

## **SUPPLEMENTARY NOTE 1 TO THE POLICY STATEMENT – LICENSING INTRODUCTION OF ANIMALS AND PLANTS INTO THE WILD (SECTION 14 AND 16(4)(C) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981).**

**Policy approach for determining whether section 14 of the wildlife and countryside act 1981 act is engaged when animals are released into enclosures.**

### **ISSUE**

This paper sets out Defra's policy position in answer to the question of whether Section 14 of the 1981 Act is engaged when animals are released into enclosures.

### **Key points and conclusions:**

- The principal purpose of section 14 is to prevent the occurrence of harmful impacts on natural habitats and their associated wild native flora and fauna arising from the introduction of non-native or schedule 9 listed species;
- The fact that an area of natural habitat has been enclosed should not automatically preclude the application of section 14;
- A release into an enclosure does not automatically disapply section 14's controls. The question of whether it applies or not in any one case is one requiring careful consideration and judgment concerning the nature of the enclosure and whether it contains an area that could be considered to be "the wild";
- "...the wild..." in section 14 describes the nature of the environment or area into which the release or escape occurs and "the wild" is taken to mean the diverse range of 'natural' habitats and their associated wild native flora and fauna in the rural and urban environments in general. This can also be broadly described as the general countryside/open environment;
- It is proposed that the question of whether Section 14 of the 1981 Act is engaged when animals are released into enclosures be determined using the test set out in Annex A.

### **Discussion:**

1. Bearing in mind obligations under the European Birds and Habitats Directives (see Annex B concerning the relevant legislation), a key purpose of the regulation of releases of animals into the wild can be summarised as being to avoid adverse impacts on natural habitats and native flora and fauna.

2. For section 14 to be engaged at all, there must be a “release or escape into the wild”. This phrase is not defined in the legislation but is concerned with identifying the nature of the environment into which the release or escape occurs. We take “the wild” to mean the diverse range of ‘natural’ habitats and their associated wild native flora and fauna in both the rural and urban environments in general. In other words, the general countryside/open environment including areas where the influence of man is more apparent, such as in agricultural and forestry landscapes, because of the habitats they provide for wildlife, and also urban wildlife habitats. In general we consider it to exclude secure enclosures containing artificial environments.
3. With regard to protecting our native biodiversity we consider that it is not tenable to simply conclude that once an animal is within any form of enclosure, it can no longer be in the “wild” and cannot adversely impact on our biodiversity. Enclosures might vary from small pens to very much larger areas of land. In this regard therefore, there is no simple rule given the wide variety of circumstances under which releases or escapes might occur within some form of “enclosure”. We therefore consider that it will be for Natural England to form a judgment in each case using the test set out in Annex A.
4. Areas that do not meet the test proposed in the Annex would not generally be considered to be “the wild”. However there may be exceptions. Releases into areas (or in circumstances) where there is no adequate or reasonable prevention of escape into the general countryside for example will require careful consideration. This is because the risks posed may mean that such a release is judged to be effectively a release into the wild.
5. Even a release into a garden or pond or some other similar private plot of land may therefore be considered a release into the wild if there is no reasonable impediment to the animal escaping and making its way into the wider open environment. The expectation of responsible behaviour in this regard is reflected in the statutory defence to section 14:

Section 14(3):

Subject to subsection (4), [concerning allegations that another person was responsible for the offence], it shall be a defence to a charge of committing an offence under subsection (1) or (2) to prove that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.

**Enclosures:**

6. There will be several means of achieving containment in order to create an “enclosure” and whilst it will be important that any enclosure for non-native species is secure as regards their containment, of equal

relevance to determining whether a release into the enclosure would be a release “into the wild” will be consideration of whether the enclosed land comprises natural habitats and associated native flora and fauna living in a wild state that may be impacted in the manner that section 14 is meant to prevent.

