

**CODE OF PRACTICE ON
NON-NATIVE AND INVASIVE NON-NATIVE SPECIES**

**DRAFT PROVIDED TO RURAL AFFAIRS &
ENVIRONMENT COMMITTEE – 29 OCTOBER 2010**

**This draft has been produced to assist the Rural
Affairs and Environment Committee in considering
the Wildlife and Natural Environment (Scotland) Bill.
The final draft of the Code of Practice will be subject
to full consultation.**

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Preface

(Minister for Environment)

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1. INTRODUCTION

1.1. Our distinctive plants and animals are part of Scotland's character and underpin many of our lives and livelihoods. Increasingly, we value the role that nature plays in supporting our lives. From fungi breaking down organic matter to white-tailed sea eagles supporting a growing wildlife tourism industry, our lives depend on nature and the services it provides.

1.2. These plants and animals, and the habitats within which they live, have developed over thousands of years. Today, they are under pressure from development, changing climate, pollution and poor land management. A further threat comes from the release of non-native animals and plants.

The Code of Practice

1.3. The legislation in Scotland which governs invasive and non-native species has recently been updated and amended. The aim of this Code is to help persons who control or manage plants or animals to understand their legal responsibilities. It is not however a replacement for legal advice where appropriate.

1.4. The Code is relevant to a wide range of people, including farmers, landowners, crofters, managers of amenity land and burial grounds, and gardeners. It is also aimed at businesses, particularly those involved in horticulture, fishing, construction and transport, and public bodies.

1.5. This Code sets out how you can play your part in preventing non-native species from being released into the wild. It describes where plants and animals from other parts of the world can be kept as pets and farm animals or grown as garden plants and crops. The Code also defines what is meant by "in the wild", which is the area beyond our houses, gardens, field and plantation woodlands where these non-native plants and animals should not be allowed to establish and create problems.

1.6. The Code sets out guidance on how you can act responsibly within the law to ensure that non-native species under your ownership, care and management do not cause harm to our environment. The release of any non-native animal, or the planting of any non-native plant in the wild, is an offence. Guidance on how to find out if any plant or animal is a native species, and whether your location lies in part of the native range of that species, can also be found in the Code.

The status of the Code

1.7. [This Code has been approved by Ministers. It has been issued by the Scottish Government under section 14C of the Wildlife and Countryside 1981 Act (the 1981 Act)¹. This Code of Practice comes into effect on **x** and applies in Scotland only.]

1.8. Failure to comply with the Code is not, of itself, an offence. However, whether or not a person complied with this Code could be used in court as evidence by either the prosecution or the defence if a prosecution is taken.

¹ As introduced by the Wildlife and Natural Environment (Scotland) [Act 2011].

Some key terms

1.9. The 1981 Act controls “types” of animals or plants. Some provisions relate to animals and plants outwith their native range, some relate to invasive plants and animals, and some relate to native animals for the purpose of conserving native populations. These terms are explained below. The legal definitions for “native range” and “invasive” are found in sections 14P(2) and 14P(3) of the 1981 Act respectively.

- **Animal.** This term includes mammals, birds, fish, reptiles, amphibians, invertebrates and zooplankton. This includes the semen or ova of an animal.
- **Plant.** This term includes marine plants, higher (vascular) and lower plants (including trees), and macro algae, fungi, and lichen. This includes any propagule of a species encompassed in that definition, including (but not limited to) the bulb, corm, rhizome, seed or spore of a plant².
- **Native range.** This the location in which an animal or plant (or type of animal or plant) is indigenous – where it occurs naturally.
- **Non-native.** Animals and plants that have been moved to a location by human action, whether intentionally or not, are considered to be outwith their native range. The terms “native” and “non-native” are used in this Code to describe plants and animals that are within or outwith their native range. The term is explained more fully in Chapter 2.
- **Translocated native species.** This term applies to species that are native to a part of the British Isles or to parts of Scotland but are not native to the area which they have been moved to by human action. These can be just as damaging as species from another country when they are moved into areas that they are not native to. They are therefore also considered to be non-native species.

1.10. The definitions of “animal” and “plant” in the 1981 Act do not include smaller organisms such as bacteria and viruses. The risks posed by such organisms are generally considered in terms of their ability to cause disease in plants or animals. Separate plant health and animal health legislation is in place to manage disease risks, and therefore they are not addressed by the 1981 Act. There is some overlap in the legislation in relation to invasive non-native invertebrate species, which may also be regarded as plant pests.

² See Sections 14(P)7 and 14(P)8 in the Wildlife & Countryside Act 1981.

2. YOUR RESPONSIBILITIES

2.1. This chapter explains why we need to be concerned about invasive and non-native animals and plants, and describes your responsibilities.

The need to regulate invasive non-native species

2.2. Non-native species are plants and animals, whether from beyond our shore or translocated native species, which have found their way to a new habitat through human activity and global transport. Many non-native species have been introduced deliberately and have been carefully managed. These contribute positively to our lives, for example as livestock, crops, providing timber, garden plants or pets.

2.3. In some cases, non-native species have been deliberately or accidentally introduced to Scotland from locations across the world and have not been well managed. Although many of these have become established in small numbers and do not currently pose a threat, a small number have spread and become invasive. Uncontrolled, these invasive non-native species can:

- damage or displace native species
- disrupt ecosystems
- spread diseases which affect native species
- interfere with our rivers, leading to increased flooding
- cause damage to buildings and infrastructure
- pose human health risks.

