Government response to the public consultation:


Part 1: Schedule 9 Amendments.
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Introduction

1. A wide range of non-native species have been introduced to Great Britain (GB) making a positive contribution to economic and social well-being through, for example, forestry, horticulture, fisheries and the pet sector. Many other species have been introduced accidentally, most of which have had a benign or positive impact on the natural history of Britain. However, a minority of non-native species exhibit invasive qualities and have had a negative impact on our native biodiversity and society. We consider these invasive non-native species to be:

   Any non-native animal or plant that has the ability to spread causing damage to the environment, the economy, our health or the way we live.

2. Worldwide, the introduction of invasive non-native species poses a significant threat to native biodiversity, particularly fragile ecosystems such as on islands. In response to the threat that invasive non-native species pose, Defra and the Welsh and Scottish Governments published The Invasive Non-native Species Framework Strategy for Great Britain (“the Strategy”). This is intended to provide a strategic framework within which the actions of government departments, their related bodies and key stakeholders can be better co-ordinated. Its overall aim is to minimise the risks posed, and reduce the negative impacts caused, by invasive non-native species in GB.

3. One of the objectives stated in the Strategy is to:

   Ensure that the legislative framework in GB for addressing invasive non-native species is coherent, comprehensive, fit-for-purpose and proportionate.

4. Sections 14 – 14ZB of the Wildlife and Countryside Act, 1981 (“WCA”) are the principal provisions that deal with non-native species. 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, GB in a wild state, or any species of animal or plant listed in Schedule 9. Section 14ZA provides a power to ban the sale of any live animals or plants to which section 14 of the WCA applies.

5. Making the most effective use of existing legislative powers is one of the ways in which the above objective will be achieved: it is widely recognised that Schedule 9 is out-of-date, while the power to ban the sale of certain non-native species under section 14ZA has yet to be utilised.

6. In light of this, the Joint Nature Conservation Committee (JNCC) provided advice on amendments which it felt should be made to Schedule 9 to the WCA. Natural England and the Countryside Council for Wales also provided advice on species that pose a threat to native biodiversity and which should be considered for being banned from sale.

Consultation

7. Between 8 Nov 2007 and 31 Jan 2008 Defra and the Welsh Assembly Government held a public consultation to seek views on the JNCC advice regarding Schedule 9 to the WCA. As well as listing a number of non-native species the consultation also proposed the addition of some native species to the schedule. The intention behind
this is to provide a level of control so that re-introduction programmes are carried out
in an appropriate manner and biodiversity is properly safeguarded in that process. The
consultation proposed the addition of 36 animals and 36 plants, and the removal of 7
animal species from Schedule 9.

8. As well as the amendments to Schedule 9 outlined above, the consultation also sought
views on banning the sale of those invasive non-native species (13 animals & 16
plants) that Natural England and the Countryside Council for Wales advised posed a
significant risk to native biodiversity.

9. The purpose of the consultation was to invite interested parties to contribute to the
evidence-base for decision-making and the summary of responses to the consultation
was published on 13 May 2009. There were 96 responses to the consultation. The
responses indicated broad support for the proposals; however, respondents also
raised a large number of important issues. In addition, it was clear from many of the
responses that there were a number of misunderstandings concerning the proposals
and their implications. With this in mind Defra has since held a series of meetings with
key stakeholders from conservation organisations and industry groups to clarify any
issues, and has consulted further within government. We have taken on board
messages from these meetings and as a result have subsequently enhanced the
evidence-base to underpin our decisions, for example clarifying which cotoneaster
species are most invasive and should be listed in Schedule 9.

10. Defra and the Welsh Assembly Government have also sought to address a number of
queries and misunderstandings regarding the legislation itself by providing guidance
on interpretation of section 14 in England and Wales (Annex A).

11. The consultation document and summary of responses can be found here:

The Government Position

12. This document sets out Defra and the Welsh Assembly Government’s decisions with
respect to amendments to Schedule 9. Here we detail the list of species that will be
added to the schedule and those to be removed from it, as well as the legislative
timetable for doing so. This document also explains how these decisions have been
made and, by way of guidance on the interpretation of section 14, advises on the
implications of these decisions for those that might be affected.

Ban on sale proposals

13. To ensure a robust evidence-base and a proportional response regarding each
species Defra and the Welsh Assembly Government have commissioned a risk
assessment for each of the species proposed for ban on sale. However, the risk
assessment process has taken longer than expected, and for many species these will
not be completed until the end of 2009. Therefore, we will delay making any final
decisions on the ban on sale proposals until early 2010. We will publish Part 2 of the
government response outlining our position on these species, including a summary of
the evidence, at that time. This is not expected to alter our plans for any necessary
Order imposing a ban on sale to come into force in October 2010.
Decision criteria for addition to Schedule 9

14. To ensure proportionality the economic, social and environmental evidence for the proposals was taken into account before coming to a decision on whether or not species should be added to Schedule 9. However, predicting the impacts of non-native species can be difficult, especially where those species are new to GB. Given that the Convention on Biological Diversity’s guiding principles place an emphasis on preventative measures, it is prudent to take a precautionary approach to the addition of species to Schedule 9. For most species this has meant that the decision-making process has been straightforward as is clear from the impact assessment (Annex B).