7. Animals in secure enclosures comprising artificial environments that are isolated from the general countryside, and from which escape into the general countryside is highly unlikely, (eg artificial animal enclosures in zoos), would not be considered to be “in the wild”. There would also be little scope for any impacts that would prejudice natural habitats or wild native flora or fauna in the general countryside. Section 14 would therefore not apply to releases in these circumstances.
8. However, substantial enclosures in the general countryside are more likely to be of concern given the greater scope for adverse impacts on natural habitats and their associated flora or fauna. It would create rather perverse outcomes if significant areas of natural habitats containing wild native flora or fauna could be put at risk of being adversely affected by introduced species with regulation precluded merely because of the existence of perimeter fencing or some other boundary feature ultimately confining the introduced species.
9. In these circumstances, and again bearing in mind the legal obligations under the European Directives, and the purpose of section 14; a considered judgment will therefore be required by Natural England as the licensing authority as to whether the enclosure encompasses an area that could be considered to be “the wild”, and whether the size and nature of the enclosure creates scope for appreciable prejudice to natural habitats, flora and fauna. If it does, application for a section 16 licence is like to then be required for any releases of non-native species into the enclosure.

**Absolute or conditional release into the wild:**

10. Whilst the legislation is not explicit in this regard, we consider that where Natural England is satisfied that the release would constitute a release into the wild, it is able to licence the release of an animal or animals into a specific ‘part’ of the wild (e.g. the enclosure) and to no other part by means of the power to impose conditions on a licence. In such cases, whilst a release into the specific enclosure (i.e. a ‘restricted release’) would be lawful (because licensed) any further releases or escape would constitute an offence under section 14.
11. Indeed arguing to the contrary would severely restrict scope for trial re-introductions for example, and could mean that a very restrictive stance would be necessary in relation to issuing any licences at all.

12. A release into the wild might be a simple single act so that the animal is free of any further human control, a release into controlled conditions that will continue to apply or it could be a graduated process during which human influence will diminish until animals are entirely self-sufficient, eg re-introductions. Animal welfare considerations may therefore apply up to a point.

**Wildlife Species Conservation Division, Defra: August 2008.**

## **Annex A:**

### **Test and evidential criteria for determining whether the release of an animal into an enclosure would or would not be “into the wild”.**

#### **Principal test:**

If an animal of a species not ordinarily resident in GB is to be introduced into an enclosure, two crucial questions arise, namely: (i) is the release into an area that constitutes “the wild” and (ii), if so, is there potential scope for prejudice to natural habitats and wild native flora and fauna.

An animal released into the rural or urban environments and subject to restrictions on its freedom, is considered to be “in the wild” if (a) or (b) below is satisfied:

- a) it is living as if it was a wild creature in a suitable natural habitat; or,
- b) it is capable of having an impact on natural habitats and wild native flora or fauna.

For these purposes, “natural habitats” is taken to include semi-natural and re-generated/re-habilitated habitats.

In determining whether an animal falls within either of the categories above, the following criteria should be considered:

<b>a) it is living as if it was a wild creature:</b>	
1.	Freedom of movement: <ul style="list-style-type: none"><li>• does it have sufficient range to pursue its natural life-cycle and is it capable of survival without dependency on human intervention, (notwithstanding that human intervention or influence may be proffered) [the additional factors below would provide additional assistance in determining the answer to this question];</li></ul>
2.	Human control or influence: <ul style="list-style-type: none"><li>• is the animal clearly under the “ownership” of someone or is it abandoned/free to fend for itself;</li><li>• if it is “owned”, is it living under conditions such that it can readily be brought under direct human control. For example, could a person relatively simply take possession of the animal or would seizing the animal require the use of techniques similar to those that would be necessary to seize a free-living animal from the wild, eg trapping, tranquilising by dart etc;</li><li>• is veterinary care or other welfare attention administered. [If such attention is necessary, the animal is less likely to be in a natural environment suitable for its survival, however, note that a species being re-introduced may involve provision of care for animals during a naturalisation period in an area of</li></ul>

