

On behalf of: Defendant

No of statement: 3

Exhibit: **EB2, EB3**

Date made: 13 October 2020

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT

Claim No. CO/731/2020

THE QUEEN
on the application of

WILD JUSTICE

Claimant

-v-

SECRETARY OF STATE FOR THE ENVIRONMENT, FOOD AND RURAL AFFAIRS

Defendant

-and-

NATURAL ENGLAND AND OTHERS

Interested Parties

THIRD WITNESS STATEMENT OF

[REDACTED]

I, **[REDACTED]**, of Seacole Building, 2 Marsham Street, London SW1P 4DF will say as follows:

1. The purpose of this witness statement is to update the Court on the Secretary of State's response to the Gamebird Review. I am providing this evidence as soon as possible. It could not have been provided sooner as it was dependent upon the Secretary of State giving proper consideration of the Gamebird Review and advice from Natural England and taking a decision about how to respond.

2. Except where indicated otherwise, the facts stated in this witness statement are within my own knowledge and are true. Where facts are not within my own knowledge, I have indicated the source of my information and those facts are true to the best of my knowledge, information and belief. There is now produced and shown to me a paginated bundle of documents marked “**Exhibit EB3**”. All references in this statement in the form **[EB3/pp.]** are to this exhibit. References in the form **[Tab/Page]** are to the bundles of documents prepared by the Claimant served with the Claim form. I refer also to Exhibit EB2 to my second witness statement dated 6 October 2020.

Overview of Gamebird Review

3. In my first witness statement, I explained that the Secretary of State took the decision in September 2019 to undertake a review of the way in which the release of gamebirds on or near European protected sites in England is managed (“**the Gamebird Review**”). I explained that there are two parts to the review. The first part of the review is a study of the impact of gamebird release on European protected sites. The principal part of this assessment took the form of a Rapid Evidence Assessment (REA) “Ecological Consequences of Gamebird Releasing and Management on Lowland Shoots in England” – which I refer to as the Madden and Sage report. I exhibited the final version of the report to my second witness statement at **[EB2/3-112]**. In addition, we obtained more data on the number of gamebirds being reared in the wild **[EB2/113-117]**.
4. The second part of the review involved an assessment of what steps are appropriate to prevent any impacts of gamebird release based on the outcome of the Madden and Sage report. In formulating the response to the Madden and Sage report, Defra has relied on advice from Natural England as well as an assessment of the impact of regulatory measures on the shooting industry.

Summary of Madden and Sage report

5. The key conclusions from the Madden and Sage report are as follows.
6. First, there are gaps in the available evidence about the ecological impacts of gamebird release. In particular, there is a lack of reliable data on the location and number of gamebird releases as well as a lack of evidence on the landscape effects of release and effects of diseases and parasites: p.82 **[EB2/84]**. The report explains that “*To understand the intensity and spatial extent of any effects of release, it is essential to consider when, where and how many gamebirds are released, how long they remain at the release site or on the game shoot and how long they survive, and where they disperse*”: (p.21)**[EB2/23]**.
7. Second, the report emphasises that the net impact of gamebird release must be considered holistically. The impact of gamebird release on habitats and wildlife is complex

due to the fact that releases are accompanied by gamebird management. The report advised that *“When attempting to consider the ecological effects of gamebird release it is vital to simultaneously account for the actions of the released birds themselves and the human actions that accompany these releases, especially the actions of the people managing the landscape into which the birds are being released”*: (p.23) [EB2/25]. The report suggests a conceptual model to consider the net effect of natural and anthropogenic effects and recommend that future work in this field adopts such an holistic approach. It cautions that *“some of these consequences may be unexpected if a holistic approach is not taken”*: (at p.27) [EB2/29]. Moreover, whether or not the net effect is positive or negative depends on consideration of the ecological outcomes that are of interest.

