



# LARGE HERBIVORES IN REWILDING PROJECTS



## CORE TOPICS

- Laws relevant to large herbivores in rewilding projects, including legislation relating to applicable licences, potential liability, imports, identification and traceability, animal welfare, and health and disease control.

## KEY TAKEAWAYS

- Licences may be required for certain large herbivore species (under the Dangerous Wild Animals Act 1976 or the Wildlife and Countryside Act 1981).
- Rewilders may be liable for harm or damage caused by large herbivores.
- Relevant rules and guidance must be complied with when importing large herbivores.
- Rewilders must comply with the identification and traceability rules applicable to large herbivores.
- Rewilders should ensure that their management of large herbivores complies with the legislation and guidance on animal welfare.
- Rewilders should comply with the rules on health and disease control, including rules relating to suspected disease, testing and disposal of fallen stock.

## TABLE OF CONTENTS

1. **Introduction**
2. **The application of the Dangerous Wild Animals Act 1976 to large herbivores**
  - 2.1 Introduction
  - 2.2 Which animals are deemed “dangerous”?  
*Case study – bison*  
*Case study – wild boar living fully wild*
  - 2.3 Practical takeaways
3. **Release licences under the Wildlife and Countryside Act 1981 for large herbivores**
  - 3.1 Introduction
  - 3.2 Releasing animals into the wild
  - 3.3 Practical takeaways
4. **Liability for large herbivores**
  - 4.1 Introduction

## TABLE OF CONTENTS CONTINUED

|           |                                                                       |
|-----------|-----------------------------------------------------------------------|
| 4.2       | Who is a “keeper” of an animal?                                       |
| 4.3       | Liability for damage caused by “dangerous animals”                    |
| 4.4       | Which species of animal are “dangerous”?                              |
| 4.5       | Liability for damage caused by non-dangerous animals                  |
| 4.6       | Other heads of liability                                              |
| 4.7       | Criminal liability                                                    |
| 4.8       | Practical takeaways                                                   |
| <b>5.</b> | <b>Obtaining large herbivores: considerations at the import stage</b> |
| 5.1       | Importing animals under the Balai rules                               |
| 5.2       | Requirement on the exporter: health certificate                       |
| 5.3       | Registration or approval of premises                                  |
| 5.4       | Import licences                                                       |
| 5.5       | Practical takeaways                                                   |
| <b>6.</b> | <b>Identification and traceability requirements</b>                   |
| 6.1       | Cattle                                                                |
| 6.2       | Horses                                                                |
| 6.3       | Pigs                                                                  |
| 6.4       | Practical takeaways                                                   |

|           |                                                                                           |
|-----------|-------------------------------------------------------------------------------------------|
| <b>7.</b> | <b>Animal welfare</b>                                                                     |
| 7.1       | Introduction                                                                              |
| 7.2       | Protected animals                                                                         |
| 7.3       | Animals for which a person is responsible                                                 |
| 7.4       | Offences under the AWA                                                                    |
| 7.5       | Unnecessary suffering                                                                     |
| 7.6       | Duty to ensure welfare                                                                    |
|           | <i>Case study – animal welfare in the Netherlands</i>                                     |
| 7.7       | Welfare of Farmed Animals (England) Regulations 2007 (“Farmed Animals Regulations”)       |
| 7.8       | Species-specific codes of practice                                                        |
| 7.9       | Horses (Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids)    |
| 7.10      | Pigs (Code of Practice for the Welfare of Pigs)                                           |
| 7.11      | Wild boar                                                                                 |
| 7.12      | Cattle including buffalo and bison (Code of Recommendations for the Welfare of Livestock) |
| 7.13      | Practical takeaways                                                                       |
| <b>8.</b> | <b>Ownership of animals</b>                                                               |
| 8.1       | Domestic animals                                                                          |
| 8.2       | Wild animals                                                                              |

|           |                                                                                                                      |
|-----------|----------------------------------------------------------------------------------------------------------------------|
| <b>9.</b> | <b>Health and disease control</b>                                                                                    |
| 9.1       | Introduction                                                                                                         |
| 9.2       | Practical takeaways                                                                                                  |
| 9.3       | Scope of the following section and consideration of obligations under the AHA                                        |
| 9.4       | Provisions that apply to all animals listed under the AHA: separation and notification                               |
| 9.5       | Treatment and testing                                                                                                |
| 9.6       | Provisions that apply to bovine species and other particular animals: specific testing obligations in relation to TB |
| 9.7       | Testing                                                                                                              |
| 9.8       | Consequences of TB diagnosis                                                                                         |
| 9.9       | Consequences of non-compliance with testing requirements                                                             |
| 9.10      | How to regain TB-free status                                                                                         |
|           | <i>Case study – TB outbreak</i>                                                                                      |
| 9.11      | Slaughter                                                                                                            |
| 9.12      | Consequences of non-compliance with applicable law                                                                   |
| 9.13      | Fallen stock                                                                                                         |
|           | <i>Case study: treatment of fallen stock in the Netherlands</i>                                                      |

## 1. INTRODUCTION

Large herbivores such as cattle, horses, pigs,<sup>1</sup> deer, bison and elk are examples of keystone species. Keystone species have a disproportionately larger effect on the environment than other species and help regulate local species diversity within the whole ecosystem. These animals played a key role in shaping the ancient landscape of the UK (including England and Wales). They can encourage the creation of a diverse mosaic of habitats to develop and encourage the co-existence of other wildlife by altering the landscape (e.g. by keeping areas open for grazing, transporting seeds and making space for wildflowers to grow). Some large herbivores used in rewilding or nature restoration projects now only survive in a domestic form (for example horses and cattle), while others exist primarily as wild animals (for example deer, bison and elk).

This briefing note focuses on 'kept-wild' large herbivores: large herbivores that live with minimal human interference and exhibit wild behaviours but that are still managed to some degree. This includes animals such as cattle and horses as well as wild animals such as bison, which are kept in enclosed settings with some degree of management. The position relating to fully wild large herbivores (such as deer living in the wild) is beyond the scope of this briefing note. Despite the fact that kept-wild herbivores are kept very differently from traditional domestic livestock animals (which are managed for production purposes), the same regulatory regimes apply. The kept-wild concept is not recognised in the relevant legislation and guidance. Because of this, these regulatory regimes are not well suited to and are not easy to apply in a rewilding context.

This briefing note addresses some of the legal considerations rewilders will need to be aware of when thinking about how to bring in and manage large herbivores in ecological restoration projects. The key issues covered are:

- the application of the Dangerous Wild Animals Act 1976 to large herbivores;
- release licences under the Wildlife and Countryside Act 1981 for large herbivores;

- liability for large herbivores;
- obtaining large herbivores: considerations at the import stage;
- identification and traceability requirements;
- animal welfare;
- ownership of animals; and
- health and disease control.

This briefing note addresses the position in England and Wales. It does not cover Scotland or Northern Ireland. For the position in Scotland please see our separate briefing note.

