

Code of Practice on Non-Native Species

**Made by the Scottish Ministers under section 14C
of the Wildlife and Countryside Act 1981**

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1. Introduction

Summary

Who? The Code has been approved by the Scottish Parliament and issued by the Scottish Government.

The Code is relevant to a wide range of individuals, businesses and public bodies including farmers, landowners, crofters, managers of amenity land and woodland, gardeners boat owners and keepers of pets and other animals.

What? The Code sets out guidance on how you should act responsibly within the law to ensure that non-native species under your ownership, care and management do not cause harm to our environment.

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

The Code applies to animals and plants but not to viruses and bacteria.

Where? The Code applies to Scotland only as the legislation governing non-native species is different throughout the UK.

When? The Code comes into effect on 2 July 2012.

- 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 ospreys 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 certain land management practices. A further threat comes from the release of non-native animals and plants and the impacts they can have are described later in the Code.

The Code of Practice

- 1.3 The legislation in Scotland which governs non-native species was updated and amended in 2011. The aim of this Code is to help everyone, including people who manage land containing non-native plants and animals or who are involved in the keeping of non-native plants and animals, to understand their legal responsibilities. It is not a replacement for legal advice but instead is intended to provide practical guidance and sets out good practice.
- 1.4 The Code is relevant to a wide range of people, including farmers, landowners, crofters, managers of amenity land and woodland, gardeners, boat owners and keepers of pets and other animals. Businesses, particularly those involved in horticulture, fishing, aquaculture, construction and transport, should consider how the guidance and best practice in the Code affects their operations. Public bodies, such as local authorities, may consider how the guidance and best practice in this Code helps them deliver their biodiversity duties.
- 1.5 The Code sets out how you can play your part in preventing non-native species from being released. It describes where plants and animals from other parts of the world can be grown as garden plants and crops, or kept as pets and farm animals (Chapters 4 and 5). The Code also defines (in Chapter 5) what is meant by “in the wild”; this is the area where these non-native plants should not be allowed to establish and create problems.
- 1.6 The Code sets out guidance on how you can act responsibly 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 (unless permitted under the Wildlife and Countryside Act 1981, any Order made under that Act¹ or under a licence issued by an appropriate authority²). Guidance on how to find out if any plant or animal is a native or non-native species can also be found at Chapter 10.

¹ See sections 14(2B) and 14(2C).

² See sections 16 and 16A of the 1981 Act.

- 1.7** If you are in any doubt regarding whether a species is native to where you are planning to release or plant it – don't release, don't plant.

The status of the Code

- 1.8** This Code has been approved by the Scottish Parliament³. It has been issued by the Scottish Government under section 14C of the Wildlife and Countryside Act 1981 (the 1981 Act). This Code of Practice comes into effect on 2 July 2012 and applies in Scotland only.
- 1.9** Failure to comply with the Code is not itself an offence. However, whether or not a person has complied with this Code could be used in court as evidence, by either the prosecution or the defence, if criminal proceedings are raised.

Some key terms

- 1.10** Some provisions in the 1981 Act relate to animals and plants outwith their native range and some relate to invasive plants and animals. These terms, along with some others, are explained in the box on the next page.
- 1.11** The definitions of "animal" and "plant" in the 1981 Act do not include microscopic 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 non-native invertebrate species and fungi, which may also be regarded as pests.
- 1.12** The native range of a species, subspecies, type or race of an animal or plant can all be different. If you are in any doubt regarding what the native range of an animal or plant is – don't release, don't plant.

³ See section 14C(4)(a) of the 1981 Act.

Key terms

Animal This term includes mammals, birds, fish, reptiles, amphibians, invertebrates and zooplankton. This includes the semen, ova or milt of an animal⁴.

Plant This term includes marine plants, vascular plants (flowering plants, ferns and trees) and lower plants (including bryophytes, lichens and macro algae). It also, for the purposes of this Code, includes fungi. 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 plant⁵.

Native range This is the range of locations in which an animal or plant (or type of animal or plant) is indigenous – where it occurs naturally. Chapter 3 describes this term in more detail.

Non-native Animals and plants that have been moved to a location outwith their native range by human action, whether intentionally or not, are considered to be non-native. The term “native” is used in this Code to describe plants and animals that are within their native range⁶. The term is explained more fully in Chapter 3.

Former native An animal or plant whose native range previously included Scotland or a particular part of Scotland but is now not indigenous. Unauthorised release is an offence under the 1981 Act. Former native species are non-native species for the purposes of the 1981 Act.

Invasive species These are animals and plants which, if not under control of any person, would be likely to have a significant adverse impact on:

- Biodiversity
- Other environmental interests or
- Social or economic interests.⁷

⁴ See section 14P(7) of the 1981 Act.

⁵ See section 14P(8) of the 1981 Act.

⁶ See section 14P(2) of the 1981 Act.

⁷ This definition is broadly the same as defined by the Invasive Non-native Species Framework Strategy for Great Britain and by the Convention on Biological Diversity.

2. Your Responsibilities

Summary

Why control non-native species?

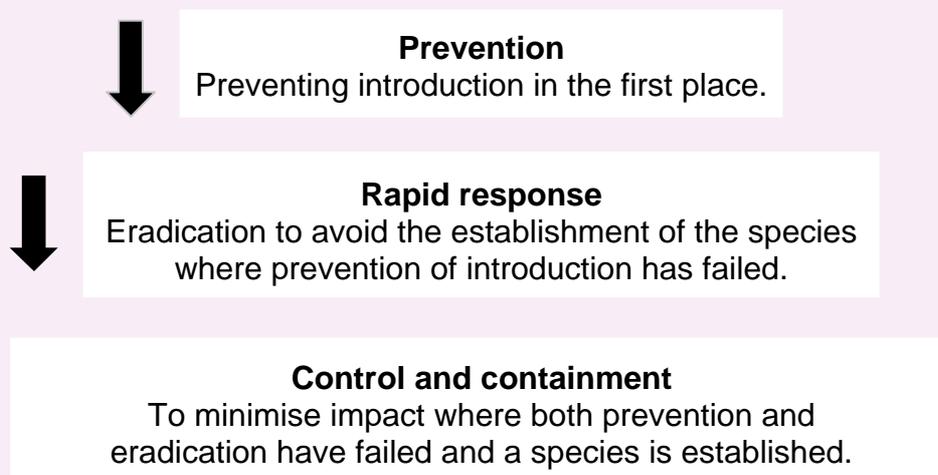
Non-native species can:

- 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.

Many factors can influence how a non-native species behaves once it is introduced to a new ecosystem and in many cases it is impossible to predict the effect it will have. Since climate is one of those influencing factors, climate change introduces an additional level of uncertainty when attempting to predict the behaviour of a new species.

How do we control non-native species?

The Scottish Government's approach to non-native species is guided by a three-stage hierarchical approach:



What laws govern the introduction of non-native species to Scotland?

The principal legislation is the Wildlife and Countryside Act 1981 (the 1981 Act). More recent legislation has amended, updated and strengthened the 1981 Act.

The 1981 Act contains provisions on

- release or planting of all non-native species⁸
- keeping of invasive species⁹
- sale of invasive species¹⁰
- notification of invasive non-native species¹¹
- Species Control Agreements and Species Control Orders¹².

The 1981 Act includes a number of offences relating to the list above, some subject to a defence of having taken all reasonable steps and exercised all due diligence to avoid committing the offence.

What are my responsibilities?

Adopt a precautionary approach – if in doubt don't release or plant until you have a clear understanding of the situation.

- Carry out risk assessments – due diligence is likely to include assessing the risk of an offence happening, establishing how to avoid it happening and acting according to best practice to prevent it happening.
- Seek advice and follow good practice – seeking advice may be particularly important in establishing the native range of a particular plant or animal. This Code contains some good practice guidance and this is designed to help you to take reasonable steps and exercise due diligence.
- Report the presence of non-native species – reporting the presence of a non-native plant or animal can help the relevant organisation (see Chapter 10) to take earlier and more decisive action.

⁸ See section 14 of the 1981 Act.

⁹ See section 14ZC of the 1981 Act.

¹⁰ See section 14A of the 1981 Act.

¹¹ See section 14B of the 1981 Act.

¹² See section 14D to 14O of the 1981 Act.