2.4. Controlling invasive non-native species once they become widespread is frequently very expensive. The most cost-effective way of dealing with the problems created by non-native species is to prevent these plants and animals from becoming established in the wild. If they have just become established, the need is to rapidly control or remove them before they become a widespread problem.

Managing the threat posed by invasive non-native species

2.5. The Scottish Government's approach to invasive non-native species is guided by the internationally recognised 3-stage hierarchical approach, the key principles of which are:

- Prevention – preventing the release of all non-native species (both known invasive or otherwise) into the wider environment (or outwith its appropriately controlled use) should be given the highest priority as the most effective and least environmentally damaging intervention.
- Rapid response (eradication) – where prevention fails, early eradication or removal from the environment should be the preferred response.
- Control and containment – once a species has become widely established, full-scale eradication is possible or cost effective in only a minority of cases. However, if invasive species are having serious negative impacts then it may be desirable to control or contain the population, or mitigate those impacts.

2.6. This approach is supported by sections [14 to 14 O] of the 1981 Act which places responsibilities on individuals and organisations for how they control or manage invasive and non-native species. The legislation also enables relevant bodies to require the taking of emergency and other control measures for invasive non-native species (a 'species control order'). Other legislation that is not covered by this code may also support the 3-stage hierarchical approach (see Annex A for other relevant legislation).

2.7. Preventing non-native animals and plants becoming established in the wild is critical to a successful policy on invasive non-native species. This is because it is not possible to predict with certainty which species may become invasive and because small populations of non-native plants and animals may be present for many years before 'taking off' and causing problems. For example, Japanese knotweed was in its lag phase for nearly 100 years, as demonstrated by the graph in figure 1 (below).

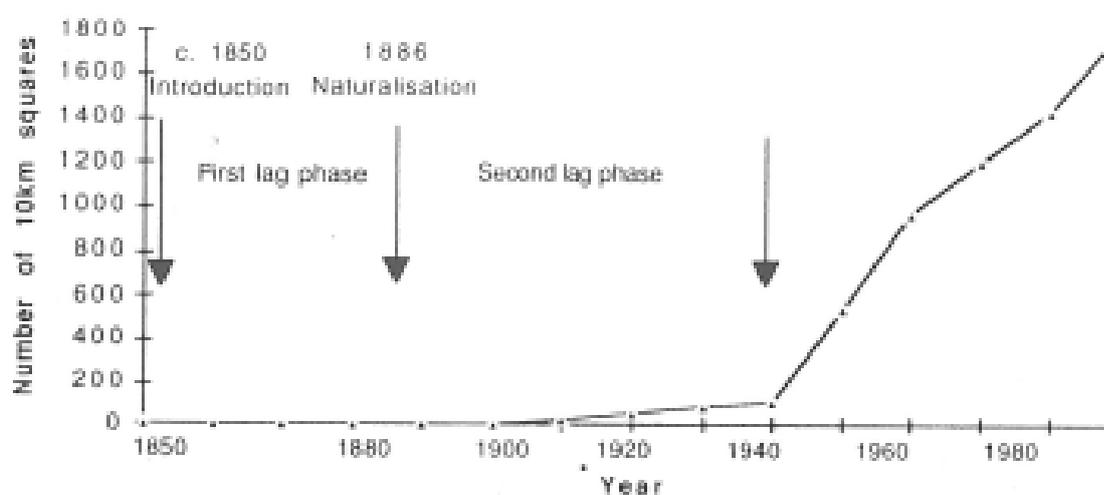


Figure 1: The Lag Phase of Japanese knotweed from, Child, L. and Wade, M. 2000. The Japanese Knotweed Manual. Packard Publishing Limited, Chichester.

2.8. Many non-native plants and animals that are currently established in the wild may still be in their lag phase and have the potential to be an invasive problem in the future.

2.9. Because of the issues outlined above and the practical difficulties and costs associated with controlling invasive species once they are established, preventing establishment is given the highest priority.

2.10. It is better to prevent the introduction into the environment of non-native species, as opposed to waiting to see if they become invasive and then instigating expensive control programmes or having to mitigate their damaging impacts. This is the approach advocated through the [Convention on Biological Diversity](#) and promoted through the [Non-Native Species Framework Strategy for Great Britain](#).

2.11. Climate change is likely to have a significant impact on biodiversity in future years. It may enable more non-native species to establish and some that are currently benign to become invasive.

2.12. It is likely that as the climate changes, the 'climate space' for each species or habitat will move (usually northwards or to higher altitudes in response to warming). In

fact there is already some evidence of animals occurring outside their known established range (such as butterflies and marine molluscs).

2.13. However, these issues are very complex and it is not certain exactly how the climate will change, what its impacts will be on 'climate space' and how species will respond.

2.14. As the climate changes, some plants and animals may not be able to migrate successfully to new climate space and would require active intervention to translocate them to new areas to ensure their survival and the survival of the habitats and ecosystems of which they are a part. Non-native species legislation provides the necessary flexibility to regulate appropriate interventions of this type. If translocation does prove necessary it would be carried out under licence.

