



# Infrastructure Act 2015

## 2015 CHAPTER 7

### PART 4

#### ENVIRONMENTAL CONTROL OF ANIMAL AND PLANT SPECIES

#### **23 Environmental control of animal and plant species**

- (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) In section 14 (introduction of new species etc), after subsection (4) insert—

“(4A) Schedule 9A contains provision about species control agreements and orders and related matters.”
- (3) After Schedule 9 insert—

“SCHEDULE 9A

Section 14(4A)

#### SPECIES CONTROL AGREEMENTS AND ORDERS (ENGLAND AND WALES)

### PART 1

#### OVERVIEW AND INTERPRETATION

##### *Overview*

- 1 (1) This Schedule provides for—
  - (a) species control agreements between environmental authorities and owners of premises, and
  - (b) species control orders made by environmental authorities, and for related matters.
- (2) A species control agreement or species control order may relate to—
  - (a) an invasive non-native species of animal or plant, or

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- (b) a species of animal that is no longer normally present in Great Britain.

This is subject to the other provisions of this Schedule.

- (3) The following definitions apply for the purposes of this Schedule.

*Definitions relating to species*

- 2 (1) “Species” means any kind of animal or plant.
- (2) A species is “invasive” if, uncontrolled, it would be likely to have a significant adverse impact on—
  - (a) biodiversity,
  - (b) other environmental interests, or
  - (c) social or economic interests.
- (3) A species is “non-native” if—
  - (a) it is listed in Part 1 or 2 of Schedule 9, or
  - (b) in the case of a species of animal, it is a species—
    - (i) whose natural range does not include any part of Great Britain, and
    - (ii) which has been introduced into Great Britain or is present in Great Britain because of other human activity.
- (4) References to a species being “present” on premises include its being present at any stage in its life-cycle (for example, as eggs or seeds).
- (5) A species of animal is “no longer normally present in Great Britain” if—
  - (a) it is a species listed in Part 1B of Schedule 9, or
  - (b) it is a species—
    - (i) whose natural range includes all or any part of Great Britain, and
    - (ii) which has ceased to be ordinarily resident in, or a regular visitor to, Great Britain in a wild state.

*Environmental authorities*

- 3 (1) “Environmental authority”, in relation to premises in England, means—
  - (a) the Secretary of State,
  - (b) the Environment Agency,
  - (c) Natural England, and
  - (d) the Forestry Commissioners.
- (2) “Environmental authority”, in relation to premises in Wales, means—
  - (a) the Welsh Ministers, and
  - (b) the Natural Resources Body for Wales.

*Owners and dwellings*

- 4 (1) “Owner”, in relation to premises consisting of land, means—

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- (a) a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion,
  - (b) a person in possession under a lease, or
  - (c) a person who for the time being exercises powers of management or control over the land.
- (2) “Dwelling” means a building or structure, or part of a building or structure, occupied wholly or mainly as a dwelling.

### *Operations*

- 5 (1) “Species control operations” are operations to do one or more of the following—
- (a) eradicate a species from premises;
  - (b) control a species on premises;
  - (c) prevent a species from returning to premises.
- (2) References to “carrying out” operations include arranging for operations to be carried out.

## **PART 2**

### **SPECIES CONTROL AGREEMENTS**

#### *Making of species control agreements*

- 6 (1) An environmental authority may enter into a “species control agreement” with an owner of any premises where the authority considers that there is present on the premises—
- (a) an invasive non-native species, or
  - (b) a species of animal that is no longer normally present in Great Britain.
- (2) Under a species control agreement the parties agree to the carrying out of species control operations.
- (3) Before entering into a species control agreement with an owner, an environmental authority must be satisfied that—
- (a) the provisions of the agreement are proportionate to the objective to be achieved, and
  - (b) in a case where there is more than one owner, the owner with whom the agreement is entered into is the most appropriate one.
- (4) Before entering into a species control agreement relating to animals of a species that is no longer normally present in Great Britain, the environmental authority must also be satisfied that—
- (a) the animals are present on the premises otherwise than under and in accordance with the terms of a licence under section 16(4)(c),
  - (b) the animals on the premises are having a significant adverse impact on—
    - (i) biodiversity,

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- (ii) other environmental interests, or
  - (iii) social or economic interests, and
  - (c) there is no appropriate alternative way of obviating that impact.
- (5) A species control agreement may not be entered into in relation to premises consisting of a dwelling except where the environmental authority is the Secretary of State or the Welsh Ministers.

