



Department
for Environment
Food & Rural Affairs

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Possession of wild bird eggs: establishing the grounds for an offence

**Summary of responses and government response
to the consultation on proposed legislation in
England and Wales**

January 2016



Llywodraeth Cymru
Welsh Government

Contents

Introduction	1
Overview of responses to consultation	3
Option 1	4
Option 2	5
Potential non-statutory measures	7
Government response and way forward	10
List of Respondents: Annex A	11

Introduction

This paper summarises the responses to the Defra and Welsh Government joint consultation published on 14 October 2014 (ending on 9 December 2014) on establishing the grounds for an offence of the possession of wild bird eggs. The consultation received a total of **34** responses from members of the public, local and national museums and related bodies, policing bodies/representatives and non-government organisations (NGOs) such as the RSPB and Countryside Alliance.

In accordance with section 1(2)(b) of the Wildlife & Countryside Act 1981 ('the 1981 Act') it is an offence in England and Wales to possess or have in one's control, the egg of a wild bird or any part of such an egg. When enacted section 1(3) of the 1981 Act specified that a person would not be guilty of possessing a wild bird egg if they could show that the egg was taken from the wild prior to Part 1 of the 1981 Act coming into force¹. This became commonly known as the 'Pre-1981 Defence'.

In 2004 Defra and the Welsh Government made the Wildlife and Countryside Act (England and Wales) (Amendment) Regulations 2004 ('the 2004 Regulations')². The primary purpose of the 2004 Regulations was to amend the definition of "wild bird" in the 1981 Act to more fully transpose the EU Wild Birds Directive. The 2004 Regulations also amended the defence contained within section 1(3) of the 1981 Act. This amendment narrowed the defence so that if a person in possession of a wild bird egg, without a relevant licence for that possession³, could not show the egg in their possession was taken from the wild before the Protection of Birds Act 1954 ('the 1954 Act') came into force, they would have committed an offence⁴. This had the effect of removing the Pre-1981 defence and narrowing it so the defence could only be relied upon if the person could show the egg was taken from the wild prior to the introduction of the 1954 Act (the 'Pre-1954 exception').

The effect of this change was not subject to full public consultation; accordingly in 2011 Defra accepted that this aspect of the 2004 Regulations was made unlawfully. The 2014 public consultation sought to rectify this by seeking public opinion on establishing the grounds for an offence asking consultees to indicate a preference for either **Option 1** (maintain the 'Pre-1954 exception') or **Option 2** (reinstate the 'Pre-1981 Defence'). In

¹ Section 1 of the Wildlife and Countryside Act 1981 came into force on 28 September 1982

² The Wildlife and Countryside Act (England and Wales) (Amendment) Regulations 2004 (SI 2004/1487 - http://www.legislation.gov.uk/ukxi/2004/1487/pdfs/ukxi_20041487_en.pdf) amended the exception in section 1(3) of the 1981 Act but it applied only in relation to England at that time by the effect of section 27ZA. It was later applied to Wales by the Wildlife and Countryside Act 1981 (Amendment) (Wales) Regulations 2004 (SI 2004/1733 - <http://www.legislation.gov.uk/wsi/2004/1733/made/data.pdf>) which dis-applied the application of section 27ZA. In this document the '2004 Regulations' refers to the position after the Welsh provisions in SI 2004/1733 had come into force.

³ Licences can be granted under section 16 of the 1981 Act

⁴ It should be noted that other limbs in section 1(3A) need to be met, and other exceptions to the offence in section 1 within the 1981 Act can apply.

addition their views were sought on the advantages and disadvantages of each option and whether any potential non-statutory measures could complement either Option 1 or 2.

It should be noted that the Crown Prosecution Service and National Wildlife Crime Unit was informed of this issue in 2011. It should also be noted that when considering any offences under section 1(2)(b) of the Wildlife & Countryside Act 1981 the CPS look at the overall evidential picture and not just the potential date of illegal taking, before reaching any decision to prosecute.