## 2. THE APPLICATION OF THE DANGEROUS WILD ANIMALS ACT 1976 TO LARGE HERBIVORES

### 2.1 Introduction

Dangerous Wild Animals Act 1976<sup>2</sup> ("DWA") licensing is relevant to projects planning to bring certain wild species of large herbivore onto their land in an enclosed setting. The DWA aims to ensure that private individuals who keep dangerous wild animals do so in circumstances that create no risk to the public while safeguarding the welfare of the animals.

The DWA lists numerous "dangerous" wild animals and states that anyone keeping one of these animals must have a licence issued by the local authority, otherwise they will be liable on conviction to an unlimited fine. The "keeping" of an animal requires the person to have the animal in their possession. A "keeper" of a wild animal remains a "keeper" even if the animal leaves that person's possession, until another person becomes the new "keeper".<sup>3</sup>

Rewilders should note that there are questions regarding how DWA licensing interacts with the licensing system for releases of wild animals under the Wildlife and Countryside Act 1981<sup>4</sup> (discussed below), and in particular whether it may

be necessary to obtain licences under both regimes in some circumstances. Rewilders should engage with the relevant regulators and be aware that they may be required to apply for both licences.

### 2.2 Which animals are deemed "dangerous"?

"Dangerous" animals under the DWA are classified at the family level, with exceptions for certain genera or (sub) species. Hybrid or cross-bred animals may need a licence, depending on how far removed the animal is from its wild ancestor.<sup>5</sup> Animals classed as "dangerous" for DWA purposes include:

- all members of the Bovidae family except any domestic form of the genera *Bos*, *Bubalus*, *Capri* and *Ovis* (domestic cattle, buffalo, sheep and goats). Highland cattle (*Bos taurus*), for example, would not require a licence;
- all members of the Equidae family except *Equus asinus* and *Equus caballus* (donkeys and domestic horses, including ponies). Exmoor ponies (*Equus caballus*), for example, would not require a licence; and
- wild boar, elk and European bison.<sup>6</sup>

A rewilding seeking to bring those species classified as "dangerous" onto their land must first seek a licence from the local authority.

A local authority will not grant a licence unless the person can show that they both own and possess the animal, or propose to do so – except in exceptional circumstances (determined at the authority's discretion).<sup>7</sup> Further, among other requirements, the local authority must be satisfied that:

- it is not contrary to the public interest on the grounds of safety, nuisance or otherwise to grant the licence;
- the animal will be held in secure accommodation (i.e. so it will not escape);
- the accommodation has suitable construction, size, temperature, lighting, ventilation, drainage and cleanliness;

- the accommodation is suitable for the number of animals proposed to be kept;
- the animal is supplied with adequate and suitable food, drink and bedding material and is visited at suitable intervals;
- appropriate steps will at all such times be taken for the protection of any animal concerned in case of fire or other emergency; and
- all reasonable precautions will be taken at all such times to prevent and control the spread of infectious diseases.

Those who keep kept-wild large herbivores classed as “dangerous wild animals” must therefore note that where such an animal is kept in an enclosure there are welfare obligations despite the intention being for the animal to live as ‘wild’ (in addition to any general animal welfare obligations that may apply under animal welfare legislation, as discussed below).

Since there is no guidance as to what constitutes ‘secure’ accommodation, the local authority has discretion to assess licence applications on a case-by-case basis, having regard to the requirements set out above. Further, representatives of the local authority may enter the premises where an animal is being held (at reasonable times) to assess whether conditions are in breach of the DWA.

## CASE STUDY – BISON

The above requirements suggest that perimeter fencing needs to be sufficiently secure to obtain a DWA licence.<sup>8</sup> Elsewhere in Europe, bison, which would be classed as “dangerous” under the DWA, have been successfully enclosed with relatively low fences (approximately 1m).<sup>9</sup> Further, public access on designated bison paths has been granted, provided that members of the public stay at least 50m away from the animals.

## CASE STUDY – WILD BOAR LIVING FULLY WILD

The wild boar population in the Forest of Dean provides an interesting example of how the government and local authorities might assess whether someone is a “keeper” of an animal for DWA purposes. In 2008, the Department for Environment, Food & Rural Affairs (“DEFRA”) published an action plan in relation to the feral wild boar population. While this plan indicated that wild boar would be “dangerous” for the purposes of the DWA (and that keepers would therefore require a licence), it did not, however, suggest that a licence would be required by someone who had feral wild boar frequently on their land, as was the case in the Forest of Dean. This is because the landowner would fail to meet the definition of a keeper – that is, someone who owns and possesses the animal – since the boar are free to come and go as they please, without management or intervention by the landowner. This is in contrast to kept-wild large herbivores. Although they are permitted to exhibit wild behaviours, kept-wild large herbivores are still subject to human management and are not free to come and go as they please. Where kept-wild large herbivores are classed as “dangerous” under the DWA their keeper must comply with DWA requirements e.g. the obligation to hold the animals in “secure accommodation”.

### 2.3 Practical takeaways

Those intending to embark on rewilding projects with kept-wild large herbivores should be aware that a DWA licence is required to keep certain large herbivore species.

DWA licensing is administered by local authorities, so there may be differences across the country in the application process and the interpretation of the requirements as set out in this section, with scope to negotiate specific licence conditions. Accordingly, where rewilders wish to bring kept-wild large herbivore species that require a DWA licence into their projects, they should actively engage with local

authorities to demonstrate that the conditions in which the animals will be kept are appropriate for the purposes of the DWA. Rewilders are also likely to want to engage with local authorities to ensure that the conditions of the licence are as favourable as possible for rewilding, for example in relation to fencing, and opportunities for public engagement/access.

Where a licence is granted, that licence and any subsequent licence will expire on 31 December of the year to which the licence relates and must be renewed before that date if the licence holder is to continue to keep the relevant animal(s). The licence conditions must be complied with.

The time it takes to process a licence application varies between local authorities. East Hertfordshire District Council, for example, aims to process all applications within 42 days. However, applications can take up to 70 days (10 weeks) to process.

A person found guilty of keeping an animal covered by the DWA without a licence, or anybody found guilty of failing to comply with any licence condition can be subject to a fine not exceeding £2,000.<sup>10</sup>

Failing to obtain a licence may result in local authority inspectors seizing the animal and either retaining it or having it destroyed (euthanised) or disposed of (to a zoo or elsewhere) without compensation.<sup>11</sup>

Rewilding projects considering an element of public viewing of their animals should be aware of the potential requirement for a zoo licence under the Zoo Licensing Act 1981.<sup>12</sup> A zoo is defined as “an establishment where wild animals (not normally domesticated in Great Britain) are kept for exhibition to which members of the public have access, with or without charge for admission, on seven days or more in any period of twelve consecutive months”.<sup>13</sup> Before making a decision on whether an establishment is a “zoo”, local authorities should assess the reasons why the animals are kept and whether the “public” have access. For example, animals held for conservation breeding or habitat management grazing in an area where public access is possible (e.g. adjacent to a public right of way) may not be considered to be in a zoo on the basis that they are not being “kept for exhibition”.