The need to control non-native species

- 2.1** This Chapter explains why we need to be concerned about non-native animals and plants, and describes your responsibilities in relation to non-native species.
- 2.2** Non-native species are plants and animals which have found their way to a new habitat through human activity. Many non-native species have been carefully managed and these contribute positively to our lives, for example as livestock, crops, timber, garden plants or pets.
- 2.3** Some non-native species have been deliberately or accidentally introduced to Scotland, from locations across the world. In other cases, species native to parts of Scotland have been moved to locations where they did not previously occur. These species are also non-native in their new locations. Although many of these have become established in small numbers and do not currently pose a threat, a small number are invasive.
- 2.4** In certain regulated circumstances¹³ former natives may be reintroduced however, in many cases the environment into which the species is being reintroduced has changed since its extinction. These changes require reintroductions to be carefully planned and their impacts on the natural environment, land use and people to be considered and monitored. The Scottish Government follows the International Union for Conservation of Nature (IUCN) Guidelines for Re-introductions http://www.iucnsscrg.org/policy_guidelines.html. No-one is permitted to reintroduce former native species without the relevant authority.
- 2.5** Uncontrolled, these non-native and former 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.
- 2.6** Non-native species sometimes expand rapidly because they have advantages over our native species - they might be more adaptable than, able to breed faster than or able to outcompete our native species. When they arrive in a new country, they have left behind the predators, parasites, diseases or competition that keep their numbers under control in their original

¹³ Former natives may be released under licences issued under section 16 of the 1981 Act.

location. Non-native species may only become a serious problem some time after their introduction. It is not always possible to predict which non-native species are invasive, which is why it is important that we maintain the principle of preventing the introduction of all new non-native species.

- 2.7** 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 first place. If they have just become established, the need is to rapidly control or remove them before they become a widespread problem.
- 2.8** The 2010 report *The Economic Cost of Invasive Non-Native Species on Great Britain*¹⁴ provides five case studies to illustrate how the cost of eradicating invasive non-native species increases considerably with the length of time that a species has been established in the country. For example, the early eradication costs of creeping water primrose (*Ludwigia peploides*) which is currently established at 13 locations are estimated to be £73,000, whilst if it spread to a suitable habitat it is estimated that it could cost almost £242 million.

Managing the threat posed by non-native species

- 2.9** The Scottish Government's approach to non-native species is guided by the internationally recognised three 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 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 only possible or cost effective in a minority of cases. However, if non-native species are having serious negative impacts then it may be desirable to control or contain the population, or mitigate those impacts.

- 2.10** This approach is supported by provisions in the 1981 Act which place responsibilities on individuals and organisations regarding how they control and manage non-native species. The legislation also enables certain

¹⁴ <http://bit.ly/GBCostNNS>

organisations to require the taking of emergency and other control measures for non-native species (see Chapter 9). Other legislation that is not covered by this Code may also support the three stage hierarchical approach (see the Annex for other relevant legislation).

2.11 Preventing the release of all non-native animals, and the planting of any non-native plants in the wild is critical to a successful policy on invasive non-native species. This is because it is not always possible to predict with certainty which species are invasive and because small populations of non-native plants and animals may be present for many years before ‘taking off’. For example, Japanese knotweed was in this “lag phase” for nearly 100 years, as demonstrated by the graph in figure 1.

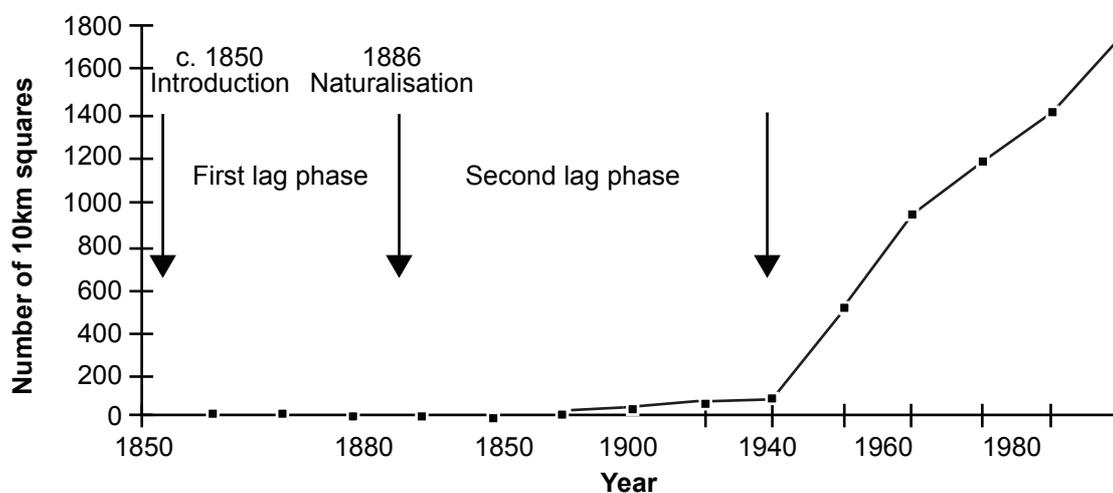


Figure 1: The Lag Phase of Japanese knotweed from, Child, L. and Wade, M. 2000. *The Japanese Knotweed Manual*. Packard Publishing Limited, Chichester.

2.12 Many non-native plants and animals that are currently established at low population levels may still be in their lag phase.

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

2.14 Preventing the introduction of non-native species is preferable to waiting to see if they are invasive, which leads to expensive control programmes designed to mitigate their damaging impacts. This is the approach advocated though the [Convention on Biological Diversity](#) and promoted through the [Invasive Non-Native Species Framework Strategy for Great Britain](#).

2.15 Some habitats or locations are especially vulnerable to the introduction of non-native species. Severe impacts of non-native species on native biodiversity have occurred on remote islands where the native flora and

fauna is less diverse, more isolated and therefore more susceptible to invasion. Other especially vulnerable habitats can, for example, include those found in marine, freshwater, riparian and woodland environments. Extra vigilance and caution should be exercised in and around these habitats.

- 2.16** 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 currently appear benign to become invasive.
- 2.17** It is likely that as the climate changes, the 'climate space' – the area which is climatically suitable – 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 now occurring outside their former range (such as butterflies and marine molluscs).
- 2.18** 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.
- 2.19** 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 licence¹⁵.

¹⁵ See sections 16 and 16A of the 1981 Act.

The legal position and due diligence

- 2.20** This Code outlines the law relating to native and non-native species, including former native species and invasive non-native species. The principal legislation is the Wildlife and Countryside Act 1981. More recent legislation, including the Wildlife and Natural Environment (Scotland) Act 2011, has amended the 1981 Act. The 1981 Act now contains sections on the release or planting of all non-native species and the keeping, sale and notification of invasive species, in addition to provisions on Species Control Agreements and Species Control Orders. The Chapters that follow in this Code explain the main provisions set out in the 1981 Act.
- 2.21** It is important to note that the release or planting, keeping and sale offences in the 1981 Act are strict liability offences. This means that the prosecution does not need to prove any intention, knowledge, recklessness or negligence on the part of the accused. It is enough for the prosecution to prove that the offence took place – so if you are in any doubt regarding whether an animal or plant is native, don't release or plant.
- 2.22** However, a person accused of a release, planting or keeping offence may successfully establish a defence if they can show that they took all reasonable steps and exercised all due diligence to avoid committing the offence. This due diligence defence is designed to recognise efforts made by people to comply with the legislation. Ultimately it is always a matter for the Court to determine whether the defence of due diligence has been established. This will depend on the circumstances of each particular case but compliance or non-compliance with the Code could be used as evidence in a criminal prosecution.
- 2.23** This Code of Practice outlines the law and, where appropriate, gives practical guidance on what reasonable steps might be taken, and how due diligence may be exercised, in relation to the release, planting or keeping offences. Exercising due diligence is likely to involve assessing the risk of an offence happening, establishing what precautions to take to avoid the offence happening and regularly reviewing the risk, the precautions and their suitability. Doing nothing is unlikely to protect an accused; positive action is likely to be required. The type and extent of action required to satisfy the Courts will vary from case to case depending on the individual relevant circumstances.
- 2.24** The Code also outlines behaviour which is considered to be best practice and which may help to prevent an offence happening. Not abiding by best practice will not in itself be an offence but evidence of a failure to abide by best practice outlined in the Code could be used as evidence in a criminal prosecution.

Your responsibilities

2.25 The Code outlines the law, but it is important to note that independent legal advice should 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 or planting of a non-native species then you should take the precautionary approach; don't release or plant 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 acting according to best practice to prevent it happening. Further advice and information, including identification guides, 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 or planting, keeping, sale or notification of non-native 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 Chapter 10. More information about the 1981 Act and other issues relating to non-native species can be found at: www.scotland.gov.uk/nonnativespecies. This Code contains some good practice guidance and this is designed to help you to take reasonable steps and exercise due diligence.