The legal position and due diligence

2.15. This Code explains the legal position relating to native, non-native and invasive non-native species. The key legislation is the 1981 Act, as amended by the Wildlife & Natural Environment (Scotland) [Act 2011]. The chapters that follow in this Code explain the main provisions set out in the legislation.

2.16. It is important to note that the release, keeping and sale offences in the 1981 Act are what are called strict liability offences. This means that the prosecution does not need to prove any intention or knowledge or recklessness or negligence. It is enough to show that the act took place.

2.17. It is, however, a specific defence to the offences relating to the release and keeping of non-native species to show that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence. This is designed to recognise efforts made by people to comply with the provisions of the legislation. Whether or not the defence will be successful depends on the circumstances surrounding each case.

2.18. This Code of Practice will explain where appropriate what reasonable steps might be taken, and how due diligence may be exercised, in relation to the release and keeping offences. That is likely to involve assessing the risk of an offence happening, establishing what to do to avoid it happening, and behaving according to best practice to prevent it happening.

Your responsibilities

2.19. The legislation sets out the law, and legal advice can be taken as needed. In practice, though, acting reasonably and responsibly is prudent. This involves:

- **Adopting a precautionary approach.** If you are in any doubt that your intended actions might lead to the release of a non-native species into the wild then you should take the precautionary approach: don't release until you have a clear understanding of the situation.
- **Carrying out risk assessments.** Due diligence is likely to include assessing the risk of an offence happening, establishing what to do to avoid it happening and

behaving according to best practice to prevent it happening. Further advice and information, including identification guides and risk assessments, can be found at the GB Non-Native Species Secretariat website: www.nonnativespecies.org.

- **Seeking advice and following good practice.** You should seek advice from an expert if you are unsure about any issues relating to the release, keeping, sale or notification of non-native and invasive plants and animals. This may be particularly important in establishing what the native range is of a particular plant or animal. A list of suggested contacts is provided in **Annex B**. More information about the 1981 Act and other issues relating to non-native species can be found at: www.scotland.gov.uk/invasivespecies. This Code contains some good practice guidance and this is designed to help you to take reasonable steps.
- **Reporting the presence of invasive non-native species.** The cost of removing or controlling a well-established invasive, non-native plant or animal can be very expensive. Reporting the presence of an invasive, non-native plant or animal can help us to take earlier and more decisive action.

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3. NATIVE RANGE

What is “native range”?

3.1. A key distinction is that between native and non-native species. The term “native range” is defined in the 1981 Act³. The native range of an animal or plant (or type of animal or plant) is the locality to which the animal or plant is indigenous – where it occurs naturally.

3.2. Animals and plants that have been moved to a location by human action, whether intentionally or not, are considered to be outwith their native range. We use the term “non-native” to describe those plants and animals that are outwith their natural range.

3.3. Some of these may have been transported here recently and are clearly known as non-native species. Others may have been transported here a long time ago and be considered “naturalised”, but these are still non-native species. If plants and animals have arrived here due to human action alone, they can never be considered “native”.

3.4. For example, the European rabbit (*Oryctolagus cuniculus*) is a species of rabbit native to south west Europe (Spain and Portugal). It was most likely introduced into Britain with the Norman invasion and is therefore outwith its natural range in Scotland, but is now widespread. As an invasive species it causes millions of pounds of damage to agriculture annually, and it is sensible therefore to prohibit release to the environment.

3.5. While it does not necessarily follow that all non-native species become invasive, the part of the legislation relating to release is about prevention and it is therefore precautionary.

3.6. The native range of a hybrid is defined as any locality within the native range of both parents of the hybrid animal or plant⁴. Any hybrid which has at least one wholly non-native parent is considered to be a non-native species in Scotland.

3.7. Some species are naturally expanding within their range. If a range is increased naturally then this larger area will be considered to be the native range of the animal or plant. However, if the range is only expanding as a result of human activity then this will not be considered the animal or plants native range.

3.8. For example, the harlequin ladybird (*Harmonia axyridis*) is native to eastern Asia but has been introduced into Europe from where it has spread to Britain (and Scotland). As it is only present in Europe due to human action importing it to that region, it is outwith its native range in Europe and therefore is also outwith its native range when it spreads (naturally from Europe) to Britain.

3.9. If you wish to release an animal or plant, it is very important that you establish whether it would be within its native range in the location where you wish to release it. If it is within its native range then you would be complying with the legislation. To help do

³ Section 14(P)2 of the Wildlife & Countryside Act 1981

⁴ Section 14(P)3 of the Wildlife & Countryside Act 1981.

this, you can check the SNH website [www.snh.gov.uk/x] for relevant information sources.

Non-native animals and plants in Scotland

3.10. The following provide some illustrative examples of animals or plants that are in Scotland and outwith their native ranges:

- Japanese knotweed is native to Japan, China and Korea but was deliberately introduced to the UK early in the 19th Century by plant collectors. In its native range it spreads both by seed and vegetatively (in the UK only by vegetative means) but without human assistance it would not otherwise be able to cross oceans etc. to establish in Great Britain.
- The ruffe is a freshwater fish that is native to southern Britain. It is thought to have been accidentally introduced to Loch Lomond as live bait for fishing. Without human assistance it would not have been able to move outside of the catchments in its native range.
- The European hedgehog has a native range spanning mainland Britain, most of Europe, Asia and North Africa. It was introduced onto the Outer Hebrides in the 1970s to control slugs in gardens. Hedgehogs would not otherwise have been able to cross the sea to reach the Hebrides.