Furthermore, rewilding planners should note that if they possess a zoo licence, a DWA licence is not required. Therefore, a zoo licence may be an alternative to DWA licensing in some circumstances. The provisions of the Animal Welfare Act 2006 also apply to animals in zoos, as well as to animals kept under a DWA licence (for further details on the Animal Welfare Act 2006 please see section 7 Animal Welfare).

### 3. RELEASE LICENCES UNDER THE WILDLIFE AND COUNTRYSIDE ACT 1981 FOR LARGE HERBIVORES

#### 3.1 Introduction

The Wildlife and Countryside Act 1981 (“WCA”) protects and conserves certain species and habitats and contains some provisions that rewilders should consider.

Specifically, the WCA prohibits the release of certain animals into the wild without a licence. Licences are generally issued either by Natural England or Natural Resources Wales. The WCA will be relevant to rewilders who want to bring wild species of kept-wild herbivores onto their land and is considered by DEFRA to apply to kept-wild animals in enclosures in some circumstances.

#### 3.2 Releasing animals into the wild

As set out in more detail in section 2 of the [Reintroduction of Animals briefing note](#), rewilders may commit a criminal offence by introducing animals that are either specifically listed in the WCA or not ordinarily resident in Great Britain without a WCA licence. Animals formerly resident in Great Britain but now extinct, including recently extinct animals, are considered not ordinarily resident for the purposes of the WCA. Kept-wild large herbivore species subject to this prohibition currently include wild boar, bison and elk but not domestic breeds of horses, cattle or pigs in a kept-wild

setting.<sup>14</sup> In cases involving hybrids between an animal whose release is controlled and one that is not, the hybrid will be subject to release controls.

Further, rewilders should note that “the wild” is interpreted broadly for the purposes of offences under the WCA. The definition includes natural and semi-natural habitats, rural and urban environments, open-environments generally and even enclosures in some circumstances.<sup>15</sup>

For an enclosure to be considered the “wild”, the animal released and subject to restrictions on its freedom must be living in a suitable natural (or semi-natural or regenerated/rehabilitated) habitat and be capable of having an impact on natural habitats and wild nature flora or fauna. Please see section 2.2 of the [Reintroduction of Animals briefing note](#) for further details.

Therefore, an animal covered by this WCA prohibition (such as a wild boar) released into an enclosed but generally natural environment could be deemed to be released into the “wild”, even if it is still subject to some human management.

#### 3.3 Practical takeaways

Rewilders should be aware that they may be expected to obtain release licences to bring kept-wild animal species that are not currently resident in Great Britain onto their land, even where these animals are kept in enclosures (based on the broad definition of “enclosures” in the DEFRA Section 14 Guidance). While it should be noted that this guidance is not legally binding and reflects the current interpretation of the WCA by DEFRA and Natural England (and probably also Natural Resources Wales), rewilders planning to bring kept-wild large herbivores onto their land should nonetheless consider whether a WCA licence may be needed and engage with Natural England/Natural Resources Wales in relation to this.

Natural England may expect rewilders to apply for and obtain a WCA licence for species to which the WCA applies, even for animals that are registered as livestock and/or kept under a DWA or zoo licence. While Natural England’s position is counterintuitive in considering all three regulatory regimes

to apply at the same time (on the basis that this would treat the animals as released into the wild, wild in captivity and domestic simultaneously), rewilders should engage with Natural England and other relevant regulatory authorities (e.g. the local authority for DWA licensing) on this issue.

To [apply for a WCA licence](#), rewilders in England should submit an application to “release non-native species and those listed in Schedule 9”<sup>16</sup> or a [conservation translocation form](#) to Natural England. Rewilders in Wales should confirm the correct form and application process with Natural Resources Wales.

### 4. LIABILITY FOR LARGE HERBIVORES

#### 4.1 Introduction

In some situations, rewilders could be held liable for damage or harm caused by kept-wild herbivores. The main legal basis for such liability is the Animals Act 1971<sup>17</sup> (“AA”), which imposes strict liability (i.e. there is no need to prove any intention or negligence) on the keeper of an animal. However, in some circumstances, liability may also arise in other ways. Rewilders should be aware of the potential for liability and take steps to mitigate this risk, such as through taking appropriate safety measures and obtaining suitable insurance. Please see sections 2–5 of the [Liability for Damage Caused by Animals briefing note](#) for further details on potential liabilities, including under legislation other than the AA, and practical examples.

#### 4.2 Who is a “keeper” of an animal?

The AA imposes liability on the keeper of the animal responsible for the damage or harm. A person is a keeper if they own the animal or have it in their possession.<sup>18</sup> Any person who was a keeper of the animal continues to be so until another person becomes the keeper.

Therefore, a rewilder who brings kept-wild herbivores onto their land with limited human management is still likely to be deemed their “keeper” for the purposes of the AA even if that animal escaped or temporarily moved onto someone else’s land before causing the harm or damage.

#### 4.3 Liability for damage caused by “dangerous animals”

The circumstances in which a rewilder may be liable under the AA depend on whether the kept-wild large herbivore in question is classed as a “dangerous” animal.

Subject to limited exceptions, any “keeper” of a “dangerous” animal is strictly liable for any damage it causes. This liability is likely to extend to liability for personal injury as well as property damage.

#### 4.4 Which species of animal are “dangerous”?

To qualify as a “dangerous” animal for the purposes of the AA, the species must: (i) not be commonly domesticated in the British Islands; and (ii) have such characteristics that they are likely to cause severe damage, or that any damage they may cause is likely to be severe (unless restrained).

Some species of kept-wild herbivores, such as cattle, horses and pigs, are unlikely to qualify as “dangerous” animals because they are considered to be commonly domesticated in the British Islands. DEFRA has published [guidance](#) as to which animals are commonly domesticated in Great Britain, and these include:<sup>19</sup>

- true domestic breeds of species that have been kept in Great Britain for so long and in such numbers that their status is normally domesticated, such as horses, ponies, cattle, sheep and pigs; and
- species introduced to Great Britain relatively recently but now so commonly kept outside zoos that they can be regarded as normally domesticated in Great Britain, such as llamas and alpacas.

Other species, such as bison, elk and wild boar, are likely to qualify as “dangerous” as they are not commonly

domesticated in the British Islands and may be considered to have characteristics that are likely to cause severe damage.

#### 4.5 Liability for damage caused by non-dangerous animals

Generally, where damage is caused by an animal that does not belong to a dangerous species (as defined above), the keeper of that animal is strictly liable (i.e. regardless of any intent or negligence on the part of the keeper) for damage only if the individual animal is abnormally dangerous and the keeper is aware of this.<sup>20</sup>

#### 4.6 Other heads of liability

Liability can also arise regardless of an animal’s species or known characteristics, if negligence can be shown.