#### *Content of species control agreements*

- 7 (1) A species control agreement must provide for—
- (a) the species control operations to be carried out,
  - (b) the party who is to carry them out, and
  - (c) the time by which they are to be carried out.
- (2) A species control agreement may contain such supplementary provision as the parties consider appropriate.
- (3) That may include provision as to—
- (a) how species control operations are to be carried out,
  - (b) payment to be made by either party to the other, or to another person, in respect of the species control operations to be carried out, or
  - (c) any species control operations that must not be carried out.

#### *Notice of compliance*

- 8 Where an environmental authority considers that an owner of premises has complied with all the requirements in a species control agreement to carry out species control operations, the authority must give the owner notice to that effect.

#### *Liability*

- 9 An environmental authority is not liable to a person with an interest in the premises, other than the owner with whom a species control agreement is entered into, for anything done by the authority pursuant to the agreement.

### **PART 3**

#### **SPECIES CONTROL ORDERS**

#### *When a species control order may be made*

- 10 (1) An environmental authority may make a species control order in relation to premises if—
- (a) it considers that there is present on the premises—
    - (i) an invasive non-native species, or
    - (ii) a species of animal that is no longer normally present in Great Britain, and
  - (b) any of the following circumstances apply.

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- (2) The circumstances are—
- (a) the environmental authority considers that an owner has failed to comply with a species control agreement entered into with the environmental authority and, having been given notice to that effect and a reasonable opportunity to rectify the failure, has not done so;
  - (b) the environmental authority has offered to enter into a species control agreement with an owner but—
    - (i) the owner has refused to enter into any kind of species control agreement, or
    - (ii) no species control agreement has been entered into in respect of the premises by the end of the period of 42 days beginning with the day after the offer was made and the authority considers it unlikely that the owner will enter any kind of such agreement;
  - (c) the environmental authority considers that the making of the order is urgently necessary;
  - (d) the environmental authority has been unable to identify an owner, having—
    - (i) placed on the premises a conspicuous notice of its desire to enter into a species control agreement, and
    - (ii) waited for 5 days after the day on which the notice was placed.
- (3) Before making a species control order, an environmental authority must be satisfied that the provisions of the order are proportionate to the objective to be achieved.
- (4) Before making a species control order relating to animals of a species that is no longer normally present in Great Britain, the environmental authority must also be satisfied that—
- (a) the animals are present on the premises otherwise than under and in accordance with the terms of a licence under section 16(4)(c),
  - (b) the animals on the premises are having a significant adverse impact on—
    - (i) biodiversity,
    - (ii) other environmental interests, or
    - (iii) social or economic interests, and
  - (c) there is no appropriate alternative way of obviating that impact.
- (5) A species control order may not be made in relation to premises consisting of a dwelling except by the Secretary of State or the Welsh Ministers.

*What an order must do*

- 11 (1) A species control order under paragraph 10(2)(a) or (b) (failure to comply with or enter into agreement) must contain provision—
- (a) requiring the owner specified in that paragraph to carry out species control operations, or
  - (b) stating that the environmental authority proposes to carry out species control operations,

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or both.

(2) A species control order under paragraph 10(2)(c) (emergency) must contain provision—

- (a) requiring any owner of the premises specified in the order to carry out species control operations, or
- (b) stating that the environmental authority proposes to carry out species control operations,

or both.