4. THE RELEASE OF NON-NATIVE ANIMALS

4.1 This chapter explains how the Wildlife and Countryside Act 1981 controls the release of non-native animals. It explains a number of key terms which are used in the legislation. It also sets out practical examples which help to explain what type of activity may or may not result in a criminal offence being committed.

Introduction

4.2 There are many reasons why animals (whether native or non-native) should not be released or introduced into the wild, including:

- an animal's welfare can suffer if it is released to fend for itself when it is accustomed to human care⁵;
- new areas may not provide enough of the right kind of food;
- the climate and habitat may not be appropriate for its survival;
- diseased animals may infect wild populations which have no immunity;
- there can be negative impacts at a population level if different strains or populations are released (this includes animals within their native ranges as well as those outwith their native ranges)
- those that do survive may establish and become invasive.

4.3 For these reasons the Wildlife & Countryside Act 1981 makes it a criminal offence in specific circumstances to release non-native animals. There are three specific ways in which a criminal offence may be committed:

- **Release from captivity** - it is an offence to release any animal from captivity outwith its native range⁶
- **Allowing to escape from captivity** - it is an offence to allow an animal to escape from captivity outwith its native range⁷
- **Causing to be at a place** - it is an offence to cause any animal outwith the control of any person to be at a place outwith its native range⁸.

4.4 A full description of each is set out below.

Releasing an animal from captivity

4.5 An animal is considered captive if it is under human control and is constrained from free movement into a new area. An example of this would be an animal held within an enclosure from which it cannot escape.

4.6 Trained animals do not need to be under direct physical control in order to be in captivity for this purpose. A trained bird of prey, for example, is in captivity for this

⁵ Note that offences relating to abandonment may also be committed under the Animal Health and Welfare (Scotland) Act 2006 – see **Annex A** for further details.

⁶ See Subsection 14(1)(a)(i) of the Wildlife & Countryside Act 1981

⁷ See Subsection 14(1)(a)(i) of the Wildlife & Countryside Act 1981

⁸ See Subsection 14(1)(b) of the Wildlife & Countryside Act 1981

purpose whether it is secured to a glove or is being flown in a display. The same is true for domestic dogs and cats (including working dogs).

4.7 There are some types of animals or activities to which this part of the legislation does not apply. A good example is deer:

- wild deer are not considered to be under control, even if they receive supplementary feeding
- deer that are farmed within an enclosure would be considered to be under human control and in captivity.

4.8 An offence is not committed if common pheasant or red-legged partridge are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting⁹. This exemption is designed to ensure that the game industry can continue the practice of releasing these two types of bird, which has been taking place for centuries.

4.9 If animals are released so that they are no longer under human control, they are considered to be released from captivity. Release covers both active release (such as releasing an animal from its enclosure) and passive release (such as failing to recover an animal that has been used in an activity such as falconry, ferreting or bird display).

4.10 There are a number of common activities that involve allowing animals to roam free and which are not considered to be a release from captivity. These are outlined in the table below.

Table 1 – Circumstances in which a type of animal is considered to remain in captivity or under the control of a person.

<p>a) Use of domesticated livestock in agriculture or for conservation management purposes</p> <p>Many different domesticated animals are used for these purposes. Most are kept in enclosed areas (and the provisions in section 14 do not therefore apply) but some may be kept in extensive or free range management systems, for example cattle or sheep kept on open hillsides or used for conservation grazing in unfenced areas, or free range poultry. In these cases the animals are kept in such a way that they can be gathered for husbandry purposes or when they otherwise need to be contained in an enclosed area.</p> <p>When these animals are released for purposes of agriculture or conservation management they are considered to be in captivity or control for the purposes of section 14(1) of the 1981 Act.</p> <p>NB. Wild boar or wild boar hybrids are not considered as falling within this category. These animals should not be released outwith an enclosure. In addition it should be noted that keeping of wild boar or wild boar hybrids requires a licence under the Dangerous Wild Animals Act.</p>
<p>b) Fish – fish farms</p>

⁹ Subsection 14(2A) of the Wildlife & Countryside Act 1981.

When fish are introduced to properly secured enclosures within fish farms they are considered to be in captivity for the purposes of section 14(1) of the 1981 Act.

c) Use of ferrets and polecat ferrets in ferreting

Where ferrets are used in ferreting, the owner should be competent, the ferret should be properly trained to return, and it is advisable to use electronic ferret finding equipment. This will enable the owner to demonstrate that they have exercised due diligence if the ferret can not be retrieved. An individual undertaking this activity with due responsibility still has the ferret under their control for the purposes of section 14(1) of the 1981 Act.

The release of untrained or unwanted ferrets, with no intention of retrieval, would not be considered to be under control for the purposes of section 14(1) of the 1981 Act. Note that in this case, offences relating to abandonment may also be committed under the Animal Health and Welfare (Scotland) Act 2006 – see Annex A);

d) The flying of birds of prey in falconry and display

Where birds of prey have been properly trained to carry out a particular activity (such as falconry or display) the owner will be able to demonstrate that they have exercised due diligence by the competence of the individual flying the bird and the degree to which the bird has been properly trained to return. The use of telemetry is advisable. An individual undertaking these activities responsibly still has the bird under their control for the purpose of section 14(1) of the 1981 Act. This includes birds being hacked.