In certain situations, rewilders may also be liable for: (i) property damage caused by livestock and horses trespassing on another’s land; and/or (ii) property damage or injury caused by unenclosed animals straying onto roads.<sup>21</sup>

Further detail on potential liabilities for damage caused by animals is set out in section 5 of the [Liability for Damage Caused by Animals briefing note](#).

#### 4.7 Criminal liability

The Health and Safety at Work etc. Act 1974<sup>22</sup> (“HSAWA”) could impose criminal liability for health and safety risks posed by kept-wild large herbivores. The HSAWA is relevant to rewilders keeping kept-wild large herbivores as part of a business or operation that generates income (e.g. where kept-wild large herbivores are combined with an ecotourism, food production or other business). The HSAWA imposes a duty of care on employers and self-employed persons to ensure third parties affected by the rewilding activities (e.g. visitors to a rewilding project) are not exposed to health or safety risks so far as is reasonably practicable.<sup>23</sup>

There is government guidance relating to the application of the HSAWA to cattle, which includes recommendations

on having a suitable cattle handling system; trained and competent workers; and a rigorous culling policy for temperamental animals.<sup>24</sup> The Health and Safety Executive (which regulates workplace health and safety) has brought prosecutions in the past in relation to deaths of third parties caused by farmed cattle.

Committing an offence under the HSAWA can result in a fine or up to two years’ imprisonment.<sup>25</sup>

Section 1 of the [Liability for Damage Caused by Animals Guidance note](#) provides further detail on liability under HSAWA and practical steps to limit potential liability.

#### 4.8 Practical takeaways

Given that the AA provides for strict liability, rewilders may wish to consider obtaining insurance to cover any liability for damage or injury caused by their kept-wild animals. The availability of such policies should be discussed with specialist practitioners (e.g. livestock insurers).

In any case, it would be prudent for rewilders to pay attention to any unusual characteristics or behaviours in their animals that are likely to create danger to the public or cause damage to property so that appropriate countermeasures can be put in place, for example additional fencing or separation of animals. Where the kept-wild animals are considered dangerous, countermeasures should be implemented to ensure public and/or staff safety, noting that for some species such measures may already be required as part of DWA licence conditions. Rewilders with kept-wild cattle should have regard to the relevant HSAWA guidance.

## 5. OBTAINING LARGE HERBIVORES: CONSIDERATIONS AT THE IMPORT STAGE

Where rewilders are looking to import animals into England or Wales from outside Great Britain, they will need to ensure that they comply with the rules regulating animal imports.

The importation of any live animals into Great Britain<sup>26</sup> (including from Northern Ireland) requires specified documentation (and in many cases other requirements must be satisfied, such as veterinary checks).<sup>27</sup> These requirements vary significantly depending on the species and the country from which animals will be imported. The information given below is merely an overview and different or additional requirements may apply to the specific circumstances of a particular import. If it is intended that live animals be imported from outside Great Britain, it is recommended that expert advice is obtained. The import rules for domestic animals (such as cattle, horses and pigs) are beyond the scope of this briefing note and further details are contained in the relevant guidance.<sup>28</sup> Rules and guidance relating to the welfare of animals during transport are also beyond the scope of this briefing note.

**Importing wild large herbivore species:** for wild animals, the importing rules vary depending on the country of origin of the animal and the particular rules that the animal or activity is covered by. For relevant purposes these include the Balai rules and the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("**CITES**"). Note that wild large herbivore species (e.g. wild ungulates) do not generally appear to be covered by the Rabies Order (Importation of Dogs, Cats and Other Mammals) 1974<sup>29</sup> and so an import licence application using form RM01 (for imports of animals susceptible to rabies) is unlikely to be required.<sup>30</sup> However, rewilders should confirm this with the Animal and Plant Health Authority ("**APHA**") before wild large herbivore specimens are imported into Great Britain.<sup>31</sup>

**Importing animals listed in CITES:** rewilders must apply for a permit or certificate to import any animal listed by CITES. CITES is an international agreement between governments seeking to ensure safe international trade of wild animals and plants. The main wild large herbivore species that rewilders may wish to import (elk (*Alces alces*), European bison (*Bison bonasus*) and wild boar (*Sus scrofa*)) are not CITES-listed at the time of writing. However, rewilders should be aware that CITES status could change and check this before importing animal specimens.

Species+ is an online tool that rewilders can use to check whether a species is on the CITES list. Also contained in its

search function is the Annex classification of the animal under the EU Wildlife Trade Regulations,<sup>32</sup> with "A" being the most strictly controlled and "D" being the least. If an animal falls within Annex A, B, or C rewilders must apply for a permit to import, export, or re-export said animal.<sup>33</sup> Application for CITES documentation takes place through APHA, with APHA aiming to process applications within 30 days.<sup>34</sup> There may be other certificates to obtain: for example, an Article 10 certificate will be required if the species is Annex A classified and will be used for commercial purposes such as displaying to the public.<sup>35</sup> There are serious criminal sanctions for breach of CITES regulations, including up to seven years' imprisonment and/or an unlimited fine.<sup>36</sup> An export permit will also need to be obtained from the management authority of the country from which the animals are being exported.<sup>37</sup>

**Customs requirements for CITES items:** all CITES import permits or certificates must be endorsed at the border by customs authorities when the animal enters Great Britain. UK Border Force will check, endorse and keep the documents and send copies to APHA.<sup>38</sup>

Furthermore, if the CITES animal is subject to regular welfare or sanitary and phytosanitary ("**SPS**") controls, a point of entry that can carry out SPS checks must be used.

Rewilders should note that the customs requirements under CITES could change and so should regularly check for updates on the relevant government websites.

## 5.1 Importing animals under the Balai rules

The Balai rules apply to imports of live animals not covered by other rules applying to animal imports or a general licence.<sup>39</sup> Imports of wild large herbivore species used in rewilding such as European bison, elk, and wild boar are likely to be subject to the Balai rules, but this should be confirmed through discussions with APHA in each particular case. Further details about the Balai rules can be found in government guidance.<sup>40</sup>

Rewilders should note that the Balai rules frequently change, and should regularly check for updates on the relevant government websites.

**From the EU:** live animals subject to the Balai rules to be imported from the EU are categorised as high-risk under the Border Target Operating Model ("**BTOM**").<sup>41</sup> If the Balai rules are applicable, rewilders will need to notify APHA of their intention to import an animal covered by the Balai rules and check which document(s) are required under the BTOM. Rewilders will also need to submit an import notification for the import of products, animals, food and feed systems ("**IPAFFS**") to APHA.<sup>42</sup> This is also known as a common health entry document ("**CHED**"). The deadline for submitting the IPAFFS notification is at least one working day before the expected arrival of the animals at their point of entry in Great Britain.<sup>43</sup> Further details about IPAFFS notification can be found in the government guidance on the Balai rules.

Live animals arriving from the EU will probably have to undergo (depending on public and animal health risks at the time) document, identity and physical checks, including tests, at an approved premises. They must stay there for either 48 hours or the time indicated on the health certificate.

Live animals (such as large herbivores) imported from the EU can currently enter Great Britain through any point of entry.