Reporting the presence of non-native species: The cost of removing or controlling a well-established invasive non-native plant or animal can be very high. Reporting the presence of a non-native plant or animal can help the relevant organisation (see Chapter 10) to take earlier and more decisive action.

3. Native Range

Summary

What is “native range”?

“Native range” is defined in section 14P(2) of the 1981 Act as:

“...the locality to which the animal or plant of that type is indigenous, and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person.”

Animals and plants that have been imported into a location outwith their native range by human action, whether intentionally or not, are considered to be non-native in that location.

Some animals and plants may have been transported here a long time ago and be considered “naturalised”, but these are still non-native species. Others are native to some parts of the UK but not to other parts (for example native to the mainland but not all islands).

What does this mean for you?

If you wish to release an animal or plant a plant, you must establish whether you would be releasing it within its native range.

If yes, then you would be complying with the 1981 Act (unless an Order preventing the release of a native animal has been made under section 14(1)(a)(ii) of the 1981 Act)¹⁶.

Finding out what a species’ native range is

www.snh.gov.uk

¹⁶ See paragraphs 4.21 and 4.22 of Chapter 4 of the Code.

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 Act as¹⁷:

“...the locality to which the animal or plant of that type is indigenous, and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person.”

- 3.2** Animals and plants that have been imported into a location outwith their native range by human action, whether intentionally or otherwise, are considered to be non-native in that location.
- 3.3** Some of these animals and plants may have been imported to their location recently and are clearly recognised as non-native species. Some may have been imported a long time ago and be considered “naturalised”, but these are still non-native species. Others are native to some parts of the UK but not to other parts (for example, native to the mainland but not all islands).
- 3.4** When the last Ice Age ended over 10,000 years ago the ice that covered most of Britain retreated northwards. Following behind this retreating ice were waves of plants and animals that slowly colonised Britain as conditions warmed up. These plants and animals reached Britain under their own steam as there was still a connection (the land bridge) attaching us to the European mainland. All these plants and animals – the ones that established themselves in Britain naturally and which still occur naturally today - are called native species. As the ice melted so sea levels rose and that land bridge was flooded. This effectively stopped any more colonisation by species that couldn’t cross the water.
- 3.5** Man first arrived in Britain about 8,000 years ago and virtually all new land animals and plants that have become established since this date have been brought here as a result of human activity. These are all non-native species.
- 3.6** For example, the European rabbit (*Oryctolagus cuniculus*) is a species of rabbit native to south west Europe (Spain and Portugal). It was introduced into Britain, most likely with the Normans, and is therefore outwith its native range in Scotland, but is now widespread. As an invasive non-native species it causes millions of pounds of damage to agriculture annually, and it is sensible therefore to prohibit further release into the environment.
- 3.7** It does not necessarily follow that all non-native species are invasive, however Chapters 4 and 5 explain in more detail why prevention is the best approach to dealing with non-native species.

¹⁷ See section 14P(2) of the 1981 Act.

- 3.8** The native range of a hybrid animal or plant is defined as any locality within the native range of both parents of the hybrid animal or plant¹⁸. Any hybrid which has at least one parent non-native to the hybrid's location is considered to be a non-native species in that location.
- 3.9** Being defined as a non-native plant or animal does not necessarily mean that the plant or animal will be subject to active control measures. However, where appropriate, control of invasive non-native species – beyond the general prohibition on release of non-native species under section 14 – can be required under a Species Control Order (section 14D of the 1981 Act), see Chapter 9.
- 3.10** Some species are naturally expanding their range, for example the Collared Dove arrived in Great Britain in 1953. If a range is increased naturally (for example, in response to climate change) then this larger area will be considered to be the native range of the animal or plant.
- 3.11** However, if the range is only expanding as a result of direct human activity then this will not be considered to be the animal or plant's native range - this includes natural range expansion following direct human activity. 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. Although it spread naturally within Europe to Britain, because of the manner by which it was introduced in Europe initially, it is still outwith its native range when it spreads (naturally from Europe) to Britain.
- 3.12** Animals and plants that were once native in a location but have become extinct are considered to be "former natives" (except in the situation described at 3.13). For the purposes of the 1981 Act former natives are considered to be outwith their native range and it is therefore an offence to release a former native without a licence¹⁹. The environment may have changed considerably since a former native was present as a species in Scotland and the impact of the former native species on the environment and on land use would need to be assessed before it can be released into the wild.
- 3.13** Former native species that re-establish themselves without the help of man are considered to have extended their natural range and so to be a native species.
- 3.14** If you wish to release an **animal**, 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

¹⁸ Section 14P(3) of the 1981 Act.

¹⁹ See section 16 and 16A of the 1981 Act.

1981 Act (unless an Order preventing its release has been made by the Scottish Ministers under 14(1)(a)(ii) of the 1981 Act)²⁰.

- 3.15** If you wish to plant a **plant**, it is very important that you establish whether it would be within its native range in the location where you wish to plant it. If it is within its native range then you would be complying with the 1981 Act.
- 3.16** To help do this, you can check the Scottish Natural Heritage (SNH) website for relevant information sources that may help you to determine whether you are complying with the definition.

Non-native animals and plants in Scotland

- 3.17** The following provide some illustrative examples of animals and 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 have crossed oceans etc. to establish in Great Britain. It is therefore a non-native species in Great Britain.

The **ruffe** is a freshwater fish that is native to southern Britain. It is thought to have been introduced to Loch Lomond as a bait fish by anglers. Without human assistance it would not have been able to move outside of the catchments in its native range. It is therefore a non-native species in Loch Lomond and anywhere else outwith southern Britain (unless it naturally extends its native range).

The European **hedgehog** has a native range spanning mainland Britain, most of Europe, Asia and North Africa. It was introduced to 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. It is therefore a non-native species in the Outer Hebrides and any other Scottish islands.

²⁰ See paragraphs 4.21 and 4.22 of Chapter 4.

4. The Release of Non-Native Animals

Summary

What are the offences relating to non-native animals?

Section 14(1) of the Wildlife and Countryside Act 1981 (the 1981 Act) makes it a criminal offence to release non-native animals. There are three specific ways in which a criminal offence may be committed:

- **Release** - it is an offence to release any animal to a place outwith its native range.²¹
- **Allowing to escape from captivity** - it is an offence to allow an animal to escape from captivity to a place outwith its native range.²²
- **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 range.²³

An animal is considered captive if it is under human control and is constrained from free movement into a new area.

What does 'release' of a non-native animal mean?

If animals are released so that they are no longer under human control, they are considered to be released from captivity – this covers both active release and passive release.

Trained animals do not need to be under constant direct physical control in order to be in captivity for this purpose.

It is essential that you take all reasonable steps and exercise all due diligence to avoid committing an offence when you are responsible for a non-native animal.

²¹ See section 14(1)(a)(i) of the 1981 Act.

²² See section 14(1)(a)(i) of the 1981 Act.

²³ See section 14(1)(b) of the 1981 Act.

When can you release non-native animals?

An offence is not committed if the common pheasant or red-legged partridge are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting.²⁴

An offence is not committed if the release is authorised by an Order made by the Scottish Ministers²⁵ or according to the terms of a licence issued by the appropriate authority²⁶.

If you are in any doubt regarding whether the species you plan to release is covered by either of these then don't release. Take advice before acting.

Releasing native animals

It is an offence under the 1981 Act²⁷ to release or allow to escape from captivity any animals of a type specified in an Order made by the Scottish Ministers. This relates to the release of an animal within its native range.

²⁴ See section 14(2A) of the 1918 Act.

²⁵ See sections 14(2B) and 14(2C) of the 1981 Act.

²⁶ See sections 16 and 16A of the 1981 Act.

²⁷ See section 14(1)(a)(ii) of the 1981 Act.

Introduction

4.1 This Chapter explains how the 1981 Act controls the release of non-native (and some 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.

4.2 There are many reasons why non-native animals should not be released including:

- they may have a serious adverse effect on other species, the environment or land use
- an animal's welfare can suffer if it is released to fend for itself when it is accustomed to human care;
- new areas may lack the required food resources;
- the climate and habitat may not be appropriate for their survival;
- non-native animals may infect native species with diseases for which they 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 such as arctic char as well as those outwith their native ranges such as sika deer hybridising with native red deer).

4.3 For these reasons the 1981 Act makes it a criminal offence to release non-native animals unless otherwise exempted²⁸. There are three specific ways in which a criminal offence may be committed in relation to non-native animals:

Release – it is an offence to release any animal to a place outwith its native range²⁹.