The release of untrained birds or unwanted birds, with no intention of retrieval, would not be considered to be under control for the purposes of section 14(1) of the 1981 Act. Note that in this case, offences relating to abandonment may also be committed under the Animal Health and Welfare (Scotland) Act 2006 – see Annex A).

e) The exercising of pet dogs and cats and working dogs

Dogs and cats that are released off the lead or out of the house for exercise or to perform working duties (such as sheepdogs) are still under the control of their owner, even though no longer in physical control. They are expected to return and are dependent on their owner for food and other requirements. Therefore, they are still under control for the purpose of section 14(1) of the 1981 Act.

The release of unwanted dogs and cats, with no intention of retrieval, would not be considered to be exempt from the provisions. It might also constitute an abandonment offence under the Animal Health and Welfare (Scotland) Act 2006.

f) Survey or welfare purpose

Where an animal is already in the wild and has been caught accidentally by virtue of a survey method (e.g. mist netting for bird ringing), it is not considered to be in captivity and the individual is not causing it to be at a place outwith natural range contrary to section 14(1)(b).

Non-native animals may occasionally become accidentally trapped in the wild, for example a Canada goose could become caught in a fishing net, and an animal such as a sika deer could get entangled in a wire fence. In these situations, if an individual was to take measures to release the animal for welfare purposes, the animal is not considered to be in captivity or under a persons control for the purpose of section 14(1) of the 1981 Act – any offence would lie with the person who originally released them to the wild. If that animal was to be taken into captivity for rehabilitation, it would then be considered to be in captivity and any release into the wild would require a licence.

The releasing of non-native animals that have been caught in lawfully set traps (such as snares, crow cages and grey squirrel traps etc.) is not covered by this exemption and would be considered an offence.

4.11 It is essential that you take all reasonable steps and exercise due diligence at all times when you are responsible for an animal in captivity. The table above provides some practical examples of this.

4.12 [There are also several native species which are prohibited from being released from captivity: capercaillie, white-tailed eagle, barn owl. Details of orders to be added as they are laid]

4.13 An offence is not caused if the release is authorised by an order made by the Scottish Ministers¹⁰ or through a licence¹¹. Further information on orders and licences which have been granted can be obtained from the Scottish Government by e-mailing invasivespecies@scotland.gsi.gov.uk or telephoning 0131 244 1621.

Allowing an animal to escape from activity

4.14 Allowing an animal to escape from activity will include situations where steps are not taken to ensure the animal is contained. For example, not repairing a hole in the fence of an enclosure, or releasing the animal to an enclosure which is not of a sufficient specification to keep that animal contained.

4.15 You must take all reasonable steps to avoid allowing an animal to escape. This also applies to the escape of non-native animals.

4.16 For example, if you introduce an animal into a enclosure which is of a suitable specification to prevent escape and you inspect the enclosure on a regular basis, you should be able to demonstrate that you have exercised due diligence in the case of an unexpected event that allowed the animal to escape (such as a storm blowing down a tree which caused the fence to fall over).

4.17 By contrast, if a tree had fallen on the enclosure, thereby weakening it, and you had taken no action within a reasonable time to repair it to a suitable standard then it would be difficult for you to show that you had exercised due diligence.

¹⁰ Section 14 (2B) of the Wildlife & Countryside Act 1981.

¹¹ Section 16 of the Wildlife & Countryside Act 1981.

Causing an animal to be at a place

4.18 It is an offence to cause any animal outwith your control to be at a place outwith its native range.

4.19 Not all animals might be considered to be in captivity when an action causes them to be introduced or spread to the wider environment. For example, a sea squirt that becomes attached to the bottom of a boat before it arrives in Scotland is not “in captivity”. However, if you scrape that sea squirt off the boat and wash it into the harbour so that it is outwith your control, you are likely to have caused it to be at a place outwith its natural range.

4.20 If you are moving substances which may contain animals or plant material, such as water or soil, it is important to consider whether species are likely to be present which would be outwith their native range at the destination. If so, you must take steps to prevent release. The two examples below illustrate this:

- A company that was pumping water for the purpose of a hydroelectric scheme between catchments and the source catchment was known to contain fish outwith their native range, would need to take steps (such as screening agreed with appropriate experts) to prevent those fish being moved to the new catchment and therefore being caused to be at another place outwith their native range.
- A company transporting fish for release should take steps (agreed with appropriate experts) to ensure that they are not transporting and releasing North American signal crayfish and causing them to be outwith the control of any person, at a place outwith their natural range.

4.21 It is important, therefore, that you take all reasonable steps to avoid causing an animal to be outwith your control. Examples of what might be reasonable include:

- A company that was transporting water from one catchment to another for the purpose of hydroelectric power could demonstrate they had taken safeguards such as appropriate mesh screens to prevent the movement of non-native fish to a new catchment.
- A company moving materials such as soil that contains animals or plants should follow good practice guidance (www.netregs.gov.uk).