Overview of responses to consultation

A total of 34 responses were received to the consultation. Four respondents asked for their responses to remain confidential. Chart 1 shows the breakdown of respondents by sector.

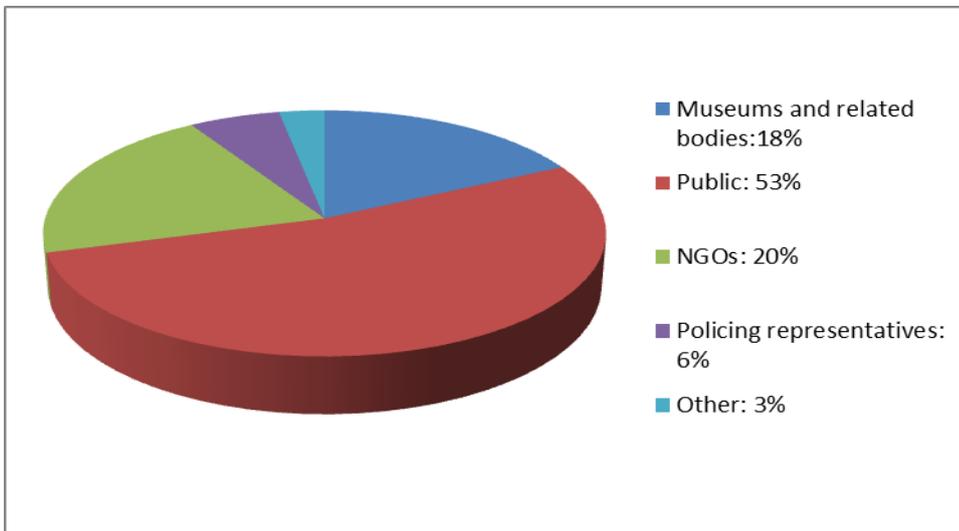


Chart 1: Breakdown of responses by sector

The consultation asked a number of questions seeking views on establishing the grounds for an offence of possessing wild bird eggs. Specifically whether the existing Pre-1954 exception (**Option 1**) created by the 2004 Regulations should be maintained or whether the Pre-1981 Defence (**Option 2**) should be reinstated. A breakdown of responses is set out in Chart 2 below.

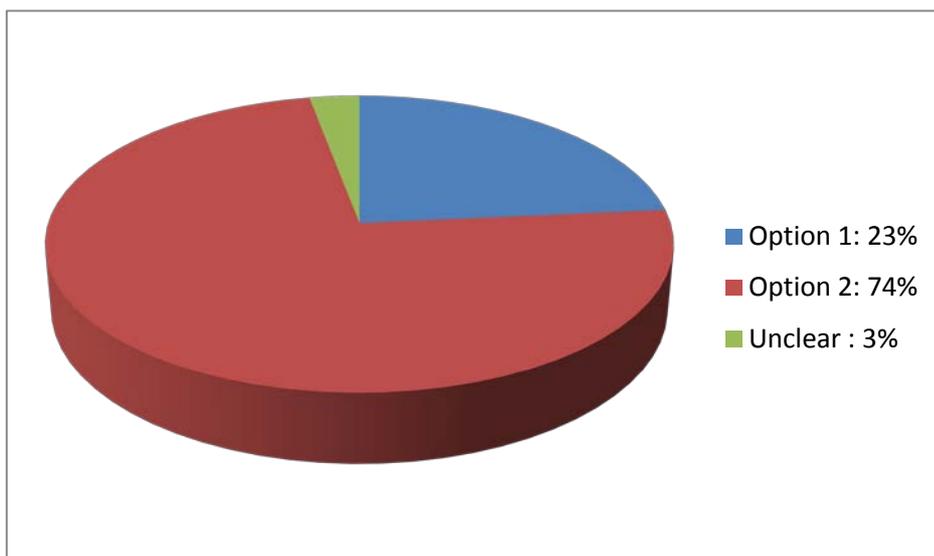


Chart 2: Breakdown of preferred option

The protection of wild birds and their eggs is a devolved matter. The consultation asked respondents to confirm whether their response applied to England (29%), Wales (12%) or England and Wales (56%). A breakdown of responses is set out in Chart 3 below⁵.

