

# Guidance on section 14 of the Wildlife and Countryside Act 1981



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Welsh Assembly Government



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## Guidance on Section 14 of the Wildlife and Countryside Act, 1981.

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## Background

1. The purpose of section 14 of the Wildlife and Countryside Act 1981 ('the Act') is to prevent the release into the wild of certain plants and animals which may cause ecological, environmental, or socio-economic harm.
2. To achieve this section 14 prohibits the introduction into the wild of any animal of a kind which is not ordinarily resident in, and is not a regular visitor to, Great Britain in a wild state, or any species of animal or plant listed in Schedule 9 to the Act. In the main, Schedule 9 lists non-native species that are already established in the wild, but which continue to pose a conservation threat to native biodiversity and habitats, such that further releases should be regulated. The Schedule also includes some native species (for example, the barn owl) in order to provide a level of control to ensure that releases, in particular re-introduction programs, are carried out in an appropriate manner and biodiversity is properly safeguarded.
3. It has become apparent from the responses to the 2007/08 consultation on amendments to Schedule 9 to the Act that there is a need for better understanding of the key elements that make up the offences in section 14. This document represents the views of Defra and the Welsh Assembly Government on the meaning of those elements; it does not, therefore, represent a definitive interpretation of the law. Nor is it necessarily exhaustive as regards each issue but, nevertheless, it is intended as guidance for enforcement agencies, licensing authorities and other interested parties in England and Wales.

## In the wild

4. A key premise for the prohibitions within section 14 is that it is only introductions into 'the wild' that are regulated. In principle, we would define 'the wild' as being:

"The diverse range of natural and semi-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 open environment."
5. However, whether an introduction (release or escape) is into 'the wild' may well be dependent on the ecology of the species in question and the potentially affected environment: as such, what constitutes the wild must be judged on a case-by-case basis.
6. For the offence to be committed, a release or allowing to escape into the wild or planting or causing to grow in the wild must occur. Therefore, to understand the application of section 14, one must also understand the offence in its entirety. These issues are considered in detail below.

## Animals

7. With respect to the release of animals, section 14(1) states:

(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.

## Animal

8. 'Animal' refers to species belonging to the kingdom *Animalia* including, for example, mammals, reptiles, amphibians, birds, fish, insects and other invertebrates.

### Release into the wild

9. We consider 'release into the wild' to be the active letting go of an animal, from a condition of captivity, such that it has the freedom to go where it will. In essence, we consider that the deliberate introduction of an animal into an area considered to be 'the wild' would be an act of release.

10. As outlined in previous Defra/NE Government guidance however, even a release into an enclosure may constitute a breach of section 14 in certain circumstances. The question of whether the offence applies or not in any case is one requiring careful consideration and judgement concerning the nature of the enclosure into which the release is made and whether it contains an area that could be considered to be 'the wild'. For guidance on circumstances in which a release into an enclosure might be considered a release into the wild, see Annex A.

## Exceptions

11. Falconry: In principle, we would not regard the long-standing and traditional practice of falconry as amounting to the commission of the offence. Such birds are clearly expected to return and competently done, there is no intention to allow the birds their freedom to establish in the wild. The legislation provides a defence if the accused can prove that all reasonable steps have been taken, and all due diligence has been exercised, in order to avoid committing the offence. Thus, the competence of the handler and the degree to which the bird has been properly trained will be relevant considerations. The release of surplus or unwanted birds, with no intention of retrieval, would constitute the offence.

12. Emergency in situ assistance: We would not consider it an offence if an individual took in situ measures (for example, in the wild) to free an animal that has become accidentally and unintentionally restrained (for example, entangled in wire netting). However, were such an animal to be taken into captivity, for example into a vehicle or to a place for rehabilitation, then its subsequent release would only be lawful under the terms of a licence.

### **Allowing to escape into the wild**

13. We would consider an animal as being 'allowed to escape into the wild' where adequate steps to ensure its continued captivity/confinement were not taken. This would include negligent or reckless behaviour resulting in the conditions of confinement failing to prevent an animal from freeing itself, for example, failing to secure the entrance of a pen.

14. Release into a garden or pond or other similar private plot of land may be considered 'allowing to escape into the wild' if there is no reasonable impediment to the animal's subsequently finding its way into the wider (unconfined) open environment.

### **Of a kind**

15. It is important to note that the legislation does not use specific taxonomic terms such as 'species' which would undoubtedly fetter the legislation's ability to serve its protective purpose. The words 'of a kind' offer an important degree of latitude bearing in mind the huge variety of characteristics and traits in the animal world, even amongst similar species or the same broad taxonomic groups, or between international populations. We consider that the words "of a kind" therefore require that the animal prohibited from being introduced should be distinct in some significant way from animals already ordinarily resident in (or which are regular visitors to) Britain, but need not necessarily be of a different species or sub-species.

### **Ordinarily resident in a wild state**

16. It is our view that for a species to be considered 'ordinarily resident', the population should have been present in the wild for a significant number of generations and should be considered to be viable in the long term.