**From outside the EU:** live animals imported from outside the EU are also categorised as high risk under the BTOM. Rewilders must complete part 1 of the CHED on the IPAFFS portal<sup>44</sup> to tell APHA about imports of live animals from non-EU countries and also apply for the relevant import licence or authorisation.<sup>45</sup> Rewilders must ensure that this is done at least one working day before the expected arrival of the animals at the port of entry.

Imports of live animals from outside the EU must be checked at a border control point ("**BCP**") in Great Britain. The BCP inspector will carry out the relevant checks and complete part 2 of the CHED, which records the results on IPAFFS. A fee must be paid for the consignment to be checked at a BCP.

Animals must not be removed from the BCP until official inspectors have completed and validated the CHED. After animals leave the BCP, rewilders must: (i) make sure the animals go directly to the destination named on the CHED; (ii) make sure the original CHED goes with the animals to

their final destination; and (iii) comply with any movement restrictions associated with the animals.

## 5.2 Requirement on the exporter: health certificate

A health certificate is required in order to export a live animal to Great Britain, the Channel Islands or the Isle of Man. This is to ensure that the relevant health standards and regulations have been met. A health certificate must be applied for by the exporter in their own country and provided by a competent authority in that country, irrespective of whether such country is in the EU. Only the original document or secure electronically certified file is valid as the evidence of certification.

## 5.3 Registration or approval of premises

When importing large herbivore specimens covered by the Balai rules rewilders will also need to ensure that the animals are imported to Great Britain from premises that are either registered or approved by competent authorities in the country of import. There does not appear to be a requirement for the premises that the large herbivores are imported to in Great Britain to be approved by APHA but rewilders should confirm this with APHA if they plan to import large herbivores.<sup>46</sup>

## 5.4 Import licences

In some cases, imports of live animals may require an import licence in addition to a health certificate. The exact import licence required varies by animal and rewilders should consult the general licences section on the government website.<sup>47</sup> It is unclear whether or not an import licence is required for the wild large herbivore species which rewilders are most likely to want to import (European bison, elk or wild boar) where the import is not covered by a general licence. As mentioned above, these species do not generally appear to require a licence application using form RM01. Given this uncertainty, rewilders should contact the APHA imports team to confirm whether a licence is required for their particular import, as suggested in government guidance.<sup>48</sup> Where an

import licence is required the relevant licence should be attached to the import notification on the IPAFFS portal.

## 5.5 Practical takeaways

Rewilders should carefully consider which species they intend to import and ensure that they have the necessary licences, and have made the required notifications, as part of planning their projects.

# 6. IDENTIFICATION AND TRACEABILITY REQUIREMENTS

Generally speaking, rewilders will need to comply with the applicable identification and traceability requirements for farmed animals unless a derogation from the relevant requirement is available.<sup>49</sup> These requirements are designed to ensure that animals entering the human food chain and living in close proximity to human beings are disease-free and identifiable. Compliance with these requirements involves handling animals or locating young animals by a certain time, which could be challenging for projects with kept-wild animals that may roam over a large area and are not used to human interaction.

## 6.1 Cattle

Bovine animals, including domestic cattle and bison, need to have a passport that corresponds to their livestock identification or a cattle ID tag (ear tag).

This requirement applies to “all animals on a holding”<sup>50</sup> (emphasis added). DEFRA states that a “holding” is the land or buildings used to keep the animals.

A landowner who wishes to keep cattle must register the land as a holding. To do so, they must:

- notify the Secretary of State of their name, address and the address of the proposed holding;

- obtain a county parish holding number (“CPH”) from the Rural Payments Agency and, before moving livestock onto the holding, provide it to the APHA;
- obtain a herd mark for the holding (this is required to purchase cattle tags); and
- inform the British Cattle Movement Service before moving cattle onto the holding.

Once the landowner has registered the land as a holding, each animal must be tagged on both ears. The timeframe for this depends on the type of cattle. For cattle used in rewilding it is likely that both ear tags will need to be applied within 20 days of birth.<sup>51</sup>

In addition, landowners must register any cattle born on their holding.<sup>52</sup>

The time limit for registration is seven days from the date the animal is tagged and this registration must be by means of an application for a passport.<sup>53</sup>

Failure to register a holding where cattle are kept, or moving untagged cattle from a holding, is an offence that can result in a fine or imprisonment of up to two years. Failure to apply an ear tag within the applicable period<sup>54</sup> and failure to register an animal in accordance with the applicable rules<sup>55</sup> are both offences that can also result in a fine and/or imprisonment of up to two years.<sup>56</sup>

## 6.2 Horses

All horses and ponies in England must be microchipped and have a valid passport identifying the animal and its registered owner.<sup>57</sup> For foals, the application for a passport must be made by the later of six months after birth and 30 November of the year of birth.<sup>58</sup> However, this requirement for a passport and microchipping does not apply to wild or semi-wild ponies on Dartmoor, Exmoor, Wicken Fen or in the New Forest (to the extent that they remain in those areas).<sup>59</sup> Such wild or semi-wild equines must be entered on the respective list/stud book of the aforementioned areas in order for the exception to apply.<sup>60</sup> However, if the semi-wild

equine receives veterinary treatment, a passport must be acquired within 30 days of the treatment.<sup>61</sup>

The passport must remain with the horse at all times (this includes at their stable/yard) and during all movements except when on foot or in an emergency situation. However, even in such situations, the passport must be produced by the keeper without undue delay, if required.

### 6.3 Pigs

Rewilders need a CPH before moving pigs onto the land and must maintain a movement document from birth to death. Further, under The Pigs (Records, Identification and Movement) Order 2011/2154,<sup>62</sup> a pig may not be moved off a holding unless it has an ear tag with the letters “UK” followed by the herd mark of the holding from which it is being moved. The legislation suggests that an ear tag is only required before a pig leaves a holding or premises, suggesting that it is not necessarily required during its stay.<sup>63</sup> However, rewilders should check this with APHA.

The same registration and identification requirements would apply to kept-wild boar. Keepers of wild boar additionally need to hold a licence for keeping an animal classified as “dangerous” under the DWA – see section 2 “The application of the Dangerous Wild Animals Act 1976 to large wild herbivores” above for further details).

If a rewilders is able to meet the requirements for a DWA licence, the relevant local authority may impose conditions on the licence relating to, among other things, liability insurance, identification, traceability and the conditions in which the wild boar are kept.

### 6.4 Practical takeaways

Rewilders should be aware of the identification and traceability requirements and comply with them. Failure to comply can have significant impacts for keepers of kept-wild animals.

## 7. ANIMAL WELFARE

### 7.1 Introduction

Anyone keeping animals will be subject to certain animal welfare rules.

It is important for rewilders to note that the animal welfare requirements were drafted with domestic/farmed animals in mind rather than animals in ecological restoration projects, which may have very different lifestyles and behaviours. Because of this, it is not clear how some of these requirements may apply in a rewilding context and some may also not be well suited to animals which are able to live more independently from humans. Despite this, rewilders are still expected to comply with these requirements. The Animal Welfare Act 2006<sup>64</sup> (“AWA”) provides legal protections for “protected animals” and for animals for which a person is responsible.