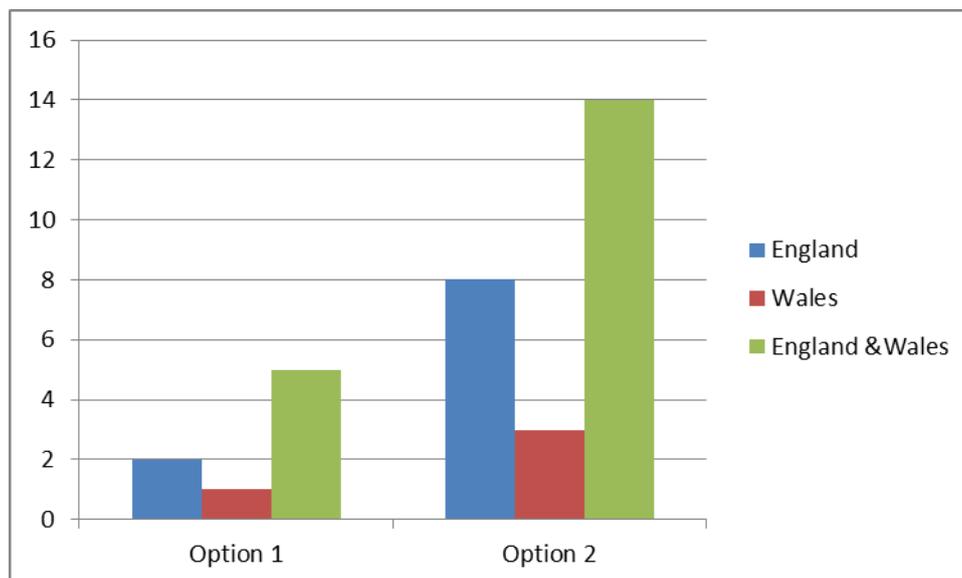


Chart 3: Breakdown of responses by area

Option 1

23% of respondents⁶ indicated that Option 1 (maintaining the Pre-1954 exception) is their preferred option. The main advantages and disadvantages of Option 1 identified have been summarised below.

Advantages

- Maintaining the Pre-1954 exception promotes the seriousness of egg collecting and would continue to target illegal collectors. It aids enforcement of the legislation by making it more difficult for those still actively collecting to substantiate false claims that eggs were taken prior to relevant protective legislation.
- Sufficient discretion remains to ensure that those who may hold illegal collections but are no longer active collectors can be dealt with by the way of advice or in some cases a police caution.
- It provides a proportionate and sensible resolution to the previously differing levels of protection afforded to wild birds and their eggs.

⁵ One respondent did not identify where their response applied to.

⁶ 50% of respondents that chose option 1 provided comments on potential advantages or disadvantages of Option 1

Disadvantages

- It would be a disproportionate response to an activity that is in decline.
- Parliament has not had the opportunity to scrutinise and fully debate the legislative change that led to the Pre-1954 exception.
- Maintaining the Pre-1954 exception would result in the ‘gold plating’⁷ of the EU Wild Birds Directive.
- It could motivate the continued destruction of historical and valuable egg collections of significant scientific value, rather than ensuring that they could be handed over to museums and similar institutions for research or educational purposes. Such destruction would “lead to the loss of essential evidence of environmental impacts on birds”.
- The falsification of data to support claims that eggs taken are legal would continue.
- It will also increase the burden on museums by the need to apply for additional organisational licences to enable them to hold and manage any collections that may be handed over.
- It will have no impact on those who continue to collect eggs illegally.