8. Thirdly, impacts depend on size and location of release. The consequences of gamebird release are *“highly dependent”* on where gamebird releases occur and the numbers and density of birds involved in those releases. Many studies observe that effects become larger where high densities of gamebirds are released and the effects outside the release pen may be dependent on the density of birds released and the distance from the release pen: p. 66 [EB2/68]. The evidence suggests that at least some of these effects can be ameliorated by following best practice relating to release sizes and densities and by consideration of release site locations and the rearing conditions of gamebirds for release: p.89-90 [EB2/91-92].
9. Fourthly, most negative effects are very spatially confined, usually at the release site or feed point although others, in particular disease issues and the effect of release on generalist predators, may occur at a landscape scale: p.89 [EB2/91].
10. Finally, effects are dependent on local factors. Effects are not homogenous across sites but instead are influenced by local ecological or social factors. The review therefore concludes that *“to understand the size of any effects both locally and nationally, and in order to compute net cost and benefits of releasing gamebirds, it is necessary to determine and account for how many birds are released, where they are released, what area they are released over and at what densities”*: (p.66) [EB2/68]/. Until further data are forthcoming, the findings of the report should be interpreted as representing a median type of shoot in terms of size and adherence to good practice over that period: p.86 [EB2/88].

Natural England’s advice to Defra following the Madden and Sage report

11. Natural England has set out its advice to Defra following the Madden and Sage report in the report exhibited at [EB3/1-19]. Of importance to this case are the following:
 - a. The negative effects from gamebird pre-release and release that are supported by the strongest evidence relate to eutrophication of soil and the depletion of vegetation immediately within and around release pens and feeding stations. These effects are

density dependent. The available evidence indicates that smaller releases (≤ 1000 birds/hectare) in line with existing 'good practice guidelines' (i.e. the 'Guidelines for sustainable gamebird releasing published by the Game and Wildlife Conservation Trust) have little or no discernible eutrophication or vegetation depletion effects beyond a relatively limited distance (up to 15m) from release pens and feeding stations.

- b. Negative effects tend to be localised and studies (indicate minimal or no effects beyond 500m (on a precautionary basis) from the point of release. Most studies tend to be within 300m of the point of release or within pens thus there is no direct evidence of the effects at or beyond this distance. However, Natural England has concluded that effects beyond 500m are likely to be minimal because studies show that dispersal of birds tends to be less than 500m from the release sites and the negative effects in consideration are linked to the presence of birds.
- c. There is strong evidence of associated benefits for biodiversity from general woodland management associated with shooting but a limited evidence base on the positive effects of general habitat management associated with gamebird management which may benefit native biodiversity.

Natural England's response to the Madden and Sage report

- 12. Natural England has explained that, on the basis of the Madden and Sage report, it intends to take the following steps.
- 13. First, where new applications or applications for renewal of consent for gamebird releases on SSSIs are received by Natural England in accordance with the Wildlife and Countryside Act 1981, Natural England will continue to carry out thorough assessments of the likely ecological impacts on the designated features, including SAC/SPA features where appropriate. Natural England will only provide consent where it is satisfied that the proposed activity is consistent with furthering the conservation or enhancement of the SSSI and where it is possible to ascertain that the proposal will have no adverse effect on site integrity.
- 14. Secondly, Natural England will continue to use its statutory powers to attach conditions to a consent such as a limit on number of birds released, or place time-limits on a consent, where this is necessary to avoid adverse effects on a site. Where it cannot be ascertained that adverse effects on a site's designated features would be avoided, Natural England can refuse to give its consent to the proposal.

