

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION DOCUMENT

13800/18

COM (2018) 731 final

PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION, IN THE THIRTY-EIGHTH MEETING OF THE STANDING COMMITTEE OF THE CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS, WITH REGARDS TO AMENDMENTS TO APPENDICES II AND III

Submitted by the Department for Environment, Food and Rural Affairs

9 November 2018

SUBJECT MATTER

1. The Commission's proposal document outlines two amendments to the Appendices of the Convention on the conservation of European wildlife and natural habitats (Bern Convention). The document was circulated in support of preparations for the upcoming 38th Meeting of the Bern Convention Standing Committee.
2. The Swiss Government is calling for the level of protection afforded to wolves under the Bern Convention be downgraded. The Norwegian Government is calling for a similar downgrade of protection for barnacle geese.

Wolf (*Canis lupus*)

3. Switzerland asserts that the European wolf population no longer requires a strict (Bern Appendix II) level of protection. Their proposal to move wolves to Appendix III would allow the management and control of wolves (including via hunting) without the need to issue exceptions under the Convention.
4. The Commission acknowledges the challenges arising from the recovery of wolf populations. However, lowering their protection status is not justified from a scientific and conservation point of view.
5. In 2019, Member States will provide reports on the local conservation status of the wolf, as required by the Habitats Directive. The Commission proposes to defer establishing a position until this information is available.

Barnacle Goose (*Branta leucopsis*)

6. Barnacle goose populations in Europe have rapidly increased in recent years. This has led to impacts on human interests, notably agricultural and air-strike risk.

7. Norway proposes to down-list barnacle geese from Bern Appendix II to Appendix III. This proposal is not in line with the current legal protection status of Barnacle Goose under the EU Birds Directive (the species is listed in Annex I of the Birds Directive; i.e. requiring designation of Special Protection Areas).
8. The Commission recommends that the proposal be supported so that the non-EU parties to the Bern Convention can apply population management measures. However, since an amendment of the Annexes of the Birds Directive is not possible within the short timeframe required by the Convention (90 days), the Commission will clarify that, for the time being, it will apply stricter protection measures, as provided for in Article 12 of the Convention.

SCRUTINY HISTORY

9. The Parliamentary scrutiny history relevant to this proposal is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

10. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. Whilst international negotiations concerning the Bern Convention is not a devolved matter, Scottish Government Ministers, Welsh Government Ministers and Northern Ireland Executive Ministers have an interest in species protection and the devolved administrations have been consulted in the preparation of this Explanatory Memorandum (EM).

LEGAL AND PROCEDURAL ISSUES

12.

- i. **Legal Basis**

Article 192(1), in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union.

- ii. **European Parliament Procedure**

In accordance with Article 218(10) of the TFEU, the European Parliament shall be immediately and fully informed at all stages of the procedure.

iii. Voting Procedure

Qualified majority voting.

iv. Impact on United Kingdom Law

This decision has no UK implications or impact on UK law.

Re-listing wolves will make no difference as there is no wild population in the UK. Re-listing geese will, at present, make no difference as the EU will continue to be bound by the stricter protections outlined in the Birds Directive.

v. Application to Gibraltar

Not applicable.

vi. Fundamental Rights Analysis

No fundamental rights issues arise from this proposal.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

13. Not applicable.

SUBSIDIARITY

14. The barnacle goose is covered by existing EU legislation. It is listed in Annex I to Council Directive 2009/147/EC on the conservation of wild birds (the Birds Directive).

15. The wolf is listed in Annex II, Annex IV and Annex V to Council Directive 92/43/1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).

POLICY IMPLICATIONS (including Exit implications where appropriate)

16. Parliament voted to trigger Article 50 and leave the EU. Until we leave the EU, all the rights and obligations of EU membership remain in force. The outcome of our negotiations with the EU on a future partnership will determine what arrangements apply in future.

17. There are no immediate policy impacts for the UK from these proposed changes.

18. After EU Exit, the UK would remain a Party to the Bern Convention. If the UK is no longer bound by the EU Birds Directive after Exit (and the Birds Directive itself has not been modified to align with the Bern Convention), it would not be required to

implement the current high level of protection afforded to barnacle geese. The UK would be able to manage barnacle geese under less prescriptive requirements set out for Bern Appendix III species. The UK currently successfully manages its populations of barnacle geese as an Appendix II species.

19. Defra recommends that the UK support the Commission's proposed positions.

CONSULTATION

20. No consultation has been undertaken or is necessary.

IMPACT ASSESSMENT

21. This does not have any impact on UK businesses so no Impact Assessment is required.

FINANCIAL IMPLICATIONS

22. No financial implications for the UK.

TIMETABLE

23. This position paper was provided by the Commission on 31 October 2018 in support of preparations for the Bern Convention Standing Committee meeting at the Working Parties International Environment Issues (Biodiversity) on 5 November 2018. The proposals will be further discussed at Working Parties' Meetings on 8 November and 23 November, for adoption by the Council on 3 December.

24. The Standing Committee Meeting opens on 24 November 2018.



DR THERESE COFFEY MP
PARLIAMENTARY UNDER SECRETARY OF STATE FOR THE ENVIRONMENT
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION, IN THE THIRTY-EIGHTH MEETING OF THE STANDING COMMITTEE OF THE CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS, WITH REGARDS TO AMENDMENTS TO APPENDICES II AND III

EM 13902/17, COM(2017) 628 FINAL: PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION IN THE THIRTY-SEVENTH MEETING OF THE STANDING COMMITTEE OF THE CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS WITH REGARD TO AN AMENDMENT TO APPENDIX II THERETO

DATE EM SIGNED: 15/11/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 2 ;22/11/2017)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1672 - 21/11/2017

EM 14025/12: PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN, ON BEHALF OF THE EUROPEAN UNION, AT THE 32ND MEETING OF THE STANDING COMMITTEE OF THE CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS (BERN CONVENTION)

DATE EM SIGNED: 05/10/2012

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS LEGALLY AND POLITICALLY IMPORTANT COMMONS REPORT - 13/03/2013	SIFTED TO SUB-COMMITTEE D AT THE CHAIRMAN'S SIFT - 17/10/2012. CLEARED ON 24/10/2012.
NOT CLEARED REPORT 23 - 12/12/2012	

EM 12875/12 & EM 12957/12: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF SPECIES OF WILD FAUNA AND FLORA BY REGULATING TRADE THEREIN (RECAST)

COMMISSION REGULATION (EU) NO .../.. OF XXX AMENDING COUNCIL REGULATION (EC) NO 338/97 ON THE PROTECTION OF SPECIES OF WILD FAUNA AND FLORA BY REGULATING TRADE THEREIN

DATE EM SIGNED: 13/08/2012

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT LEGALLY OR POLITICALLY IMPORTANT; CLEARED. REPORT NO 11 - 07/09/2012	CLEARED AT CHAIRMAN'S SIFT - 27/08/2012