### 7.2 Protected animals

Unlike equivalent rules in other countries in Europe (e.g. the Netherlands), the AWA applies equally to all protected animals, without differing levels of protection. For example, it is irrelevant for the purposes of the AWA how reliant a particular animal is on humans in practice. Under section 2 of the AWA, there are three situations in which an animal will be a protected animal:

- if it is of a kind that is commonly domesticated in the British Islands;<sup>65</sup>
- if it is “under the control of man” (whether permanently or temporarily); or
- if it is “not living in a wild state”.

For the purposes of the AWA, the kinds of animals considered to be commonly domesticated are those whose collective behaviour, life cycle or physiology has been altered as a result of their breeding and living conditions being under control for multiple generations.<sup>66</sup> A list of examples of animals considered to be normally domesticated in Great Britain can

be found in Annex A of the Zoo Licensing Act guidance.<sup>67</sup> These include horses/ponies, cattle and pigs.

For the purposes of the AWA, whether an animal is “under the control of man” is construed broadly to include any animal that requires some intervention to live in its own environment, for example for feeding or maintenance of its living conditions.<sup>68</sup> This means that kept-wild herbivores such as bison, which require minimal intervention, can still be covered.

Similarly, “not living in a wild state” is intended to cover animals that were once under the control of people and are therefore dependent on human support but are now living in the wild, such as animals that have escaped from a circus or zoo.<sup>69</sup>

Therefore, kept-wild herbivores are considered “protected” for the purposes of the AWA, on the basis that they are either: (i) commonly domesticated in the British Islands, or (ii) “under the control of man”, as there is still a degree of human management.

### 7.3 Animals for which a person is responsible

A person can commit an offence under the AWA where they directly cause an animal to suffer or where they are “responsible for an animal” and another person causes that animal to suffer. A person can be responsible for an animal on either a permanent or temporary basis. Such responsibility is only intended to arise when a person has assumed responsibility for the animal’s day-to-day care or care for a specific purpose.<sup>70</sup> A person who owns an animal will always be considered responsible for it. When a person transfers responsibility to another person temporarily, the duty to ensure the welfare of that animal will apply insofar as they must take reasonable steps to ensure that the person to whom they transfer responsibility will care for that animal appropriately.<sup>71</sup>

Since there is no clear guidance on how “responsibility” applies in the context of rewilding and conservation, it is likely that if: (i) a rewilders has a record of ownership of the animal

or (ii) the rewilder provides routine care such as checking on or feeding the animals, this constitutes responsibility.

#### 7.4 Offences under the AWA

Given that the AWA applies to kept-wild herbivores, rewilders should be aware of the two key offences that may be applicable: (i) the offence of causing unnecessary suffering; and (ii) the duty to ensure an animal's welfare.

#### 7.5 Unnecessary suffering

Since kept-wild animals are likely to qualify as “protected animals” and animals for which someone is responsible, then, in the event of any unnecessary suffering of such an animal caused by a rewilder or, where the rewilder is responsible for the animal, by another person, a rewilder could be liable to a fine and/or imprisonment as well as orders to deprive them of ownership or keeping of the suffering animal and any dependent offspring, and/or a ban on future ownership or possession of animals.

Whether an animal has suffered (the duration of which is immaterial) is determined on a case-by-case assessment based on the relevant circumstances. However, there is case law to suggest that the painless killing of animals will not necessarily constitute suffering in this context.

Whether any suffering is unnecessary involves a case-by-case assessment based on the consideration of factors such as:

- the availability of reasonable means of avoiding or reducing the suffering;
- whether the conduct causing the suffering was in compliance with a licence or code of practice;
- whether the conduct causing the suffering qualifies as a legitimate purpose: the AWA Explanatory Notes give the example of the use of horses in riot control or the use of animals in pest control activities;<sup>72</sup>
- whether the suffering is proportionate to the purpose of the conduct concerned; and/or

- whether the conduct concerned is within the boundaries of what a reasonably humane and caring person would find acceptable.

The government has produced a number of codes of practice for animal welfare which provide practical guidance, for example, the Code of Practice for the Welfare of Horses, Ponies, Donkeys and their hybrids,<sup>73</sup> and the Code of Practice for the Welfare of Pigs.<sup>74</sup> While non-binding, compliance with the codes will be considered when assessing (i) if suffering was for a legitimate purpose, and (ii) if regulations to promote welfare are being followed. The codes apply predominantly to the keeping of animals in a conventional manner (e.g. farming) rather than rewilding. Therefore, while compliance with such codes of practice may potentially minimise the risk of unnecessary animal suffering, some rewilders may consider the obligations in the codes to be impractical in the context of rewilding (e.g. daily monitoring of water supply, minimum staffing requirements and monitoring of behaviours) but should nevertheless ensure that any deviation from farmed animal practices and the codes are not causing ‘unnecessary suffering’.

It is unclear whether ecological justifications can be used, and to what extent, as a legitimate purpose when considering the unnecessary suffering offence.

#### 7.6 Duty to ensure welfare

Where a person is deemed “responsible” for an animal (such as a kept-wild herbivore), they are subject to the additional duty to ensure the animal's welfare by taking all reasonable steps to ensure that the needs of the animals for which they are responsible are met. For the purposes of the AWA, an animal's needs include the following:

- a suitable environment and diet;
- ability to exhibit normal behaviour patterns;
- any need to be housed with, or apart from, other animals; and
- protection from pain, suffering, injury and disease.

Given that there is currently no comprehensive guidance regarding to what extent rewilders are responsible for all the needs of their animals, rewilders may wish to follow the relevant codes of practice to reduce the risk of being found liable under the AWA. Actions that rewilders could take that may reduce the risk of liability include:

- researching the environment into which the animals will be released and ensuring that it is sufficiently rich (e.g. in terms of availability of food, water and shelter) and well-suited to the species;
- complying with the disease control obligations set out in section 9 Health and Disease Control below;
- having suitable procedures to deal with animals that are in pain or ill (e.g. veterinary treatment or culling);
- promoting natural social structures and natural behaviours (which rewilders are likely to want to do in any case), as well as not having other animals living together with them, which may cause them harm; and
- complying with all DWA licence conditions (if relevant).

### CASE STUDY – ANIMAL WELFARE IN THE NETHERLANDS

In the Netherlands, the level of protection granted to animals varies by animal groups (e.g. domesticated animals, farm animals and wild animals), which benefit from different levels of protection. For wild animals, the duty of care and anti-cruelty provisions under Dutch law do not apply, for example.<sup>75</sup>

Dutch case law also recognises an intermediate category of “kept wild” animals, which it will determine by consideration of the level of control exerted over the animals, often taking into account the size of the enclosure. For example, Dutch courts considered that animals on a 5,000 ha nature reserve are “kept wild” but their status may be changed to domesticated where they are moved into a 55 ha trapping meadow with a fence and drinking/feeding facilities.<sup>76</sup>

## 7.7 Welfare of Farmed Animals (England) Regulations 2007<sup>77</sup> (“Farmed Animals Regulations”)

While the offences set out above are open to some interpretation based on the circumstances, the Farmed Animals Regulations are much more prescriptive.