5. THE RELEASE OF NON-NATIVE PLANTS

5.1 This chapter explains how the Wildlife and Countryside Act 1981 controls the introduction of non-native plants into the wild. It explains a number of key terms which are used in the legislation. It also sets out practical examples which help to explain what type of activity may or may not result in a criminal offence being committed.

Introduction

5.2 There are many reasons why plants (whether native or non-native) should not be introduced into the wild, including:

- the climate and habitat may not be appropriate for its survival;
- diseased plants may infect wild populations which have no immunity against certain diseases;
- non-native plants may supply a food source or habitat that sustains another non-native species, which would not otherwise survive in that location;
- those that do survive may establish and become invasive.

5.3 For these reasons the 1981 Act makes it a criminal offence in specific circumstances to introduce non-native plants into the wild. There are two specific ways in which a criminal offence may be committed:

- **Plant in the wild** - it is an offence to plant in the wild any plant outwith its native range¹²
- **Cause to grow in the wild** - it is an offence to cause to grow in the wild any plant outwith its native range¹³.

5.4 A full description of each is set out below.

Planting in the wild

5.5 Planting includes placing or setting seeds, seedlings or plants (or parts of plants) into a medium from which they can grow. This includes placing an aquatic plant (or propagating parts of that plant) into water.

5.6 The term “in the wild” encompasses both natural and semi-natural habitats in both rural and urban environments and consists of land under extensive (or no) management that retains its semi natural character and is not subject to commercial cropping.

5.7 There are a number of areas that are not considered to be in the wild and these are outlined in the table below. Although it is not an offence to plant or cause a non-native species to grow in these areas, it **may be an offence to permit a non-native species to spread from such an area into the wild.**

¹² Subsection 14(2) of the Wildlife & Countryside Act 1981.

¹³ Subsection 14(2) of the Wildlife & Countryside Act 1981.

Table 2 – Circumstances in which a type of plant is not considered to be growing in the wild

<p>a) Agricultural and horticultural land and premises Areas used for commercial production of agricultural crops, fruit and vegetables, flowers, ornamental plants and trees, including nurseries, seed growing and Christmas tree production.</p>
<p>b) Forest or woodland areas</p> <p>Forestry under Forestry Commission Scotland (FCS) approved schemes to meet the Scottish Forestry Strategy.</p> <p>This includes:</p> <ul style="list-style-type: none"> - all managed woods where planting is authorised by FCS; - specific grant support approved by FCS e.g. under the Scottish Rural Development Programme; - approved design plans for management of the National Forest Estate; - felling licenses where replanting conditions are attached; - Environmental Impact Assessment (Forestry) Regulation approvals for afforestation projects.
<p>c) Amenity locations:</p> <ul style="list-style-type: none"> • Amenity greenspace – landscaped areas providing visual amenity or separating different buildings or land uses for environmental, visual or safety reasons (including roadside verges). • Public parks and gardens – areas of land normally enclosed, designed, constructed, managed and maintained as a public park or garden. These may be owned or managed by local authorities, charities (such as the National Trust for Scotland) or community groups. This does not include land maintained as a wild area for public recreation, such as Holyrood Park and many country parks. • Civic space – squares, streets, car parks and waterfront promenades, predominantly of hard landscaping that provide a focus for pedestrian activity. But may include plants in baskets or beds. • Play space for children and teenagers – areas providing safe and accessible opportunities for children’s play, usually linked to housing areas. • Sports areas – large and generally flat areas of grassland or specially designed surfaces, used primarily for designated sports.
<p>d) Burial grounds Including churchyards and cemeteries.</p>
<p>e) Allotments and community growing spaces Areas of land for growing fruit, vegetables and other plants, either in individual</p>

allotments or as a community activity. (Most allotments are owned by the local authority but they can also be owned by individual allotment associations.)

f) Private gardens

This is normally defined as the garden ground around someone's house, within the curtilage of their property – usually surrounded by a wall, hedge or fence or some form of demarcation. Gardens also include areas of lawn, flowerbeds, greenhouses and vegetable or fruit gardens.

5.8 It is essential that you take all reasonable steps and exercise due diligence when you are looking after plants.

5.9 An offence is not caused if the planting of a non-native plant in the wild is authorised by an order made by the Scottish Ministers¹⁴ or through a licence¹⁵. Further information on orders and licences which have been granted can be obtained from the Scottish Government by e-mailing invasivespecies@scotland.gsi.gov.uk or telephoning 0131 244 1621.

Causing plants to grow in the wild

5.10 Causing a plant to grow in the wild means that the plant becomes present in the wild as a direct result of someone's actions, even though they did not specifically plant it there. Some examples of actions that may cause a plant to grow in the wild include:

- a management technique that resulted in the spread of the plant (such as strimming Japanese knotweed);
- the planting of a non-native plant in a place other than the wild (such as a garden) with the result that the plant spreads into the wild (such as a native forest adjacent to the garden);
- the inappropriate disposal of plant material (fly-tipping), leading to plant growth¹⁶.

5.11 It is important, therefore, that you take reasonable steps when planting in an exempted (non-wild) area to prevent plants spreading into the wild. Reasonable steps are discussed in more detail below along with measures that can be taken to prevent an offence occurring.