15. Several of the species under consideration have been established in the wild for some time and/or would have an impact on businesses were they to be listed. It is primarily these species that have been the subject of on-going discussions. This is because we believe it appropriate to be able to demonstrate more thoroughly their invasiveness in GB to ensure that the wider impacts of their listing in Schedule 9 are justified.

16. It is also important that any changes to the legislation must be beneficial in preventing the release/escape to the wild of the proposed species. There is little value in listing species which spread solely through natural means upon which the legislation can have little impact. Similarly, there is little to be gained by duplicating existing legislative controls (e.g. under the Import of Live Fish (England and Wales) Act 1980). With respect to the latter we would only use Schedule 9 if there was an added benefit of doing so. We have indicated in Annex B where this has been an important consideration.

17. In coming to a decision on amendments to the Schedule we have taken into account evidence presented to us during the consultation alongside that provided by our statutory advisors. The consultation highlighted that, for some species, the evidence-base required further development. To address this we have held meetings with the key relevant stakeholders over the summer to discuss these issues. Additionally, we have sought further evidence from our advisors to ensure that our decisions are based on the best available evidence.

Schedule 9 Decisions

18. Defra and the Welsh Assembly Government’s decisions on the proposals in the consultation are set out below. Details on each decision, including the rationale and safeguards that will allow legitimate activities to continue, are included in Annex B. Species not being added on this occasion will be kept under review and it is expected that the GB risk assessment process will robustly support future decisions regarding appropriate legislative measures.

19. A number of respondents suggested further species which they felt should also be added to Schedule 9 and/or banned from sale. While it will not be possible to take these forward at this time, these recommendations will be taken into consideration in future reviews of the legislation and will be used to help prioritise the commissioning of non-native risk assessments. Additionally, the information provided will be taken into consideration when developing non-legislative tools to mitigate the impacts of non-native species, such as media and educational campaigns.
Animals to be added to Schedule 9

**Mammals**
- Wild boar, *Sus scrofa*
- Chinese water deer, *Hydropotes inermis*

**Birds**
- Northern goshawk, *Accipiter gentilis*
- Snow goose, *Anser caerulescens*
- Emperor goose, *Anser canagicus*
- Bar-headed goose, *Anser indicus*
- Barnacle goose, *Branta leucopsis*
- Eagle owl, *Bubo bubo*
- Corncrake, *Crex crex*
- Black swan, *Cygnus atratus*
- Common crane, *Grus grus*
- Red kite, *Milvus milvus*
- Monk parakeet, *Myiopsitta monachus*
- Red-crested pochard, *Netta rufina*

**Invertebrates**
- Australian flatworm, *Australoplana sanguinea*
- Flatworm, *Kontikia andersoni*
- Flatworm, *Kontikia ventrolineata*
- Slipper limpet, *Crepidula fornicatea*
- Chinese mitten crab, *Eriocheir sinensis*
- Spiny-cheek crayfish, *Orconectes limosus*
- Red swamp crayfish, *Procambarus clarkii*
- American oyster drill, *Urosalpinx cinerea*

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Animals which will not be added to Schedule 9 at this time

**Mammals**
- Ferret, *Mustelus furo*
- Polecat ferret, *Mustelus furo x putorius*
- Common rat, *Rattus norvegicus*

**Birds**
- Rosy-faced lovebird, *Agapornis roseicollis*
- Blue-crowned parakeet, *Aratinga acuticaudata*
- Helmeted guinea fowl, *Numida meleagris*
- Green pheasant, *Phasianus versicolor*

**Invertebrates**
- Black bullhead, *Ameiurus melas*
- Grass carp, *Ctenopharyngodon idella*
- Sunbleak, *Leucaspius delineatus*
- Topmouth gudgeon, *Pseudorasbora parva*

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Animals to be removed from Schedule 9.