Allowing to escape from captivity – it is an offence to allow an animal to escape from captivity to a place outwith its native range³⁰.

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 range³¹.

4.4 A full description of each is set out below.

²⁸ See sections 14(2A), 14(2B)(a), 14(2C) and 16 of the 1981 Act.

²⁹ See Subsection 14(1)(a)(i) of the 1981 Act.

³⁰ See Subsection 14(1)(a)(i) of the 1981 Act.

³¹ See Subsection 14(1)(b) of the 1981 Act.

Releasing a non-native animal

- 4.5** The offence of releasing an animal to a place outwith its native range refers to circumstances where action(s) that you have taken result in that animal no longer being under human control outwith its native range.
- 4.6** Trained animals do not need to be under constant direct physical control in order to be under human control for this purpose. A trained bird of prey, for example, is under human control for this 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** An offence is not committed if the common pheasant or red-legged partridge are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting³². 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. It should be noted that for the purposes of the 1981 Act green pheasants (*Phasianus versicolor*) are considered to be a type of common pheasant (*Phasianus colchicus*) and their release is permitted under this exemption.
- 4.8** The Game and Wildlife Conservation Trust Guidelines for Sustainable Gamebird Releasing³³ provide recommended release guidelines for pheasants and red-legged partridge. This aims to avoid negative impacts to habitats and other wildlife and maximises the potential of management practices associated with release, to enhance habitats and wildlife.
- 4.9** There are a number of common activities that involve allowing animals to roam freely, outside an enclosure and which are not considered to be a release. These are outlined in the list below.

³² See section 14(2A) of the 1981 Act.

³³ <http://bit.ly/GWCTSGR>

List 1 – Circumstances in which a type of animal is not considered to be released.

(It should be noted that these are illustrative examples, much will depend on individual circumstances.³⁴)

a) Use of domesticated livestock (not including wild boar and hybrids)

Most livestock are kept in enclosed areas (and the provisions in section 14(1)(a) 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, free range poultry or bees. 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.

These animals are not considered to be released for the purposes of section 14(1)(a) of the 1981 Act.

b) Fish

When fish are introduced to properly secured enclosures they are not considered to be released for the purposes of section 14(1)(a) of the 1981 Act.

This includes salmon introduced to fish farms or rainbow trout introduced into water bodies from which they cannot escape, for angling. It should be noted however that these types of introductions of fish require authorisation from Marine Scotland.

Similarly non-native shellfish are grown, in containment, on shellfish farms in Scotland.

c) Use of domestic ferrets in ferreting

Where ferrets are used responsibly for ferreting, the handler will be able to demonstrate that they remain under control – in that they can reasonably expect to retrieve them. It is advisable to use electronic ferret finding equipment, as that should enable the owner to demonstrate that they have taken all reasonable steps and exercised all due diligence to avoid committing the offence if the ferret cannot be retrieved.

³⁴ Whilst conduct discussed in List 1 is unlikely to be considered a release for the purposes of section 14(1) of the 1981 Act that does not mean that the conduct is permissible under the law – other pieces of legislation may be relevant and separate authorisations/licences may be required.

The release of unwanted ferrets, with no intention of retrieval, is an unlawful release for the purposes of section 14(1)(a) 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 the Annex to the Code).

d) The flying of non-native birds of prey in falconry and display

Where non-native birds of prey are flown responsibly, for falconry or display, the handler will be able to demonstrate that they remain under the handler's control - in that they can reasonably expect the bird to return. This would also apply to, often longer, training flights - sometimes referred to as tame hacking. The use of telemetry is advisable as that should enable the handler to demonstrate that they have taken all reasonable steps and exercised all due diligence if the bird cannot be retrieved.

The practice of releasing larger numbers of birds with the intention of gathering them after a period of days or weeks, sometimes referred to as wild hacking, will require a licence if it involves non-native birds³⁵. To obtain a licence, contact Scottish Natural Heritage.

The release of unwanted non-native birds, with no intention of retrieval, is an unlawful release for the purposes of section 14(1)(a) 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 the Annex to the Code).

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 not, for the purposes of this legislation, considered to be released by their owner even though no longer under physical control. They are expected to return and are dependent on their owner for food and other requirements. Therefore, they are not being released for the purpose of section 14(1)(a) of the 1981 Act.

The release of unwanted dogs and cats, with no intention of retrieval, is an unlawful release for the purposes of section 14(1)(a) 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 the Annex to the Code).

³⁵ See sections 16 and 16A of the 1981 Act

- 4.10** It is essential that you take all reasonable steps and exercise all due diligence to prevent release when you are responsible for a non-native animal. The list above provides some practical examples of this.
- 4.11** An offence is not committed if the release is authorised by an Order made by the Scottish Ministers³⁶ or through a licence³⁷. Further information on Orders can be found on the Scottish Government website and information on licences which have been granted can be obtained from Scottish Natural Heritage³⁸.

Allowing a non-native animal to escape from captivity

- 4.12** An animal is considered to be in captivity 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. An offence is complete when a person allows an animals to escape from captivity to a place outwith it native range³⁹.
- 4.13** Allowing a non-native animal to escape from captivity 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.
- 4.14** You should take all reasonable steps and exercise all due diligence to avoid committing an offence when you are responsible for a non-native animal.
- 4.15** For example, if you introduce an animal into an enclosure outwith its native range which is of a suitable specification to prevent escape and you inspect and repair the enclosure on a regular basis, and you can provide evidence of this, you should be able to demonstrate that you have exercised all due diligence. This will include taking steps to prevent damage to your enclosure, for example, in the case of a storm blowing down nearby trees.

³⁶ See sections 14(2B)(a) and 14(2C) of the 1981 Act.

³⁷ See sections 16 and 16A of the 1981 Act.

³⁸ See sections 16 and 16A of the 1981 Act.

³⁹ See section 14(1) of the 1981 Act.

4.16 If a tree had damaged the enclosure, despite your taking all reasonable steps to avoid this happening, and you had taken no action within a reasonable timeframe to repair it to a suitable standard then it may be difficult for you to show that you had taken all reasonable steps and exercised all due diligence to avoid committing the offence.

Causing a non-native 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 range⁴⁰. The offence applies where an animal that is not in captivity for the purpose of section 14(1) is enabled by some act or omission to move to a new place outwith its native range.

4.19 Your actions may cause an animal to be at a place outwith its native range albeit that the animal is not within your control. For example, a non-native sea squirt that becomes attached to the bottom of your boat before it arrives in Scotland is not “in captivity”. However, whilst the sea squirt may have been outwith your control, by moving the boat you will have caused the sea squirt to be at a place outwith its native range. In such circumstances, you should take all reasonable steps and exercise all due diligence to avoid committing the offence. For example following good practice advice regarding antifouling and regular haul out. If you scrape that sea squirt off the boat and wash it into the harbour in Scottish waters, you will have caused it to be at a place outwith its native range. In addition, moving that boat from the harbour to another area while the sea squirt is still attached to it would move the sea squirt to other locations and may constitute a further offence.

4.20 If you are moving equipment, or substances such as soil or water, which may contain animals or plant material, it is important to assess whether species are likely to be present which would be outwith their native range at the intended destination. If so, you must take all reasonable steps and exercise all due diligence to avoid committing the offence of causing the animals or plant material to be at a place outwith its native range. The following examples illustrate this:

⁴⁰ See section 14(1)(b) of the 1981 Act.

Moving Water A company that was pumping water for the purpose of a hydroelectric scheme between catchments should take steps to establish if the source catchment is known to contain fish which would be outwith their native range in the new catchment. If so the company should 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.

Moving Soil A company moving materials such as soil that contains animals should follow good practice guidance such as that found in the Environment and Efficiency section of www.business.scotland.gov.uk. In addition, they should follow the guidance outlined in the Code of Practice to Prevent the Spread of Non-Indigenous Flatworms to ensure that non-native flatworms (such as the New Zealand flatworm) and flatworm eggs are not transported to new areas.

Watersports An individual participating in watersports such as angling, canoeing, yachting or wild swimming should take precautions to ensure they do not transfer animals from one river, canal, loch or coastal area to another. Guidance on suitable biosecurity measures, such as cleaning and drying equipment, can be found on the Scottish Government website (see Chapter 10).

Releasing native animals

4.21 It is an offence under the 1981 Act to release or allow to escape from captivity any animals specified in an Order made by the Scottish Ministers⁴¹. This relates to the release of an animal within its native range.

