

EXPLANATORY MEMORANDUM TO
THE DANGEROUS WILD ANIMALS ACT 1976 (MODIFICATION) ORDER
2007 No.1437

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The scope of the Act is being amended by this Order to include animals not currently listed in the Schedule and also to remove those animals currently listed which are no longer deemed to present a genuine threat to the public. Such amendments to the Schedule were suggested in responses received during a public consultation exercise and agreed upon following consideration by a selected group of animal experts. A list of the species to be added or removed can be found in Paragraphs 7.9 and 7.10 below.
3. **Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 Following an independent review of the Act, and subsequent consultation exercises, it was decided to replace the existing statutory list of dangerous wild animals with a revised list (and to develop deregulatory proposals to revise the Act itself by means of a Legislative Reform Order – this is not part of this Order).
 - 4.2 This Order substitutes the Schedule to the Act which specifies the kinds of animals to which the provisions of the Act apply. The changes effected by this order represent the outcome of a further review of the Schedule to the Act as last modified by S.I.1984/1111 and limit the Act's species to those that may present a genuine threat to the public.
5. **Territorial Extent and Application**
 - 5.1 The Act applies in England, Wales and Scotland but the issues with which it deals have been devolved in Scotland. Accordingly, changes brought about by this instrument apply to England and Wales only.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Dangerous Wild Animals Act 1976 (“the Act”) regulates the keeping of dangerous wild animals. It aims to ensure that where private individuals keep such animals they do so in circumstances which create no risk to the public and safeguard the welfare of the animals. This is done by means of a local authority licensing regime.

7.2 A schedule to the Act lists those animals regulated by the Act and for which licences are required should people wish to keep them. The Act does not apply to any dangerous wild animal kept in a zoo; circus; pet shop; or registered scientific establishment as these premises are registered under their own specific legislation.

7.3 The review of the Act highlighted that it was in need of updating and revision, it was found to be poorly enforced and there was believed to be wide-spread non-compliance. A number of the species listed in the 1980’s were considered to be no more dangerous than domestic cats or dogs and this had further undermined the Act’s credibility. The Department went out to public consultation setting out the Department’s options for improving the effectiveness of the Act.

7.4 Amending the legislation to update the list of controlled species formed only a part of the Government’s preferred option to proceed (“*amend the legislation to update the list of controlled species and to improve enforcement, and issue revised guidance to local authorities on the Act’s application*”). All of the responses to the consultation (107 in total made up: 36 from local authorities; 37 from organisations and 34 from individuals) favoured the Government’s preferred option, but almost all made further suggestions for changes to the original proposals or put forward new proposals. Some of the public consultation responses recommended amendments (both additions and deletions) to the list of controlled species but few suggestions were backed up with new evidence in support of them. Only two responses argued there should be no species removed from the list.

7.5 After an initial review of the Schedule, as part of the review of the Act, and the consultation a key stage was the Department taking the advice of a selected group of experts in formulating proposals on which species should be removed or added to the current Schedule. The factors that the experts took into account were the likelihood and capacity of the animal producing serious injury. They looked particularly at:

- the animal’s armoury – its tools and its size;
- the animal’s ferocity – its temperament and inclination to use its armoury;
- the harm the animal could do to a child (we believe a threshold of serious injury to a child is consistent with the original intentions of the Act and is a credible threshold);
- the animal’s likely behaviour when unrestrained or cornered outside of the keeper’s premises;
- recorded incident of deaths or serious injury;
- what legislation already exists for regulating the acquisition or keeping of animals.

7.6 The focus was on the protection of the general public in the event of escapes, rather than the owner. In line with past practice and the intention of the Act, the experts excluded from consideration the potential threat of disease transmitted from animals to humans as not every animal would carry disease, and some animals might carry a disease that non-listed animals could carry. There was also no evidence that uncommonly kept animals pose a significant risk of disease to humans compared to common pets. Other legislative regimes and advisory mechanisms are in place to cover animal disease.

7.7 The panel of experts were also mindful that the existing Schedule contained animals considered no more dangerous than common domestic pets, such as dogs or cats and animals that fell into that category were recommended to be removed. Some will view de-listings as weakening the welfare protection given to these animals. However, animal welfare is not a listing criteria and animal welfare legislation should be the main vehicle for ensuring proper welfare. The 1976 Act is intended as a public safety measure and legal advice has confirmed that, if species were listed for reasons other than their dangerousness, then there would be a high risk of legal challenge being successful.

7.8 Ministers agreed to the revision of the Act's species list by secondary legislation, to limit it to those species which presented a genuine threat to the public, and that those changes should be delayed to come into force alongside or after the Animal Welfare Act came into force (because earlier de-listing of species would mean reduced welfare protection for them).

7.9 This Order adds the following animals to the Schedule: the Argentine Black-headed snake, the Peruvian racer, the South American green racer, the Amazon false viper, the Middle eastern thin-tailed scorpion and the dingo.

7.10 The following animals are no longer listed in the Schedule and so the provisions of the Act no longer apply to them: certain smaller primates (woolly lemurs, tamarins, night (or owl) monkeys, titis and squirrel monkeys), sloths, the North American porcupine, the capybara, crested porcupines; cacomistles, racoons, coatis, olingoes, the little coatimundi, kinkajou, binturong, cat hybrids which are predominantly domestic cat, hyraxes, guanaco, vicuna, emus, sand snakes, mangrove snakes, and the Brazilian wolf spider.

8. Impact

8.1 A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

9. Contact

9.1 Dave Wootton, Defra, Room 1/10 Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB. Tel: 0117 372 8686 or e-mail: dave.wootton@defra.gsi.gov.uk can answer any queries regarding the instrument.