Option 2

74% of respondents⁸ indicated Option 2 (reinstating the Pre-1981 defence) as their preferred option. The main advantages and disadvantages of Option 2 identified have been summarised below.

Advantages

- Reverting to the Pre-1981 defence is a proportionate response to what is a now a declining activity.

⁷ The Directive requires member states to put protection in place for wild birds’ eggs from the date that the directive had to be implemented (April 1981). Requiring a person to show that an egg was taken before 1954 exceeds this requirement. This is referred to as ‘gold-plating’ as it would go beyond the minimum requirements of the Directive. The UK Government does not support the gold plating of EU Directives.

⁸ 72% of respondents that chose option 2 provided comments on potential advantages or disadvantages of Option 2.

- It shows ‘the government is serious’ about not gold plating the EU Wild Birds Directive.
- The issue has already been scrutinised by Parliament (the House of Lords) who, when debating the 1981 Act, argued that it was proportionate to treat the date of taking, birds and eggs differently to avoid criminalising people overnight who retained eggs from childhood collections; meaning the law focuses on people that are currently actively collecting and trading eggs rather than prosecuting people with historic collections.
- There would be “no increased incentive to falsify data accompanying collections in private hands” and therefore reduces the motivation for doing so.
- It would encourage those with historic “data rich collections” and collections of significant scientific value to be handed over to museums for research, rather than creating “distress or panic” which could lead to their destruction. The data provided for these eggs could also help benefit future bird populations, in a similar way that collections were used to identify the effects of pesticides such as DDT.
- It does not create “an additional licencing burden to museums or Natural England” and allows museums to ensure collections are “preserved for the future”.
- It clarifies the law, and the defence available, for the public and enforcement authorities.

Disadvantages

- It would lead to inconsistencies in the law between the protection afforded to wild birds and wild bird eggs. It could lead to the perception that it weakens or dilutes the protection of wild birds and their eggs.
- Unlikely it will have any real impact on active egg collectors who will continue to collect and trade eggs illegally as well as falsifying data to suit their own needs.
- There are possible cost implications of informing members of the public, museums and other institution of the new regulation.

Potential non-statutory measures which could complement either of the regulatory options proposed

The consultation asked respondents whether there were any additional non-statutory measures which could complement any change to the regulations – approximately half of the consultation respondents provided suggestions. Of those that provided comments the majority related to non-statutory measures, with the remaining comments being interpreted as either ‘general comments’ or ‘those that would entail further regulatory change’.

An amnesty, in various forms, was the most common theme. Some respondents suggested that private individuals be allowed to keep egg collections under licence – allowing eggs to remain with their current owners in private collections. However, there is currently no provision in the 1981 Act for licensing private collections, unless it can be shown that the possession of the egg(s) is for a specific reason, such as for scientific, research or educational purposes⁹. A change to permit the issuance of a licence to a private collector would require a change in legislation and is, therefore, not considered a non-regulatory measure.

It was also suggested that there should be an amnesty for individuals currently in possession of such illegal egg collections so that they can be surrendered to museums and similar research institutions without fear of prosecution. The benefits of an amnesty would be to prevent such collections potentially being broken up and sold illegally with one respondent stating that if Option 1 was pursued “taking these eggs out of circulation would also make it easier for the enforcement authorities to assess the provenance of material discovered during future enquiries and reduce the time spent dealing with such matters”.

Conversely, one individual suggested that an amnesty would allow people to “sell and swap eggs to complete their collections” which would reduce the temptation to collect eggs illegally.

Some respondents suggested that ‘accredited’ museums should be allowed to hold egg collections, including those dated between 1954 –1981, without an additional licence for research, scientific and educational purposes. Currently the 1981 Act provides that certain actions that would be an offence, including possessing wild bird eggs, do not apply if that action is done in accordance with the terms of a licence granted by Natural England or Natural Resources Wales (as the case may be). There is currently no charge for these licences. Natural England and Natural Resources Wales are responsible for administering

⁹ See Wildlife and Countryside Act 1982 section 16(1).

these licences, and this response has been forwarded to these bodies for further consideration.