(3) A species control order under paragraph 10(2)(d) (no identifiable owner) must contain provision stating that the environmental authority proposes to carry out species control operations.

12 (1) A species control order must—

- (a) specify the species to which the order relates,
- (b) specify the species control operations to be carried out,
- (c) specify the time by which the species control operations must be carried out or (as the case may be) the time by which they are proposed to be carried out by the authority, and
- (d) if appropriate, include a map of the premises to which the order relates.

(2) Unless it is made under paragraph 10(2)(c) (emergency), a species control order—

- (a) may not require an owner of premises to carry out species control operations, or provide for an environmental authority to carry out species control operations, before the end of the period in which an appeal may be made (as to appeals, see paragraph 16), and
- (b) must provide that if an appeal is made within that period, the owner need not carry out the operations, or the environmental authority shall not carry out the operations, before the appeal is withdrawn or finally determined.

#### *What an order may do*

13 (1) A species control order may contain provision supplementary to that specified in paragraphs 11 and 12.

(2) That may include provision as to—

- (a) how species control operations are to be carried out;
- (b) payment to be made by the environmental authority to—
  - (i) an owner, in respect of the reasonable costs of operations to be carried out by the owner, or
  - (ii) another person, in respect of the reasonable costs of operations to be carried out by an owner;
- (c) payment that an owner must make in respect of the reasonable costs of species control operations to be carried out by the environmental authority;
- (d) species control operations that an owner must not carry out;
- (e) who will carry out species control operations for the environmental authority.

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#### *Notice*

- 14 (1) After making a species control order, an environmental authority must forthwith give notice of it to—
- (a) all owners of the premises of whom the environmental authority is aware,
  - (b) the Secretary of State, if the environmental authority is the Environment Agency, Natural England or the Forestry Commissioners, and
  - (c) the Welsh Ministers, if the environmental authority is the Natural Resources Body for Wales.
- (2) In the case of an order under paragraph 10(2)(d) (no identifiable owner), the environmental authority must also give notice of the order by placing it on the premises conspicuously.
- (3) Notice under this paragraph must include—
- (a) reasons for making the species control order, and
  - (b) reasons for any requirement imposed by it on an owner.

#### *Revocation*

- 15 (1) An environmental authority may at any time revoke a species control order made by it.
- (2) Notice of revocation must be given as specified in paragraph 14 (but reasons need not be given).

#### *Appeals*

- 16 (1) An owner of premises in relation to which a species control order is made may appeal to the First-tier Tribunal against—
- (a) the making of the order, or
  - (b) any provision of the order.
- (2) The First-tier Tribunal may—
- (a) affirm the order,
  - (b) direct the environmental authority which made the order to revoke or amend it,
  - (c) in the case of an order under paragraph 10(2)(c) (emergency), suspend the order, or
  - (d) make such other order as the Tribunal thinks fit.

#### *Notice of compliance*

- 17 Where an environmental authority considers that an owner of premises has complied with all the requirements in a species control order to carry out species control operations, the authority must give the owner notice to that effect.

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### *Enforcement*

- 18 (1) This paragraph applies where an environmental authority considers that an owner of premises required by a species control order to carry out a species control operation has not done so by the date or in the way specified in the order.
- (2) The authority must give the owner notice to that effect.
- (3) Sub-paragraphs (4) to (6) apply if, after a week after giving notice under sub-paragraph (2), the authority considers that the owner has still not carried out the species control operation in the way specified in the order.
- (4) The authority may carry out the operation itself or carry out such further work as is necessary to ensure that the operation is carried out in the way specified in the order.
- (5) The authority may recover from the owner any expenses reasonably incurred by it in doing so (less any payment which the authority would apart from this paragraph have been required to make to the owner in respect of the carrying out of the operations by the owner).
- (6) The authority is not required to make any payment provided for under paragraph 13(2)(b) in relation to the operation (and may recover any payment made under that paragraph).