15. Thirdly, where instances of damage caused by unauthorised operations are found, Natural England will continue to take appropriate steps to prevent further damage occurring and to achieve restoration of harm that has occurred. This will be done on a case by case basis. Depending on the circumstances of the case, this could include the complete cessation of release within and around the site (if regulatory tools are required, by using its powers under the Wildlife and Countryside Act 1981 as amended, the Regulatory Enforcement and Sanctions Act 2008 or the Environmental Damage Regulations 2015 as amended).
16. Finally, Natural England is proposing to include 12 sites within its ongoing monitoring programme of condition assessments. This includes 5 European protected sites where rearing and releasing of gamebirds has previously been identified as a known threat to the site's condition. These are the 5 sites discussed in my first witness statement. In addition an updated condition assessment will be carried out in relation to those parts of 7 European protected sites which coincide with an APHA registered on-site release location. These sites have not, to date, been considered unfavourable or under threat due to gamebird release. Natural England has decided to re-assess them because the APHA data shows that they are sites where gamebird release is taking place. Natural England, understandably, is unable to say what the outcome of this monitoring will be or whether it will be possible for action to be taken prior to releases occurring during 2021. However, it has confirmed that where monitoring reveals any significant cases of damage or deterioration, these would be priorities for immediate action to prevent further harm as highlighted in paragraph 15.
17. Natural England has set out the steps which are necessary to fill the evidence gaps identified in the Madden and Sage report but has explained that some steps are beyond its statutory remit and others require further funding [EB3/5-6].

Natural England's views on the implications of gamebird release in 2021

18. As set out above Natural England has advised that releases of red-legged partridge and pheasant within European protected sites will be subject to the SSSI consenting regime. Consents will only be granted for European protected sites where Natural England ascertains there will not be an adverse effect on site integrity.
19. Natural England has advised that, releases of birds taking place within 500m of a European Site and at densities greater than 1000 birds/per hectare, and where the 'Guidelines for sustainable gamebird releasing' are not being followed, pose the greatest risk of causing deterioration of the sensitive features of adjacent sites. Natural England has also advised that, generally speaking, any direct impacts from gamebird release (i.e. physical damage to habitats from birds and loss/disturbance to individual animals) during a single season is unlikely, on its own, to be considered to be sufficiently significant to result in a

permanent long term negative impact on the SSSI or European protected site features. However, this cannot be ruled out, particularly where damage or disturbance from gamebirds is already an issue. Where Natural England has concerns that continuation of gamebird activity would result in significant harm, action has been taken or is in train to address the activity. This applies to both activity within European protected sites and adjacent to site boundaries.

20. Natural England has advised that whether releases outside of European protected sites will result in deterioration or significant disturbance will depend on a number of factors such as the scale and nature of the release and the nature and location of the release site. Natural England has explained that action has been taken or is in train where there is concern as to significant harm including European protected sites where release takes place “inside and adjacent to site boundaries”. The problem is that Natural England cannot rule out the possibility that there are cases where gamebird release is having, or has had, an adverse impact on a European protected site of which Natural England is not aware.
21. As also noted above, in the course of monitoring the 12 sites included in its monitoring programme, Natural England has confirmed that where monitoring reveals significant cases of damage or deterioration, these would be priorities for immediate action to prevent further harm.

Impact of regulatory action on the shooting industry

22. Defra officials, including economists, have considered the evidence in the witness statements in these proceedings about the economic contribution of the shooting industry and also the likely impacts on industry of introducing a licensing system. A note of our conclusions is exhibited in a paper at [EB3/20-22]. By way of context, anecdotally we have heard that shoots have been significantly disrupted this year as a result of Covid-19 with estimates of up to 50% fewer birds being released. Given the industry’s cycle of ordering birds early in the year and beginning the rearing process from February onwards it is likely that there will be continued disruption next year due to Covid-19. The actual size of the industry is disputed and pheasant and red legged partridge shooting is only a proportion of this. Based on what we know from the APHA poultry register we estimate that up to 25% of gamekeepers could be impacted by a licensing regime covering all European protected sites and a 500m buffer around them. The precise impacts will depend on the situation of individual shoots including the extent to which they already limit densities of releases, where they site release pens and feeding stations and how much scope they have to change the density of birds released and the siting of pens and feeding stations. Depending on the type of licence concerned, the direct impacts would include the cost of applying for an individual licence; any repositioning of infrastructure;

and loss of earnings as a result of reduced numbers of birds. Additional issues covered in the paper include the resource implications for the licensing body of putting the system in place. The paper makes clear that the biggest impact to industry would be through disruption during planning stages for next season.