4.22 This Code does not list the Orders – or the species listed in the Orders – made under the 1981 Act as these are subject to change. More information on the Orders made under the 1981 Act can be found on the Scottish Government website (see Chapter 10).

⁴¹ See section 14(1)(a)(ii) of the 1981 Act.

5. The Planting of Non-Native Plants

Summary

What are the offences relating to non-native plants?

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 committed⁴²:

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

What does 'in the wild' mean?

'In the wild' encompasses both natural and semi-natural habitats in both rural and urban environments

What does 'plant' mean?

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.

What does 'cause to grow' mean?

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.

⁴² See section 14(2) of the 1981 Act.

When can you plant non-native plants, or cause them to grow, in the wild?

An offence is not committed if the planting of a non-native plant in the wild is authorised by an Order made by the Scottish Ministers⁴³ or according to the terms of a licence issued by the appropriate authority⁴⁴.

If you are in any doubt regarding whether the species you plan to plant is covered by either of the offences then don't plant. Take advice before acting

Introduction

5.1 This Chapter explains how the 1981 Act 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.

5.2 There are many reasons why a non-native plant should not be introduced into the wild, including:

- it may have a seriously adverse effect on other species, the environment or land use
- non-native plants may carry diseases for which native species have no immunity;
- non-native plants may supply a food source or habitat that sustains another non-native species, which would not otherwise survive in that location.

5.3 For these reasons the 1981 Act makes it a criminal offence to introduce non-native plants into the wild⁴⁵. 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 range
- **Cause to grow in the wild** – it is an offence to cause to grow in the wild any plant outwith its native range.

5.4 A full description of each offence is set out below.

⁴³ See sections 14(2B)(b) and 14(2C) of the 1981 Act.

⁴⁴ See sections 16 and 16A of the 1981 Act.

⁴⁵ See section 14(2) of the 1981 Act.

Planting non-native plants 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. It includes everywhere except the areas listed below. Although it is not an offence to plant or cause a non-native plant species to grow in these areas, it can be an offence to permit a non-native plant species to spread from such an area into the wild (see section on causing non-native plants to grow in the wild).
- 5.7** The below areas are exempted (designated as non-wild) based on the intensity and frequency of the management of the area. It is important to note that it is the certain species uses of land that causes that land to be designated as non-wild rather than whether the land is privately owned or not.

List 2 – Exempted (non-wild) areas.

(It should be noted that these are illustrative examples, much will depend on individual circumstances.⁴⁶)

a) Agricultural, horticultural and forestry land and premises

- Areas used for commercial production of agricultural or biomass crops; fruit and vegetables; flowers, ornamental plants, including nurseries; seed growing;
- Areas used for Christmas tree production, nurseries for trees, arboreta and silvicultural research trial areas (provided all of these are regularly monitored);
- Areas of enclosed grassland, used for livestock grazing.

Other activities may also take place on parts of these exempt areas including the growing of trees to create appropriate habitats (e.g. grazed woodland and wood pasture), creation of conservation headlands or uncropped margins, the planting of game cover crops and the planting of wild bird seed mixes.

⁴⁶ Whilst areas described in List 2 are unlikely to be considered as wild for the purposes of section 14(2) of the 1981 Act that does not mean that planting is permissible under the law – other pieces of legislation may be relevant and separate authorisations/licences may be required.

b) Amenity locations:

- Amenity greenspace – landscaped areas providing visual amenity or separating different buildings or land uses for environmental, visual or safety reasons
- 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 natural area for public recreation, such as Holyrood Park and large parts of 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 or trees in containers 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.

c) Burial grounds

Including churchyards and cemeteries (provided these are regularly maintained).

d) Allotments and community growing spaces

Areas of land for growing fruit, vegetables and other plants, either in individual allotments or as a community activity.

e) 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.

(f) Roads and railways

Roadside verges and railway embankments in a built-up area. Elsewhere, verges and embankments are wild.

- 5.8** It is also essential that you take all reasonable steps and exercise due diligence to avoid causing a plant to grow in the wild, outwith their native range, when you are looking after plants (see section on causing non-native plants to grow in the wild).
- 5.9** An offence is not committed if the planting of a non-native plant in the wild is authorised by an Order made by the Scottish Ministers⁴⁷ or through a licence⁴⁸. Planting of certain beneficial plants is allowed under such an Order. Further information on Orders can be found on the Scottish Government website and information on licences which have been granted can be obtained from Scottish Natural Heritage (see Chapter 10).

Causing non-native 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.
- 5.11** Some examples of actions that may cause a plant to grow in the wild include:
- a management technique that results 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 woodland adjacent to the garden);
 - failing to take proper steps to prevent a non-native plant, which is growing in a place other than the wild such as a garden, from spreading into the wild (such as a native woodland adjacent to the garden);
 - the inappropriate disposal of plant material (fly-tipping), leading to plant growth⁴⁹.
- 5.12** It is important, therefore, that you take all reasonable steps and exercise all due diligence when planting in an exempted (non-wild) area, or otherwise dealing with non-native plants, to prevent them spreading into the wild. This is discussed in more detail below along with measures that can be taken to prevent an offence occurring, beginning with some practical examples:

⁴⁷ See sections 14(2B) and 14(2C) of the 1981 Act.

⁴⁸ See sections 16 and 16A of the 1981 Act.

⁴⁹ This would also be an offence under the Environmental Protection Act 1990.

A **gardener** clearing out their pond should take care when disposing of plant material to ensure it does not spread out of their garden into rivers or lochs. Guidance on suitable disposal such as composting can be found on the Scottish Government website.

An **individual participating in watersports** such as angling, canoeing, yachting or wild swimming should take precautions to ensure they do not transfer plants from one river, canal, loch or coastal area to another. Guidance on suitable biosecurity measures, such as cleaning equipment, can be found on the Scottish Government website.

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

5.13 There are a number of steps you could take to avoid the situation where non-native plants that you are planting in an exempted (non-wild) area end up growing in the wild.

- In an exempted area, such as a garden or amenity ground, you should consider whether the use of a native plant would be more suitable, bearing in mind the risk of anything you plant spreading into the wild. Non-native plants known to spread rapidly, for example by producing highly mobile seed, should be avoided.
- 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 wild land or alongside a watercourse which flows through and out of an exempted area into the wild.
- Within exempted (non-wild) areas avoid non-native species in or along watercourses, or other transmission corridors, where seeds or plant fragments are likely to be spread over long distances.

5.14 Where non-native plants have been planted in exempted areas, all reasonable steps should be taken, and all due diligence exercised, 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 the 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.

5.15 Put simply, it is necessary to responsibly manage an exempted (non-wild) area to prevent the spread of non-native plants into the wild. In this way, you should be able to demonstrate that you have taken all reasonable steps and exercised all due diligence to avoid committing an offence in the event that a non-native plant spreads to the wild.

5.16 If you own both the exempted (non-wild) land and the wild land and a non-native plant spreads from the exempted land to the wild land, you will still need to demonstrate that you have taken all reasonable steps and exercised all due diligence to prevent this spread. The fact that you own both pieces of land is not a defence.

5.17 Whilst ownership of wild land is not relevant to the offence of causing a plant to grow in the wild, it would clearly be good practice to work in collaboration with neighbours to control or eradicate a non-native species or to seek to prevent its spread onto a neighbour's land.

Summary of chapters 6,7 and 8

Keeping invasive species

It is an offence under the 1981 Act⁵⁰ to keep invasive animals or plants of a type specified in an Order made by the Scottish Ministers.

The keeping of species listed in such an Order may be allowed under licence⁵¹.

Selling invasive species

It is an offence under the 1981 Act⁵² to

- sell
- offer or expose for sale;
- have in your possession, or transport, for sale;
- publish, or cause to be published, any advertisement for the purchase or sale;

any invasive animals or plants of a type specified in an Order made by the Scottish Ministers.

The term “sale” includes the hire, bartering and exchange of goods.

The sale etc of species listed in such an Order may be allowed under licence⁵³.

Notification of invasive species

The 1981 Act⁵⁴ enables the Scottish Ministers to make an Order creating the requirement to notify the presence of any invasive non-native plant or animal. These Orders may specify the types of invasive animals or plants that must be notified, the persons (or types of person) who must make a notification, and in what circumstances.

The duty to notify in such an Order may only be conferred on a person (or type of person) who has or should have knowledge of, or is likely to encounter, the animal or plant to which the Order relates⁵⁵.

⁵⁰ See section 14ZC(1) of the 1981 Act.

⁵¹ See sections 16 and 16A of the 1981 Act.

⁵² See section 14A(1) of the 1981 Act.