### *Offences*

- 19 (1) A person who, without reasonable excuse, fails to comply with a requirement imposed on that person by a species control order commits an offence.
- (2) A person who intentionally obstructs a person from carrying out an operation required or proposed under a species control order commits an offence.
- (3) A person guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine, or both.
- (4) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in sub-paragraph (3) to 51 weeks is to be read as a reference to 6 months.
- (5) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in sub-paragraph (3) to a fine is to be read as a reference to a fine not exceeding £40,000.

### *Liability*

- 20 (1) An owner of premises is not liable to any other person for doing anything required to be done by a species control order.
- (2) An environmental authority is not liable to a person with an interest in premises for anything done—



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- (a) by an owner pursuant to a requirement included in a species control order, or
- (b) by the authority pursuant to—
  - (i) provision included in a species control order under paragraph 11(1)(b), (2)(b) or (3), or
  - (ii) paragraph 18(4).

## PART 4

### POWERS OF ENTRY

#### *Powers of entry*

- 21 (1) A person who is authorised to do so may enter any premises to—
- (a) assist an environmental authority to determine whether to offer to enter into a species agreement with a person,
  - (b) assist an environmental authority to determine whether to make or revoke a species control order,
  - (c) investigate suspected non-compliance with a species control agreement or a species control order,
  - (d) carry out species control operations for an environmental authority under a species control order,
  - (e) place a notice as specified in paragraph 10(2)(d)(i) or 14(2) (no identifiable owner), or
  - (f) carry out species control operations or work pursuant to paragraph 18(4).

This is subject to the other provisions of this Schedule.

- (2) A person may not enter premises under sub-paragraph (1)(a) or (b) with a view to establishing whether a species is present unless the environmental authority has reasonable grounds for suspecting that it is.

#### *Authorisation by justice of the peace*

- 22 (1) To enter premises under paragraph 21 a person must be authorised by a warrant issued by a justice of the peace where—
- (a) the premises consist of a dwelling or a garden, yard, outbuildings or other land used or enjoyed wholly with a dwelling,
  - (b) admission to the premises has been refused by an owner or refusal is reasonably apprehended,
  - (c) the premises are unoccupied,
  - (d) the owner is temporarily absent,
  - (e) giving notice would defeat the purpose of entry,
  - (f) entry is to carry out species control operations for an environmental authority under an order under paragraph 10(2)(c) (emergency),
  - (g) entry is to carry out species control operations for an environmental authority under an order under paragraph 10(2)(d) (no identifiable owner),

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- (h) entry is to place a notice as specified in paragraph 10(2)(d)(i) or 14(2), or
  - (i) entry is to carry out operations or work pursuant to paragraph 18(4) which the environmental authority considers to be urgently necessary.
- (2) A justice of the peace may not grant a warrant—
- (a) in the circumstances in sub-paragraph (1)(a) to (d) unless satisfied that reasonable notice of the proposed entry has been given to all owners of the premises of whom the environmental authority is aware, or
  - (b) in the circumstances in paragraph (1)(g) unless satisfied that the requirement in paragraph 14(2) (notice) has been met.
- (3) For the purposes of sub-paragraph (2)(a) less than 48 hours' notice is not reasonable.
- (4) A warrant may authorise a person to use reasonable force if necessary, but a person so authorised—
- (a) must be accompanied by a constable when doing so, and
  - (b) may not use force against an individual.

#### *Authorisation by environmental authority*

- 23 (1) To enter premises under paragraph 21 in circumstances other than those specified in paragraph 22(1), a person must be authorised in writing by the environmental authority.
- (2) A person authorised by an environmental authority may not demand admission as of right to any premises unless reasonable notice has been given to all owners of the premises of whom the authority is aware.
- (3) For these purposes less than 48 hours' notice is not reasonable.