23. In the longer term, the further evidence gathering measures - including monitoring and evaluation of sites, improvements to recording on the APHA poultry register and the review of consents - will help identify which sites remain at risk and therefore assist in shaping the longer term regulatory approach. The long-term regulatory position will, in addition, be informed by a more in-depth study on the size of the industry (contribution to economy, jobs and other socio-economic benefits) to commence in parallel with recommended measures below. This work will not be complete before the 2021 releases due to dependencies on further evidence gathering on the sites.

The Secretary of State's response to the Gamebird review

24. The Secretary of State has decided to put in place an interim licensing regime for 2021 releases of common pheasant and red legged partridge within European protected sites and within a 500m buffer zone around the sites. This will be accompanied by additional measures, aimed at improving the evidence base about the impact of release of these species on individual European protected sites. These measures are: (1) improving the Animal Plant and Health Agency (APHA) poultry register which includes game birds; (2) Natural England prioritising the review of gamebird related consents; and (3) measures to enhance monitoring of protected sites by Natural England.
25. The Secretary of State has taken the decision on the basis of (a) the gamebird review and (b) Natural England's advice that it does not currently have evidence about individual European protected sites that would allow it to say with certainty that gamebird release on or around European protected sites which are not currently the subject of Natural England investigation would not result in significant disturbance/deterioration of any site (i.e. that there may be sites where gamebird release might have such an effect but of which Natural England is not yet aware). The interim licensing regime will be revisited once further evidence has been gathered to enable a site-specific appraisal of the impacts of gamebird release.
26. The interim licensing regime needs to be in place ahead of the 2021 releases, and ideally the key elements of the regime communicated before birds are ordered for the 2021 season. The Secretary of State has therefore decided to act now to introduce an interim licensing regime, notwithstanding the fact that he will also be gathering further evidence on the impacts of the licensing regime on the industry and the impact of release on European protected sites. For this reason, the Secretary of State wants to ensure that the interim regime is proportionate and that key aspects of how it will work are set out ahead of the key planning stages for shoots to minimise disruption on them. To achieve that aim

we will engage early and consult with industry. Ahead of the 2021 releases we will work with industry to understand the extent to which industry best practice guidelines are followed and to determine what approach could be taken through a licensing regime to draw on this best practice to help mitigate any impacts on the industry.

27. Wild Justice proposed the use of Special Nature Conservation Orders (SNCOs) (an existing regulatory power) to prohibit gamebird releases within a 5km buffer zone of European protected sites. Such a measure is in the Secretary of State's view not supported by the findings of the Madden and Sage Report. Based on Natural England's advice, the Secretary of State has concluded that adopting a precautionary approach, a protective buffer zone of 500m is appropriate. Furthermore, the Secretary of State does not consider that SNCOs will be an effective mechanism for addressing the impacts of 2021 releases across the board. SNCOs are enforced as a last resort, designed to manage activities that fall outside a consenting regime (e.g. recreational activity). They require complex and lengthy processes, involving the gathering of evidence about damage or potential damage to the site. Not only is it not necessary to issue SNCOs in respect of all sites where release of gamebirds may lead to deterioration or significant disturbance in advance of 2021 releases, it is simply not feasible.