⁵³ See sections 16 and 16A of the 1981 Act.

⁵⁴ See section 14B of the 1981 Act.

⁵⁵ See section 14B(3) of the 1981 Act.

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.
- 6.2** It is an offence under the 1981 Act⁵⁶ to keep types of invasive animals or plants specified in an Order made by the Scottish Ministers. Any species that are listed in such an Order are prohibited from being kept except where the keeping is under a licence issued by the appropriate authority⁵⁷. A defence of taking all reasonable steps and exercising all due diligence to avoid committing the offence is available to a charge of keeping an invasive animal or plant⁵⁸.
- 6.3** This Code does not list the Orders – or the species listed in the Orders – made under the 1981 Act as these are subject to change. More information on the Orders created under the 1981 Act can be found on the Scottish Government website (see Chapter 10).

⁵⁶ See section 14ZC(1) of the 1981 Act.

⁵⁷ See sections 16 and 16A of the 1981 Act.

⁵⁸ See section 14ZC(3) of the 1981 Act.

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 It is an offence under the 1981 Act⁵⁹ to sell any invasive animals or plants of a type specified in an Order made by the Scottish Ministers. A person will also be guilty of an offence where they do any of the following relating to a species listed in such an Order

- offer or expose for sale;
- have in their possession, or transport, for sale;
- publish, or causes to be published, any advertisement for the purchase or sale.

The term “sale” includes the hire, bartering and exchange of goods⁶⁰.

7.3 This Code does not list the Orders – or the species listed in the Orders – made under the 1981 Act as these are subject to change. More information on the Orders created under the 1981 Act can be found on the Scottish Government website (see Chapter 10).

⁵⁹ See section 14A(1) of the 1981 Act.

⁶⁰ See section 27(1) of the 1981 Act.

8. Notification of Invasive Non-native Animals and Plants

- 8.1** This Chapter explains the responsibility, which you may have, to notify authorities of the presence of an invasive animal or plant.
- 8.2** The 1981 Act⁶¹ enables the Scottish Ministers to make an Order creating the requirement to notify the presence of any invasive non-native plant or animal. Any such Order may specify (amongst other things) the types of animals or plants that must be notified, the person (or type of person) who must make the notification, and in what circumstances⁶².
- 8.3** Having these notification requirements in place will provide early warning of a high-risk invasive non-native species arriving in Scotland (or escaping from captivity). Early notification should ensure that potential problems can be reacted to quickly and that control action is more likely to succeed.
- 8.4** The duty to notify can only be conferred on a person (or type of person) if the Scottish Ministers consider that the person has or should have knowledge of, or is likely to encounter, the invasive animal or plant to which the Order relates⁶³.
- 8.5** This Code does not list the Orders – or the species listed in the Orders – made under the 1981 Act as these are subject to change. More information on the Orders created under the 1981 Act can be found on the Scottish Government website (see Chapter 10).
- 8.6** The notification of types of animal or plant may be required under other legislation, not just the 1981 Act. For example the citrus longhorn beetle, plum curculio weevil and corn earworm moth are notifiable under the Plant Health (Scotland) Order 2005.

⁶¹ See section 14B of the 1981 Act.

⁶² See section 14B(2) and (4) of the 1981 Act.

⁶³ See section 14B(3) of the 1981 Act.

9. Species Control Agreements and Species Control Orders

Summary

The 1981 Act provides relevant bodies⁶⁴ with mechanisms for the control of invasive species.

What is a Species Control Agreement (SCA)?

A Species Control Agreement (SCA) is a voluntary agreement which may set out;

- what must be done
- by whom and
- by when

in order to control an invasive non-native plant or animal.

There is no penalty for non-compliance with these voluntary agreements (although it may result in a Species Control Order being made).

What is a Species Control Order (SCO)?

Species Control Orders (SCOs) can be made;

- where an owner/occupier has not signed up to a SCA that has been offered
- where an owner/occupier has failed to comply with the terms of a SCA
- where the relevant body has been unable to find out the name or address of the owner or any occupier and has not therefore been able to offer a SCA or
- where action is considered urgent – see section on ESCO below.

The relevant body must give 28 days' notice before the SCO comes into force and appeals are possible.

⁶⁴ See section 14P(6) of the 1981 Act.

What is an Emergency Species Control Order (ESCO)?

An Emergency Species Control Order (ESCO) may be made when the relevant body considers that the making of the Order is urgently necessary and the ESCO may be made without attempting to make a SCA.

There is no notice period for an ESCO but it expires 49 days after it is made and an appeal against an ESCO is possible.

What information should a Species Control Order (SCO) contain?

- where (what premises) the SCO relates to, including a map;
- what type of invasive non-native animal or plant it relates to;
- what operations are to be carried out; who is to carry them out; how and when they should be carried out;
- what operations must not be carried out;
- the date the SCO will come into effect and the period for which it is to have effect; and
- circumstances in which an appeal against the SCO may be made.

Is it an offence to disobey a Species Control Order (SCO)?

Section 14K of the 1981 Act makes it an offence to;

- fail, without reasonable excuse, to carry out an operation required under a SCO in the manner required by the SCO;
- carry out, or cause or permit to be carried out, an excluded operation without reasonable excuse; or
- intentionally obstruct any person from carrying out an operation required to be carried out under a SCO.

Who can create Species Control Orders or Emergency Species Control Orders (SCOs or ESCOs)?

The 1981 Act nominates a number of relevant bodies that can create SCOs and ESCOs, these are:

- Scottish Ministers
- Scottish Natural Heritage
- The Scottish Environment Protection Agency
- the Forestry Commissioners

What other powers do relevant bodies have?

A relevant body may authorise a person to enter premises⁶⁵ to;

- determine whether a SCA or SCO (or revocation of them) is required
- serve notice regarding a SCA or SCO
- determine whether a SCO offence⁶⁶ has been committed and
- to carry out operations specified in a SCO.

A person authorised to enter premises may also take others with them if they feel it is necessary.⁶⁷

A relevant body can take action to meet the requirements of a SCO if required operations have not been carried out or if excluded operations have been carried out.⁶⁸

The 1981 Act also enables relevant bodies to recover the costs of operations undertaken to enforce a SCO.⁶⁹

⁶⁵ See section 14M of the 1981 Act .

⁶⁶ See section 14K of the 1981 Act.

⁶⁷ See section 14O(1) of the 1981 Act.

⁶⁸ See section 14L(2)(a) of the 1981 Act.

⁶⁹ See section 14L(2)(c) of the 1981 Act.

Introduction

- 9.1** This Chapter explains how the 1981 Act provides for the control of invasive non-native species⁷⁰. It includes information on why and how Species Control Orders can be used as well as information on the procedure involved and in what circumstances costs are likely to be recovered.
- 9.2** As noted in Chapter 2, 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 first place. If they have recently become established, the need is to rapidly control or remove them before they become a widespread problem.
- 9.3** Once they become widely established, full-scale eradication is only feasible or cost-effective in a small number of cases. However, there are some situations where action is very important and can be effective in reducing future impact.
- 9.4** Species Control Agreements (SCA) and Species Control Orders (SCO) enable relevant bodies⁷¹ (Scottish Ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency and the Forestry Commissioners) to set out measures that must be taken to control or eradicate an invasive non-native animal or plant. The responsibilities of these bodies are set out in Chapter 10.

Species Control Agreements

- 9.5** Where a relevant body is aware of a situation in which there is an invasive plant or animal outwith its native range, and where control is considered by the relevant body to be both viable and of sufficient priority, it must first attempt to make a Species Control Agreement (SCA) with the owner or any occupier of the land (unless the situation is urgent in which case an Emergency Species Control Order (ESCO) can be made – see section on ESCO below).
- 9.6** A SCA is a voluntary agreement and should set out what must be done by whom and by when in order to control an invasive non-native plant or animal. There is no penalty for non-compliance with these voluntary agreements (although it may result in a SCO being made).

⁷⁰ See section 14D to 14O of the 1981 Act.

⁷¹ See section 14P(6) of the 1981 Act.

Species Control Orders

9.7 Species Control Orders (SCOs) can be made in the following circumstances⁷²:

- where 42 days have elapsed since the relevant body made the offer to enter into a SCA and the owner or occupier has not signed up to the SCA;
- where the owner or occupier has refused to enter into a SCA;
- where the owner or occupier has entered into a SCA but has failed to comply with the terms of that SCA;
- where the relevant body has been unable to find out the name or address of the owner or any occupier of the premises and has not therefore been able to offer a SCA;
- where the relevant body considers that the making of a SCO is urgently necessary - in which case an Emergency SCO can be made (see below).