#### *Exercise of right of entry*

- 24 (1) A right of entry under paragraph 21 is exercisable at any reasonable time.
- (2) A person authorised under paragraph 22 or 23 to enter premises must, if so required before entering, produce evidence of his or her warrant or other authorisation and state the purpose of entry.
- (3) A person entering premises under paragraph 21 may—
- (a) take on to the premises such other persons as may be necessary;
  - (b) take any equipment, machinery or materials on to the premises;
  - (c) take samples of anything in or on the premises.
- (4) A person who enters premises under paragraph 21 which are unoccupied or from which the owner is temporarily absent must, on departure, leave them as effectively secured as they were on entry.

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## PART 5

### SUPPLEMENTARY

#### *Compensation*

- 25 (1) The Secretary of State and the Welsh Ministers may (separately or jointly) make arrangements for the payment of compensation to an owner of premises in respect of financial loss resulting from—
- (a) a species control agreement or order, or
  - (b) the exercise of the powers of entry under this Schedule.
- (2) The arrangements may secure that compensation is payable only for financial loss above a specified amount.

#### *Codes of practice*

- 26 (1) The Secretary of State must issue a code of practice in relation to species control agreements and orders in England.
- (2) A code under this paragraph must in particular provide guidance to environmental authorities in England on—
- (a) when to offer to enter into a species control agreement;
  - (b) how to go about entering into a species control agreement;
  - (c) what a species control agreement should contain (and in particular what it should contain by way of provision about payment of costs);
  - (d) when to make a species control order;
  - (e) what a species control order should contain (and in particular what it should contain by way of provision about payment and recovery of costs);
  - (f) standards of animal welfare to be met in connection with species control agreements and orders.
- (3) A code under this paragraph may be revised or replaced.
- (4) Before issuing (or revising or replacing) a code under this paragraph the Secretary of State must carry out a public consultation.
- (5) The Secretary of State must—
- (a) ensure that a code under this paragraph is published in a way that is appropriate for bringing it to the attention of persons likely to be affected by it, and
  - (b) lay a copy of a code under this paragraph before Parliament.
- 27 (1) The Welsh Ministers must issue a code of practice in relation to species control agreements and orders in Wales.
- (2) A code under this paragraph must in particular provide guidance to environmental authorities in Wales on—
- (a) when to offer to enter into a species control agreement;
  - (b) how to go about entering into a species control agreement;

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- (c) what a species control agreement should contain (and in particular what it should contain by way of provision about payment of costs);
  - (d) when to make a species control order;
  - (e) what a species control order should contain (and in particular what it should contain by way of provision about payment and recovery of costs);
  - (f) standards of animal welfare to be met in connection with species control agreements and orders.
- (3) A code under this paragraph may be revised or replaced.
- (4) Before issuing (or revising or replacing) a code under this paragraph the Welsh Ministers must carry out a public consultation.
- (5) The Welsh Ministers must—
  - (a) ensure that a code under this paragraph is published in a way that is appropriate for bringing it to the attention of persons likely to be affected by it, and
  - (b) lay a copy of a code under this paragraph before the National Assembly for Wales.
- 28 (1) A person's failure to comply with a provision of a code under paragraph 26 or 27 does not make the person liable to civil or criminal proceedings.
- (2) A code under paragraph 26 or 27—
  - (a) is admissible in evidence in any civil proceedings, and
  - (b) must be taken into account by a court in any civil proceedings in which it appears to the court to be relevant.”
- (4) In section 19 (enforcement), at the end insert—
 

“(9) This section does not apply in relation to offences under Schedule 9A.”
- (5) In section 25 (functions of local authorities), at the end insert—
 

“(3) Nothing in this section applies in relation to Schedule 9A or orders or offences under it.”
- (6) In section 26 (regulations, orders, notices etc), at the end insert—
 

“(7) In this section references to orders do not include species control orders under Schedule 9A.”

#### Commencement Information

- 11** S. 23 in force at 12.4.2015 for E. by S.I. 2015/481, reg. 3(a)  
**12** S. 23 in force at 12.4.2015 for W. by S.I. 2015/990, reg. 2

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