Section 14 Wildlife and Countryside Act 1981 - Licensing Regime Proposal

28. Section 14 WCA 1981 prevents the release into the wild of certain plants and animals which may cause ecological, environmental, or socio-economic harm. Under this section, the release of any species (non-native and other species) that are listed on Schedule 9 Part 1 of the Act is an offence, except under a Section 16 licence. Adding the red-legged partridge and common pheasant to Schedule 9, which will require a statutory instrument subject to the negative resolution procedure, would mean a licence would be required to release these species. However, unlike other species listed, Defra intends for there to be a geographic limitation to the prohibition on releases of these two species, focused on European protected sites and a buffer zone around these sites. The protected site would be subject to the existing SSSI consenting regime as well as the new licensing regime itself.
29. Laying secondary legislation and introducing a new licensing regime will be challenging to deliver but we believe it will be just possible in time for the release of gamebirds in June and July for the 2021 season. We estimate that up to 25% of keepers could be impacted by a licensing regime that covers all European protected sites and a precautionary 500m buffer zone. We will engage and consult with industry early in order to minimise disruption to planning for next season's releases. In particular we intend to gather information on the extent to which industry follows best practice guidelines around densities of release and location of infrastructure, allowing us to gain a better understanding of how impacts might be mitigated. This will help to inform decisions on

the exact form of the licensing regime. There are various forms of licensing, specifically general, class and individual. Subject to further consideration, the preferred option here is likely to be a general licence. General licences do not require an application to be made and there is no fee. General licences set out conditions that must be complied with in order to rely on the licence. The licence to be introduced in respect of pheasant and red legged partridge is likely to have conditions relating to the number of birds, density of release and location of key infrastructure. This is because the evidence is that effects are significantly reduced where birds are released in smaller numbers and at lower densities. However, the precise thresholds for any conditions are subject to further consideration and consultation. The intention is that where shoots cannot meet the conditions of the general licence, they will have the option to apply to Natural England for an individual, bespoke licence, a process which enables the impacts on the specific sites in question to be considered.

30. The proposed approach to licensing takes a proportionate approach to the risk, dealing with the key threats identified by Madden and Sage, - notably overall numbers, density and pen siting – as well as having regard to the impact of an interim licensing regime on the industry. The details of the regime will be finalised following public consultation.

Improvements to the APHA Poultry register

31. The review highlights low compliance with the legal requirement for registration although the main gamekeeping/shooting organisations have previously endorsed and provided advice to members on this issue. What is clear is that the register currently does not represent the entire gamebird industry. Accurate information on the register can enhance monitoring of European protected sites by highlighting gamebird release densities and their locations and reduce the biosecurity (disease) risk for the UK (its primary purpose). This will enable proactive use of management mechanisms around identified locations. The following actions are proposed to improve compliance with the APHA Poultry Register:

- a. working with industry organisations to improve compliance by conducting an annual comparison of data from the National Game Bag Census and the APHA Register;
- b. working with APHA to improve the recording of data so that the intended purpose for the gamebirds is made clear.

If discrepancies in figures do not improve within 2 years, we would reserve the right to introduce further measures (subject to consultation). This could include increased monitoring and targeted enforcement of the APHA Register by local authorities.

Review and Improvements to the existing Consenting Regime for SSSIs

32. Natural England is in the process of reviewing historic consents for European protected sites. The ongoing review project, running from April 2020 to March 2022, will prioritise gamebird release consents for the protected sites with a view to affirm, modify or revoke existing consents.

Improved Monitoring of Sites

33. The Madden and Sage report highlights that the negative effects supported by the strongest evidence relate to eutrophication (nutrient enrichment of water and soil) and depletion of vegetation in and around release pens and feeding stations. For most habitats the indicators signifying eutrophication are included in the 'favourable condition table' (the table contains the conservation objectives that have been developed for each interest feature for each SSSI designation). Natural England would need to modify their recording of data in order to categorise where the condition is considered attributable to gamebirds. Eutrophication caused by gamebirds is localised and thus may not be identified through the random sample approach currently used to underpin the assessments of the condition of designated sites, especially larger sites. Resources will be provided to ensure additional sample stratification and development of a counterfactual validation network (comparison with areas where gamebirds are not present) to enhance condition monitoring where gamebird activity is known or suspected.

The end of the EU implementation period

34. As the end of the transition period approaches, and in the context of considering its legislative programme, Defra will be considering retained EU law and EU derived domestic legislation, including in the area relevant to this claim, and how best to align it with domestic priorities and processes, whilst at the same time maintaining high standards of protection for designated sites.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth

[REDACTED]

Dated: 13 October 2020