The Farmed Animals Regulations apply specifically to “farmed animals” and explicitly exclude any animals “living in the wild”. It is unclear whether kept-wild animals count as wild for these purposes and it is possible that kept-wild animals fall within the definition of farmed animals if they are used for the production of food, skin or other farming purposes (on which there is no further guidance). Therefore, in a situation in which kept-wild animals are left to live in “wild” conditions, but the surplus population is culled and used for meat, it is likely that these animals would be considered farmed and, under the Farmed Animals Regulations, anyone deemed responsible for the animals is required to take all steps to ensure that the conditions under which the animals are bred or kept comply with the general requirements set out in Schedule 1.<sup>78</sup>

Among other things, these requirements set out minimum conditions in relation to staffing, frequency of inspection, record keeping, freedom of movement and food and water supply. For example, animals must be fed a wholesome diet of sufficient quantity to maintain them in good health, and must have access to feed at intervals appropriate to their physiological needs and, in any case, at least once a day. They must also not be provided with food or liquid that contains any substance that may cause them unnecessary suffering or injury. Equally, they must have access to a suitable water supply and be provided with an adequate supply of fresh drinking water every day.

In addition to the general requirements in Schedule 1 there are also species-specific requirements. For example, schedules 7 and 8 set out specific conditions for the keeping of cattle and pigs, respectively. These include measures to prevent fighting among pigs/boar and a requirement to inspect pigs at least once a day to check on their wellbeing.

## 7.8 Species-specific codes of practice

In addition, and as already referred to in subsection 7.5 Unnecessary Suffering above, there are relevant codes of practice. While failure to comply with their recommendations does not necessarily constitute an offence under the AWA or otherwise, in the event that proceedings are brought against the keeper/person responsible for an animal, the court may look at whether that person has complied with such recommendations when deciding whether an offence has been committed.

Set out below are some very brief and non-exhaustive species-specific points rewilders should consider when assessing the environments into which they propose to bring certain species.

### 7.9 Horses (Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids)<sup>79</sup>

While the vast majority of this document deals with issues that are unlikely to be applicable in the context of rewilding, such as stabling conditions, the Code of Practice for the Welfare of Horses, Ponies, Donkeys and their hybrids sets out other considerations which, if ignored, could lead to unnecessary suffering of animals. These include: (i) awareness of plants that can be toxic to horses, (ii) ensuring that natural water sources are clean, plentiful, are easily accessed and do not have a sandy base, and (iii) having appropriate plans in place for euthanising suffering horses.<sup>80</sup> There are differing levels of flexibility in how toxic plants must be dealt with, for example ragwort must be completely removed from a site but acorns may be dealt with by taking any steps that prevent the horses from ingesting them.

### 7.10 Pigs (Code of Practice for the Welfare of Pigs)<sup>81</sup>

Similarly, much of this document caters to farming-specific issues such as tail-docking (to mitigate risk of tail-biting), appropriate trough sizes and castration. However, as pigs are very social and inquisitive animals, the guidance reiterates, among other things, the need for appropriate enrichment material that is edible, chewable, investigable and

manipulable. As natural foragers, if kept-wild pigs are free to roam in a large environment akin to their natural habitats, it is very likely that exploration of this environment would be sufficient enrichment. The code also highlights potential problems caused by aggressive behaviours. While the code acknowledges that these behaviours are most likely where pigs are not sufficiently enriched and kept in an enclosed space, rewilders should be aware of potential aggressive behaviours and consider separation or even slaughter where this might cause unnecessary suffering to other pigs or any other animal to which the AWA may apply. For pigs kept outside, the code simply states that feed and water should be made available to allow individual animals’ needs to be met, and that owners should carefully monitor the body condition of the pigs and adjust feed provision if necessary.

### 7.11 Wild boar

Rewilders should note that this code of practice also applies to kept-wild boar.<sup>82</sup>

### 7.12 Cattle including buffalo and bison (Code of Recommendations for the Welfare of Livestock)<sup>83</sup>

Much of this code, as with the equivalent codes for pigs and equine species, deals with more hands-on farming practices such as calf-rearing, feeding, dehorning and milking. However, as cattle are generally timid animals, among other things, rewilders should take care not to cause excessive fear during any interactions with the animals and, if they need to be moved from one area to another, rewilders should do so without the cattle being hurried by keepers, vehicles or dogs. To mitigate the tension between this recommendation and the requirements to handle animals, for ear-tagging for example, the code of practice recommendations should be followed and require such tags to be fitted by a properly trained and competent operator. In terms of food, the code provides that the amount of forage should be monitored and supplemented where necessary. For water, where water infrastructure is needed the appropriate number, size and design of water troughs, bowsers or water tanks, should be provided, in areas that have easy access, are smooth underfoot and are not prone to waterlogging.

### 7.13 Practical takeaways

Rewilders should consider how the AWA and other legislation and guidance relating to animal welfare may apply in a rewilding context.

In particular, rewilders should be aware that animal welfare obligations under the AWA apply to kept-wild herbivores and consider to what extent kept-wild animals might “suffer” as part of their project, to what extent this could be viewed as “unnecessary” and take reasonable steps to avoid this and ensure a baseline level of welfare (to the extent possible). In addition, rewilders may wish to consult with DEFRA for guidance.

Further, rewilders should bear in mind that using any kept-wild animals for production purposes, such as meat or skin, even if there is a population surplus and such production is secondary to the primary goal of ecological restoration, may result in additional compliance burdens (i.e. Farmed Animals Regulations).

## 8. OWNERSHIP OF ANIMALS

Ownership rights over an animal depend on whether the animal is classed as a “domestic” or “wild” animal under common law. Generally speaking, in law, “domestic” or tame animals live in association with humans, either by habit or training, and do not exist in a wild state. Conversely, “wild” animals include all animals, regardless of their nature, which are not considered domestic.<sup>84</sup> From a legal perspective, whether an animal is wild or domestic is a matter of legal classification, rather than the precise factual position. For example, the classification of animals as domestic or wild also does not take into account the characteristics or circumstances of individual animals, such as whether or not the particular animal is confined or is actually living freely in the ‘wild’ or has the characteristics associated with ‘wild’ animals. This means that where an animal is classed as domestic in law, it will still be classed as domestic even if it is living as a wild animal and exhibits wild behaviours.

Where an animal has been classed as domestic, this extends to all species of that animal, and absent new legislation it is unlikely that courts will depart from this classification.<sup>85</sup>

### 8.1 Domestic animals

While there is no exhaustive list of domestic or wild animals, common law indicates that horses, cattle, oxen, sheep, pigs and poultry are domestic. Therefore, many types of kept-wild animals used in rewilding (such as Exmoor Ponies or Highland cattle) are very likely to be considered domestic under the laws of England and Wales.