**Mammals**
- Crested porcupine, *Hystrix cristata*
- Himalayan porcupine, *Hystrix hodgsonii*
- Mongolian gerbil, *Meriones unguiculatus*
- Coypu, *Myocaster coypus*
- Cervus and hybrids thereof (with respect to the Outer Hebrides and the islands of Arran, Islay, Jura and Rum)

**Birds**
- Bobwhite quail, *Colinus virginianus*
- Budgerigar, *Melopsittacus undulatus*
Plants to be added to Schedule 9

\textbf{Plants}

Few flowered leek, \textit{Allium paradoxum}
Three cornered garlic, \textit{Allium triquetrum}
Water fern, \textit{Azolla filiculoides}
Carolina water-shield, \textit{Cabomba caroliniana}
Hottentot fig, \textit{Carpobrotus edulis}
Cotoneaster, \textit{Cotoneaster bullatus}
Cotoneaster, \textit{Cotoneaster horizontalis}
Cotoneaster, \textit{Cotoneaster integrifolius}
Cotoneaster, \textit{Cotoneaster microphyllus}
Cotoneaster, \textit{Cotoneaster simonsii}
Curly waterweed, \textit{Lagarosiphon major}
Variegated yellow archangel, \textit{Lamiastrum galeobdolon montanum} (syn \textit{Lamiastrum galeodbolon argentatum})
Water primrose, \textit{Ludwigia grandiflora}
Floating water primrose, \textit{Ludwigia peploides}
Water primrose, \textit{Ludwigia uruguayensis}
Parrots feather, \textit{Myriophyllum aquaticum}
False virginia creeper, \textit{Parthenocissus inserta}
Virginia creeper, \textit{Parthenocissus quinquefolia}
Water lettuce, \textit{Pistia stratiotes}
Yellow azalea, \textit{Rhododendron luteum}
Rhododendron, \textit{Rhododendron ponticum}
Rhododendron, \textit{Rhododendron ponticum x Rhododendron maximum}
Japanese rose, \textit{Rosa rugosa}
Duck potato, \textit{Sagittaria latifolia}
Giant salvinia, \textit{Salvinia molesta}
Perfoliate alexanders, \textit{Smyrnium perfoliatum}

\textbf{Algae}

Green seafingers, \textit{Codium fragile}
Red algae, \textit{Grateloupia luxurians}

Plants which will not be added to Schedule 9 at this time

Shallon, \textit{Gaultheria shallon}
Sea buckthorn, \textit{Hippophae rhamnoides}
Turkey oak, \textit{Quercus cerris}
Evergreen oak, \textit{Quercus ilex}
False acacia, \textit{Robinia pseudoacacia}

Additional proposals

Japanese knotweed

20. The Latin name for Japanese knotweed will be altered from \textit{Polygonum cuspidatum} to \textit{Fallopia japonica} in Part II of Schedule 9, as this name is more widely used and accepted.

Hybrids

21. The consultation proposed the introduction of a provision that makes it clear that all hybrids of plants and animals listed in Schedule 9 would be caught within the scope of section 14. Respondents to the consultation were broadly supportive of this proposal. Those in opposition were of the opinion that many hybrids do not exhibit the same characteristics of the parent species and only those which are invasive should be listed in the schedule. This is particularly true for plants species where hybridisation is common place. Additionally a wide range of different species’ hybrids are used in
horticulture. However, this amendment would only prohibit the introduction of the hybrids to the wild and is not an absolute prohibition of their use. While many hybrids do not share the invasive characteristics of their parent species, in all likelihood some will and as such it is precautionary to take the view that the schedule should apply to all hybrids of the species listed even if some non-invasive species are caught within its scope. Where it is clear that only specific hybrids are invasive, these, and not the parent species will be listed in Schedule 9. Amending the legislation so that all hybrids are brought within the scope of section 14 will require amendment of primary legislation; therefore it is not possible to make this change immediately, but we propose to do so when an appropriate opportunity arises.

Next steps

Schedule 9

22. The Order to amend Schedule 9 will be made early in 2010 and will come into force on 06 April 2010.

Ban on sale

23. With regard to those species proposed for being banned from sale, the suite of risk assessments is due for completion early in 2010 at which time we will finalise our position with respect to these species. It is our current intention that any ban on sale provisions should come into force in October 2010. We will maintain a dialogue with potentially affected stakeholders, for example, concerning the use of lead-in times to allow the industry to adapt. Prior to an Order coming into force, we will notify the World Trade Organisation’s Sanitary and Phyto-sanitary committee of our intentions through the usual procedures.
Annex A: Section 14 Guidance

The guidance is also published here:


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 (e.g. the barn owl) in order to provide a level of control to ensure that releases, in particular re-introduction programmes, 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 and enclosure might be considered a release into the wild, see: http://www.defra.gov.uk/wildlife reference not valid.

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 (i.e. in the wild) to free an animal that has become accidentally and unintentionally restrained (e.g. 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/confine ment were not taken. This would include negligent or reckless behaviour resulting in the conditions of confinement failing to prevent an animal from freeing itself, e.g. 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 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 to be introduced should be distinct in some significant way from animals already ordinarily resident in 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 exceptionally 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 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.

Causing to grow in the wild

23. We would expect that where plants listed in Schedule 9 are grown in private gardens, amenity areas etc, 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 an individual does not have sufficient ability or the resources to manage a species 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.

24. Additionally, 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 also constitute an offence.