

The Rt Hon Thérèse Coffey MP

Secretary of State for Environment, Food and Rural Affairs
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Your Ref:

Our Ref:

TGY/TWS/00191552/24

21 November 2022

Dear Secretary of State,

Re: Catching-up of Pheasants and Red-legged Partridges

1. We write on behalf of our client Wild Justice to raise concerns regarding the catching-up of Pheasants and Red-legged Partridges released from captivity for the purpose of shooting in circumstances where there is an ongoing Avian Influenza crisis in the United Kingdom.

Catching-up

2. Pheasants and Red-legged Partridges are game birds, within the meaning of section 2 of the Game Act 1831 (“the Game Act”) and section 27 of the Wildlife & Countryside Act 1981 (“the WCA”). The close season for Pheasants and Red-legged Partridges is 2 February – 31 August (inclusive)¹.

¹ Section 2(4) read with Part 1 of Schedule 2 of the WCA

3. By section 1(1) of the WCA, the killing or taking of Pheasants and Red-legged Partridges is prohibited except in limited circumstances². Those limited circumstances include that the taking of Pheasants and Red-legged Partridges is permitted outside their close seasons by section 2(1) of the WCA.
4. Section 5 of the WCA prohibits certain methods of snaring, trapping, catching and capturing of wild birds. Section 5(5) sets out that it is lawful to take any game bird by use of a cage-trap or net if the taking of the bird is solely for the purpose of breeding (though it is not permitted to use any net for taking birds in flight or for taking birds on the ground if the net is projected or propelled otherwise than by hand).
5. Accordingly, our understanding is that it is lawful to “catch-up” Pheasants and Red-legged Partridges (i) outside of their respective close seasons only (i.e., as set out above, in both cases before 2 February in any year after the open shooting season commences) and (ii) through the use of a cage-trap or net only where the catching-up of the bird is for the purpose of breeding.

Avian Influenza

6. As a measure to bring the current epidemic Avian Influenza in the United Kingdom under control, on 2 November 2022 the Secretary of State declared an Avian Influenza Prevention Zone, including housing measures, in England, with the effect that all bird keepers are required to keep their captive birds (which includes game birds held in captivity) indoors and to follow certain biosecurity measures.³ Schedule 1 of the declaration sets out 13 detailed minimum

² This provision applies to all “wild birds”. Section 1(6) clarifies that a Common Pheasant or Red-legged Partridge is a “wild bird” when it is “no longer in captivity and is not in a place where it was reared”.

³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1115125/Avian_Influenza_Prevention_Zone_Declaration_mandatory_biosecurity_housing_measures_-_England_from_7_November_2022.pdf We note that a similar declaration has also been made in Wales: <https://gov.wales/all-wales-avian-influenza-prevention-zone>

biosecurity requirements that must be followed by any keeper of captive birds (including game birds). In recognition of the risk of transmission from wild game birds, Schedule 2 of the declaration provides that, in the case of premises with over 500 poultry or other captive birds “wild game birds should not be fed within 500m of the restricted access part of the premises where this area is under the control of the keeper”. Schedule 3 sets out requirements for housing of captive birds, which include provisions to ensure that they are isolated from wild birds due to the risk of transmission of Avian Influenza.

7. The Government’s current assessment is that the risk in respect of Avian Influenza in the wild bird population across Great Britain is “very high” (“the event occurs almost certainly), while the risk to captive populations “remains at medium”.⁴

8. It is our client’s understanding, however, that to date no steps have been taken to ensure that the risk of transmission of Avian Influenza within, or from, the population of any wild game birds caught-up before 2 February 2022 is excluded, or at least minimised.

Request

We should be grateful if you would please:

- (i) Confirm whether you agree with the summary on the lawfulness on the catching-up of Pheasants and Red-legged Partridges set out above, and if you disagree with any aspects of that summary, explain what you understand to be the correct position; and

⁴ <https://www.gov.uk/government/news/bird-flu-latest-situation-avian-influenza-prevention-zone-declared-across-great-britain>

- (ii) Explain what steps, if any, the Secretary of State (and/or any other agency, such as APHA) intends to take to ensure preventative and biosecurity measures are in place as soon as possible to exclude or minimise the risk of transmission Avian Influenza within, or from, the population of any wild game birds caught-up before 2 February 2022, including whether the Secretary of State proposes to prohibit catching-up in this open season; and
- (iii) Provide copies of all documents relevant to the Secretary of State's consideration of whether to take such steps as indicated in (ii) above, including any risk assessments relating to Avian Influenza in wild game birds (whether produced by Defra or any other agency such as APHA).

Given that the catching-up of Pheasants and Red-legged Partridges takes place predominantly in late December and January each year, we would be grateful for a prompt response, and in any event no later than 28 November 2022.

Yours sincerely,



Leigh Day