### **Regular visitor in a wild state**

17. A 'regular visitor' is considered to be a species which occurs within GB with reasonable frequency or predictability, for example seasonal migratory species. This does not include species which occur only as vagrants or strays.

### **In a wild state**

18. A species would be considered to be 'in a wild state' where the population

lives and fends for itself in the wild.

## **Plants**

19. With respect to plants section 14(2) states:

(2) Subject to the provisions of this Part, if any person plants or otherwise causes to grow in the wild any plant which is included in Part II of Schedule 9, he shall be guilty of an offence.

## **Plant**

20. 'Plant' refers to species in the kingdom *Plantae*. However, as is the case with respect to Schedule 8 to the Act (protected species), Schedule 9 may also include fungi and algae species.

## **Planting in the wild**

21. The legislation aims to prevent the planting of Schedule 9 listed plant material in the wild where it then poses a threat to our native biodiversity and ecosystems. Our views on the meaning of 'the wild' have been discussed above. We consider that planting in the wild would constitute intentionally placing viable plant material in or on suitable medium so that it can grow. This can include, for example, whole plants, seeds, rhizomes, bulbs, corms and cuttings.

22. Although it is impractical to attempt to describe all possible circumstances, we would not consider planting on managed land, where it is expected that the spread of the plant will be kept under control, and where the plant is not having an appreciable adverse impact on habitats and their native biodiversity, as planting in the wild. It would follow that planting in private gardens would not be considered planting in the wild and, in general, this is also likely to apply to larger scale gardens, estates and amenity planting. Conversely, where the plant is inadequately managed or contained and is likely to have an adverse effect on habitats and their native biodiversity, it is more likely that the offence will have been committed. Therefore, whether or not planting is an offence should be judged on a case-by-case basis, taking into account the potential impacts on habitats and native flora and fauna of planting the species in question, and the existence or extent of management practices employed. Again, it is worth noting that the legislation provides a defence if the accused can prove that all reasonable steps have been taken, and all due diligence has been exercised, in order to avoid committing the offence.

## Causing to grow in the wild

23. Section 14 does not impose an explicit obligation to manage Schedule 9 species not introduced onto your land by your own actions. However, the law is not entirely clear as to the full scope of the phrase “causes to grow”. See for example case law on cases involving the offence in section 85(1) of the Water Resources Act 1991 (offence of ‘causing’ or ‘knowingly permitting’ polluting matter to enter controlled waters). Based on certain indications in that case law, it may be possible to argue that a landowner who knowingly allows a Schedule 9 species that he did not introduce, to accumulate on his land and create a problem as it spreads to other areas of the wild, and who makes a conscious decision to do nothing about it, is ‘causing it to grow’. However, this interpretation has not been tested, and whether the offence could apply in these circumstances would have to be established in the courts. The Department is therefore unable to offer a firm view on circumstances of that nature. The requirements of the defence in section 14(3) of the Act should be borne in mind.
24. We would expect that where plants listed in Schedule 9 are grown in private gardens, larger scale gardens, estates and amenity areas, reasonable measures will be taken to confine them to the cultivated area so as to prevent their spreading to the wider environment and beyond the landowner’s control. It is our view that any failure to do so, which in turn results in the plant spreading to the wild, could be considered as ‘causing to grow in the wild’ and as such would constitute an offence. If the person responsible for the presence of a species in this way does not have sufficient ability or the resources to manage it so as to prevent its spreading to the wild, thereby exposing him or herself to the risk of committing an offence, he/she should seriously consider whether planting a Schedule 9 species is appropriate.
25. Negligent or reckless behaviour, such as inappropriate disposal of garden waste, where this results in a Schedule 9 species becoming established in the wild would constitute an offence.

## **Annex A: Animals released into enclosures**

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 B

### **Discussion:**

1. Bearing in mind obligations under the European Birds and Habitats Directives (see Annex C 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 B.
4. Areas that do not meet the test proposed in the Annex B 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 (for example, 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 (for example, 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.

12A. 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, for example, re-introductions. Animal welfare considerations may therefore apply up to a point.

Wildlife Species Conservation Division, Defra: August 2008.

## Annex B: Enclosure test

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:

- a) it is living as if it was a wild creature:
  1. Freedom of movement: 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.
  2. Human control or influence:
    - is the animal clearly under the “ownership” of someone or is it abandoned/free to fend for itself
    - 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 like those that would be necessary to seize a free-living animal from the wild, for example, trapping, tranquilising by dart
    - 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 suitable natural habitat is the animal protected from or subject to predation

3. Nutrition: can the animal sustain itself within its current habitat or is supplementary feeding necessary 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).

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

1. Nature and scale of enclosed area: does the enclosure include an area of natural habitats with associated native flora and fauna on which the animal could have an impact.
2. Wider interaction/potential impacts: 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.

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 C: The legislation

### 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:

### **Introduction of new species**

(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.