, they have been secured as they found it upon entry.

Clause 20- Enforcement: Wildlife inspectors, referring to Article 25 of the bill

The UFU do not feel that wildlife inspectors should have powers to enter and inspect premises, without the need of a warrant or being accompanied by a police officer.

Again, the UFU feels that this would increase the risk of bio security breaches as well as having implications for health, welfare and safety. The bill should stipulate necessary checks and precautions to be adhered to.

The UFU feels that it is not necessary for wildlife inspectors to enter premises to facilitate processing of applications for licences or to check for on-going compliance with licence conditions. All necessary compliance standards will already be guaranteed from the submission of necessary paperwork during application stage. Relevant paperwork and further guarantees can also be sought, for certain licences e.g. from PSNI: when applying for a deer culling licence a person should already have applied for a special gun licence that allows him to carry a gun capable of killing a deer.

Clause 24- Review of Schedules to the Wildlife Order, referring to Article 28 of the bill

'This clause places a duty on the Department to review those Schedules, together with new Schedule A1, every 5 years.'

The current NI Wildlife order has been operative for over 20years. While recognising the importance of regular reviews, we would question whether or not it is appropriate that the schedules of the bill are reviewed every 5 years. This is a fairly short time period making it difficult for people to keep track of any changes. We would instead suggest that this review should take place at 10year intervals to allow for any changes to be established and evaluated.

Clause 27- Offences in connection with ASSI's, Clause 28- Notification of change of owner or occupier, Clause 29- Notices and signs relating to ASSIs and Clause 30- Effect of failure to serve certain notices in connection with ASSI's, referring to Articles 46 and 48 of the bill

Already within Northern Ireland there are very stringent controls in place in relation to ASSI's and the UFU feel that the proposed changes would significantly increase the regulatory burden on landowners in ASSI's without any additional outcome benefit.

The UFU are very strongly opposed to the requirement for the owner of the land within an ASSI to inform the Department of change of ownership/tenancy. Tenancy of a parcel of land can alter throughout the year e.g. a dairy farmer will often let out silage ground to sheep farmers solely for the winter months. Therefore we feel, this is an unnecessary bureaucratic requirement and it is excessive to create it an offence for failure to comply with these requirements. The Department could have easy access to this information via land registry or through DARD. In the past we have suggested that DARD include all ASSI designations on farm maps.

The UFU are also opposed to the Department having power to erect maintain and remove signs/notices about an ASSI on land included in that ASSI. This could be a major bio security risk.

'Any public body which fails to (inform the Department of the Environment before conducting or permitting work within an ASSI) will be committing an offence'

The UFU welcome this addition.

'...declarations and notices will not be invalidated in the event that an owner has not been identified.'

Considering the implications of conducting certain agricultural activities within an ASSI we feel it would be irresponsible and unfair that the Department is not obligated to inform all landowners within new ASSI designations. We would question where it would not be possible to inform landowners as all necessary information should be easily accessible via the routes mentioned above.

Other Issues

In addition to the points raised above the UFU would like to suggest the inclusion of the following;

Closed Hedge Cutting Period

While this particular issue has not been included as part of this consultation, the UFU requests that it is considered as part of this Wildlife and Natural Environment Bill.

The background to this request stems from the inclusion of a 'closed period' for hedge cutting as an integral part of maintaining land under Good Agricultural and Environmental Condition (GAEC). This is required under the EU Commission framework for 'cross-compliance' for the EU's Single Farm Payment Scheme. The dates covered by this period differ within the United Kingdom:

Northern Ireland – 1 March to 31 August

England/Scotland – 1 March to 31 July

Wales – 15 March to 31 August

The UFU is fully supportive of ensuring that birds are not disturbed during the main nesting season. However, the delivery of the objectives of maintaining the land in good agricultural and environmental condition and the non-disturbance of birds must be balanced against permitting practical farming operations to continue.

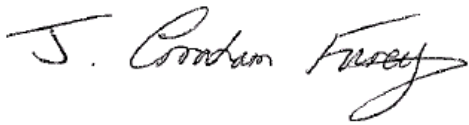
We have previously raised this issue with the Department and understand that the Wildlife (NI) Order 1985 covers the principle of avoiding the disturbance of birds during the nesting season but does not include specific dates for a 'closed hedge cutting period'. It also allows a defence against bird disturbance if such action was necessary under certain defined conditions such as for the purposes of public/animal health.

It is against this background that **we are requesting that the end date of the closed hedge cutting period in Northern Ireland (31 August) should be brought forward to 31 July from this year onwards**. This date would still avoid the disturbance of hedge nesting birds during the main nesting season but also permit practical farming operations such as hedge trimming or the erection of field boundary fences to take place during the month of August rather than September (as would be the case otherwise). Ground conditions during August would be much more suited to such operations. Indeed, there are certain areas where such work in September is virtually impossible.

We therefore request that this particular issue should now be reconsidered as part of the current review of the Wildlife and Natural Environment Bill and Northern Ireland should be aligned with GB.

Whilst the UFU acknowledges and supports the protection of wildlife and the natural environment, we are opposed to the duplication of existing legislation and the unnecessary burden of red tape.

Yours sincerely,

A handwritten signature in black ink that reads "J. Gordon Furey". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Graham Furey