5.12 You should be aware of the risk of anything you plant in an exempted (non-wild) area, such as a garden or field, spreading to the wild. Areas in which efforts are not made to control the particular species which grow, such as road verges and boundary hedges, may act as stepping stones to wild areas.

5.13 It is essential that you take all reasonable steps and exercise due diligence when you are looking after plants. Some practical examples are set out below.

¹⁴ Under inserted section 14(2B) of the Wildlife & Countryside Act 1981.

¹⁵ Section 16 of the Wildlife & Countryside Act 1981.

¹⁶ This would also be an offence under the Environmental Protection Act 1990.

5.14 A company moving materials such as soil that contains or may contain plants should follow good practice guidance (www.netregs.gov.uk); otherwise they could be responsible for a plant contained within the material spreading to a new location outwith its native range.

5.15 There are a number of steps you could take to avoid the situation where non-native plants that you are responsible for end up growing in the wild.

- In an exempted area, such as a garden or amenity ground, you should consider whether the non-native plant is providing any benefit (such as financial or aesthetic). If it isn't, then you could consider using a native species instead.
- The location of the exempted (non-wild) area can also be important. For example, you may need to take more care with non-native species if you are planting in an area close to the countryside than in the middle of a town. Care should also be taken to avoid causing a nuisance to neighbours.
- Within exempted (non-wild) areas, non-native species should not be planted in or along watercourses or other transmission corridors where seeds or plant fragments are likely to be spread over long distances.

5.16 Where non-native plants have been planted in exempted areas, reasonable steps should be taken to reduce the risk of these plants spreading into the wild. The appropriate management will depend on the circumstances and the plants in question, but could include:

- monitoring to detect spread of non-natives toward wild land;
- removing regeneration of non-native species that are spreading from exempted areas;
- using root barrier fabrics to contain the spread of plants with strong rhizome systems
- preventing or reducing seed production by deadheading plants after they have flowered or using sterile varieties
- preventing vehicles from parking in areas where pollen is known to fall.

5.17 Put simply, the key need is to manage an exempted area responsibly and prevent the spread of non-native plants into the wild. In this way, you will avoid committing any offence, or to be able to demonstrate that you have exercised due diligence.

5.18 If you are not responsible for planting something in an exempted area (if for example it has spread from neighbouring land, or was present before you became the owner of the land) then inaction to prevent further spread is not considered to be causing the plant to be in the wild.

6. KEEPING INVASIVE ANIMALS AND PLANTS

6.1. This chapter explains the restrictions which apply to the keeping of some types of invasive animals and plants. It also describes some of the issues that should be considered when keeping non-native or invasive non-native animals and plants.

6.2. Scottish Ministers have the power to prohibit the keeping of invasive animals or plants¹⁷. Any species that are listed by order by Scottish Ministers are prohibited from being kept. This can either be an absolute prohibition, or allowed only under licence if certain conditions are met

6.3. The power to make orders is not expected to be used widely, and is subject to consultation. The policy memorandum to the WANE Bill notes that they might for example be used to ban the keeping of the Chinese mitten crab, which could be released for the purpose of commercial exploitation, but which if released is likely to have a severe impact similar to that of the American signal crayfish.]

¹⁷ Section 14ZC of the Wildlife & Countryside Act 1981.

7. SELLING INVASIVE ANIMALS AND PLANTS

7.1 This chapter explains the restrictions which apply to the sale of some types of invasive animals and plants.

7.2 Scottish Ministers have the power to prohibit the sale of invasive animals or plants¹⁸. Any species that are listed by order by Scottish Ministers are prohibited from sale, having in the person's possession for sale, or advertising for sale. The term "sale" includes the bartering and exchange of goods

7.3 [Note: this section to be updated with information on the list of species that are prohibited from being sold. Currently there are no species listed by Scottish Ministers under section 14A of the 1981 Act.]

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¹⁸ Section 14A of the Wildlife & Countryside Act 1981.

8 NOTIFICATION OF INVASIVE NON-NATIVE ANIMALS AND PLANTS

8.1. This chapter explains the responsibility which you have to notify authorities of the presence of an invasive non-native animal or plant, and where you can obtain more information.

8.2. Scottish Ministers have the power to make orders requiring notification of invasive non-native plants or animals¹⁹. These orders may specify the types of animals or plants that must be notified, who must make the notification, and in what circumstances.

8.3. In order to provide early warning of a high-risk invasive non-native species arriving in Scotland (or escaping from captivity) section 14B of the 1981 Act enables the Scottish Ministers to require by order that they are notified of the presence of species of particular types. Early notification should ensure that potential problems can be reacted to quickly and that control action is more likely to succeed.

8.4. Scottish Ministers can require the notification to them of the presence in any part of Scotland, of any species which are invasive, that is they pose a risk of harm to biodiversity or to wider interests as defined in the 1981 Act.

8.5. [Note: this section to be updated with information on the list of invasive species that require to be notified. Currently, the Destructive Imported Animals Act 1932 contains a provision relating to notification. As with the keeping provisions, the notification provisions are not expected to be used widely and will only be used for high-risk invasive species.

8.6. The policy memorandum to the WANE Bill provides a table illustrating species for which the notification power might be used, with examples of the kind of persons who might be required to notify the presence of the species (see below).

