

**Explanatory Memorandum to The Wildlife and Countryside Act 1981
(Variation of Schedule 5)(Wales) Order 2008**

This Explanatory Memorandum has been prepared by the Department for the Environment, Sustainability and Housing and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) Description

The Order varies Schedule 5 of the Wildlife and Countryside Act 1981 which lists animals protected under section 9 of that Act. Four animals have been added to Schedule 5. Short snouted seahorse and spiny seahorse are given general protection and the angel shark and the roman snail are given limited protection. The water vole, currently afforded limited protection, is given general protection.

(ii) Matters of special interest to the Subordinate Legislation Committee

No matters of special interest

(iii) Legislative Background

Section 9 of the Wildlife and Countryside Act 1981 creates several offences in relation to actions which cause damage/detriment to any wild animal listed in Schedule 5 to that Act. The power to vary Schedule 5 (so as to add any animals to, or remove any animals from, that Schedule) is contained within Section 22(3) of that Act. The Secretary of State's power under section 22(3) was transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 and has subsequently been transferred to the Welsh Ministers by section 162, and Schedule 11, paragraph 30 of the Government of Wales Act 2006.

The Order is subject to the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

The Wildlife and Countryside Act 1981 protects all wild birds, certain animals and certain plants. The protection of certain animals and plant species, through their listing in the relevant Schedules to that Act, allows them to be protected from specific threats, such as sale.

The Wildlife and Countryside Act 1981 (section 24) requires that Schedules 5 and 8 be reviewed every five years by the Joint Nature Conservation Committee ("JNCC"). The JNCC submitted its report in the autumn of 2002, to which the UK Government and Welsh Assembly Government gave careful consideration, before preparing their public consultation paper, which was issued in 2005.

Following that consultation, and in light of the JNCC's advice, the Order will provide additional (in the case of the water vole) or new protection under Schedule 5 and section 9 of the Act as follows:

Water Vole (*Arvicola terrestris*). Protection will be increased to full protection under section 9 of the WCA, adding prohibitions against intentional killing taking or injury (s9(1)), possession (s9(2)), and sale (s9(5)(a) and (b)).

Roman Snail, *Helix pomatia*. will be protected against intentional killing, taking or injury (s9(1)), possession (s9(2)), and sale (s9(5)(a) and (b)).

Spiny and short-snouted seahorses, *Hippocampus guttulatus* & *Hippocampus hippocampus*. will be given full protection under section 9 of the WCA. The protections will prohibit intentional killing taking or injury (s9(1)), possession (s9(2)), damage or disturbance in a place of shelter (s9(4)(a), (b) and (c)) and sale (s9(5)(a) and (b)).

Angel Shark, *Squatina squatina* For any wild specimen killing, taking and injuring (s9(1)) will be prohibited in Wales and within 0-6nm of Welsh territorial waters.

The legislation will have an impact on developments that may occur in areas where the species are known to live, ie planning applications will have to consider the possible presence of the species and any necessary compensation measures that would need to be put in place. Guidance will be drafted for planning authorities when assessing applications and granting planning permission to identify any conditions, requirements of the permission.

(v) Implementation

It is intended that this instrument should come into force on 12th August 2008

Should the legislation be annulled then the species that have been identified as requiring greater protection will be at risk of harm.

Parallel legislation is already in place in England.

(vi) Consultation

Consultation was carried out following the production JNCC's report by Defra in England and Wales in 2005. Defra invited 224 organisations and individuals to comment, of which 62 written responses were received. The responses were made available for public inspection via Defra's Information Resource Centre.No further

consultation was undertaken on the SI as the proposals were not altered following the consultation.

Regulatory Impact Assessment

a) Options (for achieving the policy objective – as set out in paragraph (iv) above) –

The Wildlife and Countryside Act 1981 requires the JNCC to review the contents of Schedules 5 and 8 every five years. That review recommended that additional protection be afforded to several animals under Schedule 5 of the Act. In light of that review, and following consultation, it was decided to provide that protection. This Order is required to do so.

No amendments were identified for Schedule 8.

b) Benefits –

The benefits to this legislation will primarily be the added protection given to the species.

Increasing the protection given to the water vole will provide a greatly simplified legal position making it more understandable to those whose activities may affect water voles populations. .

Listing the Short Snouted Seahorse and the Spiny Seahorse will prevent the potential loss of these species from around the British Isles before its biology and ecology is fully understood. Their shelter or protection areas which will also given protection, which will also benefit other fish species that use the same habitats and thereby increase fish yields for many species.

Listing the Angel Shark will prevent the loss of these species from around the British Isles by affording them greater protection.

Listing the Roman Snail will strengthen the protection for the species by helping to prevent both casual and commercial collections which is increasingly putting the wild UK populations at risk.

c) Costs

The non-monetary costs associated with this legislation relate mainly to the protection for water voles and the subsequent impact that the protection may have on activities that may take

place near to water vole populations. Guidance is currently being drafted on the implications of the legislation and in particular the requirements that need to be considered by authorising authorities for any activities that may need consents, e.g. planning permissions.

d) **Consultation**

Consultation was carried out following the production JNCC's report by Defra on behalf of England and Wales in 2005. No further consultation was undertaken on the SI as the proposals were not altered following the consultation. See paragraph vi for further detail.

e) **Summary**

The Order is being put forward to address the requirements detailed above. The benefits will be to provide additional protection for certain animals and to provide clarification in the activities that can be undertaken. There are no monetary costs to the proposals but there will be a need for developers and landowners to consider the possible presence of the protected species and how their activities may impact on the species.