One individual suggested a certificate could be issued to determine the legality of individual collections. It is not clear what the respondent had in mind in terms of certification. The 1981 Act provides a defence where the person in control or possession of the egg can show an egg has been lawfully taken or sold.

It was also noted there was no 'fool proof' or 'forensic' method to authenticate the age of eggs to determine the legality of individual collections. As stated in the consultation document it is currently not possible to accurately identify the age of an egg forensically.

Other observations and comments

Some respondents commented that egg collecting itself was now on the decline and that there may be a case for doing nothing at all, noting that neither option will help reverse the impact that historical egg collecting may have had on the populations of certain bird species.

It was noted that if the Pre-1954 exception was maintained whether it is in the public interest to continue to pursue prosecutions on what is now a declining pastime. While illegal egg collection prosecutions are declining, there are still those who persist in this illegal activity. As such, it is important that legislation remains in place to allow the prosecution of illegal egg collecting (which is a requirement of the EU Wild Birds Directive), and as with any prosecution, it is for the Crown Prosecution Service (CPS) to decide if taking a case forward is in the public interest.

It was also requested by two organisations that any change in the legislation should continue to exempt wild game birds¹⁰. It is important to note that the consultation was concerned with 'wild bird' eggs only, and for the purposes of section 1 of the 1981 Act 'game birds' are not considered 'wild birds' and are therefore out of scope of this consultation.

One individual suggested removing the 'reverse burden of proof' in section 1 of the 1981 Act, which provides that a bird of a protected species is presumed to be 'wild' unless the defendant shows that the bird was bred in captivity and a bird will not be treated as bred in captivity unless the defendant shows that its parents were lawfully in captivity when the egg was laid. This would require further legislative change and is not within scope of this consultation.

¹⁰ As set out in the Wildlife and Countryside Act 1981 and Game Act 1831. There are no plans to change the regulations that apply to game birds.

Finally it was also suggested by one organisation that the legislation be changed to cover egg collections which are gifted or inherited – this is already required under section 1(2)(b) of the Act which refers to the ‘possession or control’ of a wild bird egg.

Government response and way forward

Defra and the Welsh Government have carefully considered the responses to this consultation, and agreed that **Option 2** is the preferred option and as such, intend to re-instate the Pre-1981 defence. This will require an amendment to the Wildlife and Countryside Act 1981. In coming to this decision the following factors were taken into account:

- There would be no significant benefit to wildlife conservation in maintaining the Pre-1954 exception.
- Reinstating the Pre-1981 defence is a proportionate response to, what is now, a declining activity.
- The 1981 Act, including the Pre-1981 defence, was fully scrutinised when the Bill went through Parliament.
- The Pre-1981 defence complies with the requirements of the EU Wild Birds Directive but avoids 'gold-plating' in line with current UK Government policy.
- Historical collections with scientific value would be preserved for research purposes.

The consultation also enquired about any non-statutory measures that could compliment any change in the regulations. The majority of suggestions received related to an amnesty and licensing system if Option 1 (maintain the Pre-1954 exception) was taken forward. As we propose to take forward Option 2 (re-instate the Pre-1981 defence) the suggested amnesty is no longer relevant. No other suitable non-statutory measures were suggested for Option 2.

Defra and the Welsh Government are responsible for taking this legislative change forward in England and Wales respectively.

Annex A: List of respondents

Bassaleg School

British Bird Council

Ceredigion Museum

Countryside Alliance

Dyfed Powys Police (Chief Constable acting as National Wildlife Crime lead for UK police forces)

Federation of Museums and Art Galleries in Wales

International Bird of Prey Centre

Leeds Museums and Galleries

National Gamekeepers Association

National Museums Scotland

Natural History Museum

National Science Collections Association

RSPB

RSPB Wales

Rural Policing Liaison Group

Scottish Association for Country Sports

Plus eighteen individuals



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