9.8 The relevant body must give notice in writing to the owner and any occupier that a SCO is being made⁷³. The notice must have a copy of the Order attached and set out the reasons for making it. The SCO will come into force either:

- after 28 days after the date of the written notice, if no appeal is made (unless a later date is specified in the Order); or
- if an appeal is made, after it is refused or dismissed by a sheriff or withdrawn.⁷⁴

9.9 A SCO must⁷⁵:

- describe the premises to which the Order relates;
- be accompanied by a map showing the premises to which the Order relates;
- specify the type of invasive animal or plant to which the Order relates;
- specify any operations to be carried out, who is to carry them out and how and when they should be carried out;

⁷² See section 14D of the 1981 Act.

⁷³ See section 14G of the 1981 Act.

⁷⁴ See section 14I of the 1981 Act.

⁷⁵ See section 14F of the 1981 Act.

- specify any operations that must not be carried out on the premises (for example, actions which might spread the species further);
- specify the date the Order will come into effect and the period for which it is to have effect;
- set out the circumstances in which an appeal against the decision to make the SCO, or the terms of the SCO, may be made.

9.10 The term “premises” has a wide definition⁷⁶ and covers vehicles, vessels, aircraft and other means of transport as well as land (including lockfast places and other buildings). It does not include a dwelling.

Emergency Species Control Orders

9.11 An Emergency Species Control Order (ESCO) may be made when the relevant body considers it is urgently necessary and may be made without attempting to make a SCA in the first instance.

9.12 The following are some hypothetical examples of what might be considered urgent situations requiring an emergency order:

A boat is found to have the highly invasive carpet sea squirt (*Didemnum vexillum*) on its hull.

The boat owner is about to sail up the west coast of Scotland, thereby potentially spreading the sea squirt. An ESCO could be made to ensure the sea squirt is removed from the hull and responsibly disposed of before the boat is allowed to sail.

A non-native crayfish is present within a set of ponds on land, close to a water course that does not contain any non-native crayfish.

Escape of the non-native crayfish from the pond is very likely and could happen at any time. An ESCO could be made to ensure action is taken to prevent the crayfish infesting any other bodies of water.

⁷⁶ See section 14P(5) of the 1981 Act.

9.13 An ESCO comes into force⁷⁷ as soon as notice is given to the owner and any occupier of the land (unless the ESCO specifies a later date), and expires 49 days after it is made⁷⁸. An appeal can be made against the decision to make a ESCO, or the terms of the ESCO, within 28 days of notice being given⁷⁹. A sheriff can decide whether or not to suspend the effect of the Order while the appeal is under way⁸⁰.

Offences, enforcement and powers of entry

9.14 Section 14K of the 1981 Act makes it an offence to:

- fail, without reasonable excuse, to carry out an operation required under a SCO;
- to carry out, or cause or permit to be carried out, an excluded operation (operations specifically prohibited in the terms of the relevant Order) without reasonable excuse; or
- intentionally obstruct any person from carrying out an operation required to be carried out under a SCO.

9.15 A relevant body may authorise a person, in certain circumstances, to enter premises⁸¹ to

- determine whether to enter into a SCA;
- make or revoke a SCO;
- serve notice regarding a SCA or SCO;
- determine whether a SCO offence has been committed; or
- carry out work identified in a SCO.

9.16 These persons may take someone else with them as well as machinery or other equipment, for the purpose of assisting them in the exercise of the power⁸². For example, this may be an expert on control methods for the invasive plant or animal. If there is any damage caused by the authorised person or any person accompanying them, the relevant body must pay compensation unless the damage is attributable to the fault of the person who sustained it⁸³.

⁷⁷ See section 14I(a) of the 1981 Act.

⁷⁸ See section 14E(2) of the 1981 Act.

⁷⁹ See section 14H(1) and (2) of the 1981 Act.

⁸⁰ See section 14H(3) of the 1981 Act.

⁸¹ See section 14M of the 1981 Act.

⁸² See section 14O(1) of the 1981 Act.

⁸³ See section 14O(4) of the 1981 Act.

- 9.17** If the relevant body considers that any operations required by the SCO have not been carried out or have not been carried out within the date specified or in the manner required by the SCO, the relevant body can take action to ensure the requirements of the SCO are met⁸⁴. This may mean entering the premises and carrying out the operations themselves. In some cases more extensive action may be needed to remedy the effect of inadequate previous control, or of excluded operations.
- 9.18** The 1981 Act also sets out when a sheriff may grant a warrant⁸⁵ authorising the person authorised by the relevant body to enter premises. This may be necessary where occupiers are temporarily absent, premises are unoccupied or admission to the premises has been refused.
- 9.19** The following provides an example of the use of powers of entry in relation to a SCO:

A catchment scale eradication programme is underway for giant hogweed

A number of landowners/occupiers are identified in the catchment that have areas of giant hogweed on their land. SNH enters into a voluntary SCA with the various landowners and occupiers.

One occupier fails to take action as specified in the SCA, leaving an untreated and seeding population of giant hogweed which will rapidly spread into surrounding areas threatening the success of the whole programme. A SCO is therefore made requiring the occupier to abide by the same terms as the SCA originally outlined.

The occupier fails to abide by the terms of the SCO therefore SNH operatives gain access to the area to carry out control work themselves (see also section on recovery of costs).

⁸⁴ See section 14L of the 1981 Act.

⁸⁵ See section 14N of the 1981 Act.

Recovery of costs and the “polluter pays” principle

9.20 The 1981 Act enables relevant bodies to recover the costs of operations undertaken to enforce a SCO⁸⁶. This power is discretionary and it is expected that this will depend on the particular circumstances. The intention is that costs will be recovered where it is fair and proportionate to do so, in accordance with the “polluter pays” principle. In others words, where it is clear that the person is responsible for the problem, for example if they have actively released the invasive animal or plant in question. There may also be other cases where it is fair to recoup costs, for example where the owner or occupier is considered to have caused the species to spread.

9.21 The following provides a hypothetical practical example of a SCO that might be made and why costs may or may not be recouped:

A population of American bullfrogs is detected in a series of ponds on private land

The landowner has admitted to releasing the bullfrogs but refuses access to their land. This is the only known population of bullfrogs in Scotland. The GB Risk Assessment for bullfrogs identifies them as high risk and notes that they may predate on, compete with, and pass disease on to, native species. They are also known to be a vector of *Batrachochytrium dendrobatidis*, the causative agent for chytridiomycosis, a potentially catastrophic fungal disease of amphibians.

SNH consider that measures are required to prevent the bullfrogs spreading and that work can only be carried by a trained individual.

A SCA is refused, specifically the landowner refuses access to land. A SCO is made by SNH, which sets out the operations that trained SNH staff will undertake and the period over which this will take place.

Costs are recouped from the land-owner on the basis of the polluter pays principle.

⁸⁶ See section 14L(2)(b) and (c) of the 1981 Act.

Right to Appeal

9.22 Owners and occupiers may appeal to a sheriff if they are aggrieved by the decision to make a SCO or aggrieved by the terms of the SCO⁸⁷. An appeal must be made within 28 days of being given notice (in writing by the relevant body) of the intention to make a SCO⁸⁸.

9.23 The sheriff must determine the appeal⁸⁹ and may either:

- affirm the SCO;
- direct the relevant body to amend the SCO;
- direct the relevant body to revoke the SCO; or
- make such other order as the sheriff sees fit.

9.24 Further appeal from the decision of the sheriff can only be made on a point of law⁹⁰.

⁸⁷ See section 14H(1) of the 1981 Act.

⁸⁸ See section 14H(2) of the 1981 Act.

⁸⁹ See section 14H(4) of the 1981 Act.

⁹⁰ See section 14H(5) of the 1981 Act.

10. Non-Native Species - Which Body is Responsible

Summary

Who is responsible for non-native species in Scotland?

Scottish Ministers (including Marine Scotland), Scottish Natural Heritage (SNH), the Scottish Environment Protection Agency (SEPA) and the Forestry Commissioners (FCS) all have responsibilities relating to non-native species in Scotland.

These 'habitat leads' are given specific powers relating to the prevention, eradication and control of non-natives in the 1981 Act (Chapter 9 provides more details) and are responsible for determining priorities for their habitat.

Who do I contact if I have a non-native species enquiry?

The habitat leads all have information on their websites however queries should be directed to SEARS (Scottish Environment and Rural Services) in the first instance:

08452 30 20 50 (24/7 customer service number)

info@sears.scotland.gsi.uk

Who do I contact if I require a licence to release a non-native species?