Species	Specified persons for notification
Chinese muntjac deer (<i>Muntiacus reevesi</i>)	Forestry/woodland managers; Professional stalkers; Agricultural and Environmental Officials
Cervus species (deer) excluding red deer (<i>Cervus elaphus</i>) on the refugia islands	Forestry/woodland managers; Professional stalkers; Agricultural and Environmental Officials
Carpet sea squirt (<i>Didemnum vexillum</i>)	Harbour Masters; Port Authorities; Agricultural and Environmental Officials
European and Canadian beavers (outwith trial reintroduction area)	District Salmon Fishery Boards; Water Bailiffs; Fisheries Managers; Agricultural and Environmental Officials
Floating pennywort (<i>Hydrocotyle</i>	District Salmon Fishery Boards; Water

¹⁹ Section 14B of the Wildlife & Countryside Act 1981.

<i>ranunculoides)</i>	Bailiffs; Fisheries Managers; Agricultural and Environmental Officials
Water primrose (<i>Ludwigia grandiflora</i>)	District Salmon Fishery Boards; Water Bailiffs; Fisheries Managers; Agricultural and Environmental Officials

8.7. The intention is that the duty to notify will only be applied to persons who might reasonably be expected to be able to identify the individual species.]

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ANNEX A - RELEVANT LEGISLATION

Import of Live Fish (Scotland) Act 1978

The 1978 Act forbids the import into, or the keeping or the release of live fish (or eggs) of listed species which might compete with, displace, prey on or harm the habitat of any freshwater fish, shellfish or salmon in Scotland. Listed species can be kept under license.

Control of Pesticides Regulations 1986 SI 1510 (not available online)

Sets out restrictions on selling, supplying or storing pesticides and precautions to protect the health of humans, the environment, and particularly water, when using pesticides.

Environmental Protection Act 1990

Defines within England, Scotland and Wales the legal framework for duty of care for waste, contaminated land and statutory nuisance.

Control of Pesticides (Amendment) Regulations 1997 SI 188

Amends 1986/1510, explaining what the regulations cover, how to seize and dispose of pesticides and inform the public.

Section 33A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (which came into force on 1 August 2008)

Section 33A of the 2003 Act makes it an offence for any person to intentionally introduce any live fish or spawn of any fish into inland waters, or possess such with the intention of introduction without previous written agreement of the appropriate authority (either Scottish Ministers or District Salmon Fishery Boards). The provisions apply to all introductions of freshwater fish to any inland Scottish water system. They do not apply to fish farms (including introduction of brood-stock into hatcheries) or to ornamental fish-keeping facilities. The 2003 Act applies to all fish and to intentional introduction of fish only.

Nature Conservation (Scotland) Act 2004 - Biodiversity Duty

Under section 1 of the Nature Conservation (Scotland) Act 2004, all public bodies have a statutory duty to further biodiversity in exercising their functions.

Plant Health (Scotland) Order 2005

Plant Health (Forestry) Order 2005

Plant health controls in the UK are based on the EU Plant Health Regime, set out in the EU Plant Health Directive, 2000/29/EC. This is adopted into Scottish legislation through the Plant Health (Scotland) Order 2005, and for forestry throughout Great Britain through the Plant Health (Forestry) Order 2005. The Directive and Orders set out detailed requirements for many plant species and plant pests and diseases entering or moving within the Community and are regularly amended to keep these controls up to date.

Animal Health and Welfare (Scotland) Act 2006

Animals normally domesticated in the British Isles (such as dogs, cats, rabbits, horses and livestock) are protected animals for the purposes of Part 2 of the Act, as are all other animals under the control of man whether on a permanent or temporary basis. It is an offence under section 29 of the Act to abandon any animal for which that person is responsible if it is likely to cause unnecessary suffering. "Release" of a previously cared-for animal into the wild would be likely to cause suffering, unless care has been taken to ensure that they are able to obtain sufficient food and fend for itself.

Environmental Liability Regulations 2009

Sets out the mechanism by which bodies undertaking economic activity that damages the environment are responsible for preventing damage and can be held liable for the cost of reinstatement. This could include damage caused by causing the introduction of a non-native species.

***Gyrodactylus salaris* Contingency Plan**

The Scottish Government has a detailed contingency plan prepared with the help of 41 internal and external stakeholder groups, to deal with an outbreak of *Gyrodactylus salaris* should it occur in Scotland.

In the event of an outbreak or incident, the disease control strategy adopted will be consistent with the United Kingdom's European Union obligations and in line with the appropriate EU legislation and consistent with Scottish legislative requirements.

Scottish Government's first objective in tackling an outbreak of *Gyrodactylus salaris* will be to restore Scotland's disease free status as quickly as possible. In doing so Scottish Government will seek to select control strategies which:

- Protect public health.
- Minimise the number of animals which need to be culled either to control the disease or on welfare grounds, and which keep animal welfare problems to a minimum.
- Cause the least possible disruption to the food, farming and tourism industries, to visitors to the countryside, and to rural communities in the wider economy.
- Minimise damage to the environment.
- Minimise the burden on taxpayers and the public

ANNEX B - CONTACTS

[Note: this section to be completed to provide signposting and contact details]

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ANNEX C - PRACTICAL CASE STUDIES AND RESPONSIBLE MITIGATION MEASURES

[Note: this section to be developed with various illustrative case studies.]

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