	<p>suitable natural habitat];</p> <ul style="list-style-type: none"> <li>• is the animal protected from or subject to predation;</li> </ul>
3.	<p>Nutrition:</p> <ul style="list-style-type: none"> <li>• can the animal sustain itself within its current habitat or is supplementary feeding <u>necessary</u> rather than merely desirable or provided in any case. [If supplementary feeding is not strictly necessary for the animal to have a reasonable chance of survival, it is more likely to be living in a wild state and to be in suitable natural habitat for its purposes].</li> </ul>

**b) it is capable of having an impact on natural habitats and wild native flora or fauna:**

1.	<p>Nature and scale of enclosed area:</p> <ul style="list-style-type: none"> <li>• does the enclosure include an area of natural habitats with associated native flora and fauna on which the animal could have an impact;</li> </ul>
2.	<p>Wider interaction/potential impacts:</p> <ul style="list-style-type: none"> <li>• are any impacts that might arise from the presence of the animal adequately isolated from the general countryside or is it capable of impacting on or interacting with natural habitats and/or wild native species. [For example, while the enclosure may contain the animal, are other wild animals capable of entering and leaving; or bearing in mind the statutory defence (paragraph 5), is the risk of escape into the countryside adequately addressed].</li> </ul>

None of these criteria is likely to be determinative on its own in any particular case. A considered opinion will have to be formed, taking into account the sum of the assessments, as to whether section 14 applies to the individual case and if so, whether a licence with or without conditions should be granted or licence refused.

## **Annex B:**

### **The legislation:**

1. European Member States are required to regulate the release of non-native species into the wild under the following provisions of the European Birds and Habitats Directives:

### **BIRDS DIRECTIVE OBLIGATION:**

2. Article 11<sup>1</sup> of the Birds Directive (79/409/EEC) requires Member States to ensure that introduction of non-native birds species into the wild does not prejudice the local flora and fauna.

### **HABITATS DIRECTIVE OBLIGATION:**

3. Article 22(b)<sup>2</sup> of the Habitats Directive (92/43/EEC) requires Member States to ensure that deliberate introduction of non-native species into the wild is regulated, and if necessary prohibited, so as not to prejudice natural habitats or wild native flora and fauna.
4. Incidentally, Article 22(a)<sup>3</sup> of the Directive also requires Member States to study the desirability of reintroducing specified species that are native to their territory where this might contribute to their conservation status.
5. The Article 11 and 22(b) regulatory obligations are met through the provisions of sections 14 and 16 of the Wildlife and Countryside Act 1981.

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<sup>1</sup> Member States shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member State does not prejudice the local flora and fauna. ....

<sup>2</sup> ...Member States shall: (b) ensure that the deliberate introduction into the wild of any species which is not native to their territory is regulated so as not to prejudice natural habitats within their natural range or the wild native fauna and flora and, if they consider it necessary, prohibit such introduction.

<sup>3</sup> ...Member States shall: (a) study the desirability of re-introducing species in Annex IV, that are native to their territory where this might contribute to their conservation, provided that an investigation, also taking into account experience in other Member States or elsewhere, has established that such re-introduction contributes effectively to re-establishing these species at a favourable conservation status and that it takes place only after proper consultation of the public concerned; ...

## **WILDLIFE AND COUNTRYSIDE ACT 1981:**

6. Section 14 provides the (prohibitive) regulatory control:-

### **14 Introduction of new species etc.**

(1) Subject to the provisions of this Part, if any person releases or allows to escape into the wild any animal which—

(a) is of a kind which is not ordinarily resident in and is not a regular visitor to Great Britain in a wild state; or

(b) is included in Part I of Schedule 9,  
he shall be guilty of an offence.

7. Section 16(4) provides for the exemptions:-

16 (4) The following provisions, namely—

(a) ...;

(b) ...; and

(c) section 14,

do not apply to anything done under and in accordance with the terms of a licence granted by the appropriate authority.