Most licensing is dealt with by SNH with freshwater fish being dealt with by Marine Scotland.

Background

10.1 A Framework of Responsibilities (the Framework) has been agreed by those identified in the Act as having powers relating to non-native species in Scotland. Referred to as the relevant bodies in the 1981 Act, these are the Scottish Ministers (including Marine Scotland), Scottish Natural Heritage, the Scottish Environment Protection Agency and the Forestry Commissioners. The Framework aims to ensure that roles and responsibilities are clear. This will help to ensure that control work is undertaken promptly, reducing costs and avoiding duplication. Although the Framework will make the response to non-native species more effective, limited resources will mean that each relevant body will have to balance the effort involved in tackling non-native species not only against the potential cost of doing nothing but also against other priority tasks.

Overview

10.2 The Framework designates SNH as the overall lead co-ordinating body for non-native species issues. SNH will work with lead bodies for each habitat type as set out on the next page (referred to as habitat leads for the purposes of the Code).

Forestry Commission Scotland (FCS)

Habitat Responsibilities: Woodlands

Comments: Woodlands and other habitats managed by FCS (the national forest estate). FCS will also lead in other woodlands for most non-native plant species, and other non-native species that impact on plant health or forestry interests. A partnership approach may be taken for some species affecting biodiversity interests, especially animals and plants that are found both in woodland and other habitats.

For example: Rhododendron.

Marine Scotland (MS)

Habitat Responsibilities: The marine environment

Comments: Marine and coastal habitats up to Mean High Water Spring level or the limit of saline influence up an estuary.

For example: Carpet sea squirt and Wireweed.

Scottish Environment Protection Agency (SEPA)

Habitat Responsibilities: Freshwater – still and flowing waters

Comments: Species found within the water body itself including emergent plants. The boundary between freshwater and marine is that previously agreed with MS for the purposes of the Water Framework Directive - these relate to the limit of saline influence up an estuary.

For example: Signal crayfish and New Zealand pygmyweed.

Scottish Natural Heritage (SNH)

Habitat Responsibilities: All terrestrial and wetland habitats and species in situations not listed above.

Comments: Including riparian vegetation, peatlands and mires outwith woodland areas. All terrestrial vertebrates and invertebrates (including all birds, and amphibians).

For example: Japanese knotweed and American mink.

The role of the co-ordinating body – SNH

10.3 As co-ordinating body SNH will ensure that the Framework operates effectively as well as providing an oversight of delivery and implementation of non-native species policy in Scotland. SNH will work in close partnership with the other habitat leads (SEPA; MS; FCS) as well as with others such as the current Scottish Non-Native Species Working Group. SNH will provide generic advice and guidance to the habitat leads and to others on non-native species issues where required.

The role of habitat leads

10.4 Habitat leads will:

- be a point of contact for species within that particular habitat;
- be required to determine what the strategic priorities are for that habitat type;
- ensure an appropriate strategy is delivered for these priorities. This may include public awareness raising, the “do-nothing” option, containment, biosecurity measures, eradication etc. This will, in many situations, mean encouraging or coordinating action by other groups or bodies;
- maintain a dialogue and work with partners to deliver these priorities;
- consider prevention measures such as assessment and management of high-risk pathways (both into and within the habitat) and consider strategies to reduce risk from these pathways (regulation, public awareness etc.); and
- determine the suitability and necessity of control work and coordinate and manage any work undertaken within the habitat. Note that this does not necessarily require work to be progressed “on the ground” as control action must be technically and financially feasible, humane and safe, and proportionate to the level of threat. Habitat leads will also need to assess any control work against any competing priorities.

Joint responsibility

10.5 For some species a joint or shared responsibility, often through a partnership, is the most effective arrangement. The case study below sets out some of the partnership work underway at the time of writing. Efforts will be made to maintain and develop partnership working both between the habitat leads described above and by bringing in additional organisations.

Rhododendron case study

The extensive growth of *Rhododendron ponticum* hybrids in the west and south-west of Scotland poses a major threat to biodiversity of international importance, particularly to mosses, liverworts and lichens. A partnership led by Forestry Commission Scotland and Scottish Natural Heritage involving Loch Lomond and the Trossachs National Park, the National Trust for Scotland, Highland Birchwoods and others has been formed to address this threat.

The role of Scottish Government and the Scottish Non-Native Species Working Group

10.6 The Scottish Government will continue to lead on strategic policy on invasive non-native species in Scotland. This will include:

- coordination at the Great Britain and European level;
- coordination, development and strategic oversight of policy within Scotland;
- chairing the Scottish Non-Native Species Working Group;
- leading on matters relating to non-native species policy work including risk assessment, prevention, legislation and research.

10.7 The Scottish Non-Native Species Working Group was set up in March 2006 to ensure effective policy co-ordination and implementation in Scotland. The group co-ordinates the overall response of public sector bodies in Scotland to the environmental, social and economic challenges presented by non-native species.

SEPA, SNH, FCS, MS, Police Forces, the Convention of Scottish Local Authorities (CoSLA), Ministry of Defence, GB Non-Native Species Secretariat, research institutes, environmental charities and organisations are all represented on this group.

Who to contact?

All non-native species enquires and reports

SEARS (Scottish Environment and Rural Services) 24/7 customer service number or email;

08452 30 20 50

info@sears.scotland.gov.uk

Contacting the Habitat Lead directly

SNH: non_native_species@snh.gov.uk

FCS: fcsscotland@forestry.gsi.gov.uk

Marine Scotland: marinescotland@scotland.gsi.gov.uk

SEPA: www.sepa.org.uk/about_us/contacting_sepa/by_email.aspx

Licensing enquires

SNH:

Tel: 01463 725245

E-mail: licensing@snh.gov.uk

Marine Scotland:

Tel: 0131 244 6236

E-mail: Valerie.Lusk2@scotland.gsi.gov.uk

Native ranges and species specific advice

www.snh.gov.uk

Orders and other general information

www.scotland.gov.uk/nonnativespecies

Annex Relevant Legislation

Control of Pesticides Regulations (SI 1986/1510)

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 c 43

Sets out the legal framework within England, Scotland and Wales for environmental protection in relation to control of pollution waste, contaminated land, statutory nuisance and the control of genetically modified organisms.

Control of Pesticides (Amendment) Regulations (SI 1997/188)

Makes a number of amendments to the Control of Pesticides Regulations 1986/1510 to clarify the scope of those Regulations, including what products the Regulations apply to, the powers available to Ministers in the event of a breach of the Regulations and the right of access to information under the Regulations.

Section 33A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 asp 15 (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 appropriate ornamental fish-keeping facilities.

Nature Conservation (Scotland) Act 2004 asp 6 - Biodiversity Duty

The Act provides a series of measures which are designed to conserve biodiversity and to protect and enhance the biological and geological natural heritage of Scotland, including a new general duty on public bodies to further biodiversity in exercising their functions.

Plant Health (Scotland) Order (SSI 2005/613)

Plant Health (Forestry) Order (SSI 2005/2517)

Plant health controls in the UK are based on the EU Plant Health Regime, the basic framework for which is in the EU Plant Health Directive 2000/29/EC. This regime 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. They are regularly amended to keep these controls up to date.

Animal Health and Welfare (Scotland) Act 2006 asp 11

Part 1 of the Act makes provision in relation to animal health including powers to prevent the spread of diseases.

Part 2 of the Act makes a number of provisions in relation to animal welfare through the consolidation and modernisation of animal welfare legislation for Scotland.

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, or otherwise not living in a wild state.

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 or, if that person leaves that animal unattended without adequate provision for its welfare.

Environmental Liability (Scotland) Regulations (SI 2009/266)

Sets out the mechanism by which bodies undertaking economic activity that carries a risk of damage to the environment are held responsible for preventing damage and provides that such bodies can be held liable for remedial measures.

Water Environment and Water Services (Scotland) Act 2003

The first part of the Act provides measures for protection of the water environment and sets out the duties of public bodies, such as SEPA, in this regard.

The Act created a new River Basin Management Planning (RBMP) process to achieve environmental improvements to protect and improve Scotland's water environment in a sustainable way.

Under the Act regulatory controls over water activities have been introduced (the Water Environment (Controlled Activities) (Scotland) Regulations 2011) in order to protect, improve and promote sustainable use of Scotland's water environment. This includes wetlands, rivers, lochs, transitional waters (estuaries), coastal waters and groundwater.

Part 2 of the Act provides for the system for funding new connections to the water and sewerage infrastructure by amending the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980.



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