Domestic animals are considered personal property of the owner and subject to absolute ownership rights. Absolute ownership grants the owner certain rights, such as the ability to claim property rights where possession of the animal is lost, for example if the animal strays.

A person can become the owner of a domestic animal if it is born to an animal that the person already owns or if it is legally transferred to them.<sup>86</sup>

### 8.2 Wild animals

Certain kept-wild animals (such as bison) have not been explicitly classed as domestic under common law and so it is likely that they would be considered wild for ownership purposes.

While it is not possible to have absolute ownership of wild animals, it is possible to acquire qualified ownership in certain circumstances. This is a more limited form of ownership that only persists while there is possession of the animal. Examples of how qualified ownership of wild animals can be obtained include:

1. by taming the animal – where the person lawfully takes, tames or reclaims the wild animal they acquire qualified ownership over the animal. The ownership is lost if the animal regains its liberty and does not intend to return. For example, deer that roam to a different part of the

forest but return to the person’s land each day would remain under ownership for as long as they continued to return.

2. ownership of the land – the owner of the land who has exclusive rights to hunt, take and kill the wild animals on their land, acquires qualified ownership over such animals while they are on the land.

Accordingly, if a kept-wild animal is wild under common law, qualified ownership may be acquired by virtue of the animal being on a person’s land. If the animals were to leave the land and not return, ownership and any accompanying property rights would be lost. This is because qualified ownership depends on possession of the animal.

## 9. HEALTH AND DISEASE CONTROL

### 9.1 Introduction

The Animal Health Act 1981<sup>87</sup> (“AHA”) sets out obligations relating to disease control in animals. These obligations can apply to kept-wild large herbivores. Specifically, a rewilders should be aware of when they might be required to: (i) separate; (ii) treat and test; and (iii) facilitate controlled slaughter and culling of diseased animals. Rewilders should note that complying with the AHA could require handling of animals in some circumstances (which may not be straightforward for animals living wild that are not used to human contact) or impact rewilding projects by requiring animals to be culled.

The AHA applies to certain species of animals, regardless of whether they are domestic or wild.<sup>88</sup> Therefore, rewilders should expect the rules set out below to apply equally to any kept-wild herbivore (except horses, to which only the provisions of the AHA that apply to all animals will be relevant).

## 9.2 Practical takeaways

To reduce the risk of liability for failure to adhere to animal health legislation, rewilders should:

- plan to bring kept-wild herbivores into areas away from domestic species that are similar to the kept-wild herbivore;
- actively engage with neighbouring landowners to mitigate possibilities of either: (i) such landowners' diseased animals infecting kept-wild animals; or (ii) diseased kept-wild animals infecting neighbouring landowners' animals (which could result in civil liability and damages claims);
- monitor the health of kept-wild animals using a comprehensive animal health plan with monitoring carried out by appropriately experienced stock people;
- develop action plans to deal with any emergencies;
- ensure that they have the right insurance in place to cover any civil liability and any losses that might arise if animals need to be culled to prevent the spread of disease;
- cooperate fully with local and government authorities' orders or instructions in relation to disease control;
- engage with APHA to understand its bovine tuberculosis ("TB") testing requirements; and
- develop action plans for dealing with fallen stock, for example engage with APHA in anticipation of difficulties and have leakproof disinfected bins with lids for emergency storage of fallen stock.

## 9.3 Scope of the following section and consideration of obligations under the AHA:

- "disease" generally refers to cattle plague, pleuro-pneumonia, foot-and-mouth disease, sheep pox, bovine TB and various swine fevers. However, this list can be extended by the Secretary of State and some parts of the AHA are not restricted by this definition;<sup>89</sup> and

- animals generally covered by the AHA include cattle, sheep, goats and all other ruminating animals, and swine (regardless of whether they are domestic or wild).<sup>90</sup> Therefore, the AHA would be likely to apply to all species that would be considered as kept-wild herbivores (except horses, which are non-ruminating). However, some provisions of the AHA apply to all animals, for example in relation to the notification of rabies as set out below.<sup>91</sup>

## 9.4 Provisions that apply to all animals listed under the AHA: separation and notification

Any person with animals covered by the AHA (which includes most kept-wild large herbivores) affected by disease on their land should, to the extent practicable, keep the animal(s) separate from animals not affected and notify the local police without delay.<sup>92</sup> Failure to do so could result in criminal prosecution (as set out in subsection 9.12 Consequences of non-compliance with applicable law below) and possible civil liability under the common law towards third parties who suffer harm where the keeper allows diseased animals to mingle with another person or such person's animals.<sup>93</sup>

## 9.5 Treatment and testing

Generally, except in relation to TB (see the following subsection), keepers of animals do not have specific obligations to monitor and test for diseases actively (although monitoring the health of kept-wild animals via an animal health plan is recommended, as mentioned).<sup>94</sup> However, ministers have broad powers to require treatment of animals that may have been exposed to a diseased animal.<sup>95</sup>

While ministers do have the power to order the monitoring and/or testing of animals in relation to certain diseases, for example sheep scab, zoonoses and foot-and-mouth disease, this will be carried out by an inspector rather than the keeper, so rewilders would only need to facilitate access to the animals in such a situation.

## 9.6 Provisions that apply to bovine species and other particular animals: specific testing obligations in relation to TB

Rewilders should note that there are additional legal obligations<sup>96</sup> to prevent the spread of: (i) TB in goats, sheep, pigs, camelids and deer, and (ii) bovine TB in particular (e.g. in domestic cattle and bison). The testing process requires animals to be handled, and so rewilders will need to consider how they can comply with the testing obligations safely and humanely for animals that ordinarily have minimal human contact.

## 9.7 Testing

The Secretary of State may issue a notice to a keeper of any animal requiring TB testing by a specified date.<sup>97</sup>

In relation to bovine TB, those responsible for bovine animals should arrange<sup>98</sup> for the testing of bovines such as cattle and bison at least once every four years (if in a low-risk area), once every six to twelve months in an edge area, and up to once every six months (if in a high-risk area).<sup>99</sup> Some types of farms and industries are considered inherently high risk, including open farms where cattle can have contact with the public.<sup>100</sup>

In relation to sheep, pigs, goats and camelids, there is no statutory surveillance programme for TB. However, there is a legal obligation for herd owners and veterinary practitioners to report any cases of disease with clinical signs or gross pathological (or historical) findings suggestive of TB to APHA.<sup>101</sup> Furthermore, keepers who suspect these animals have TB should: (i) contact their private veterinary surgeon; and (ii) arrange a post-mortem examination with their private veterinary surgeon on animals that have died on their land or show signs indicative of TB.<sup>102</sup> While it is not compulsory to notify suspicions of TB during clinical examinations, surgery, during radiography procedures or in biopsy material, submission of clinical samples from such cases to the APHA laboratory is encouraged.

In relation to deer, there is also no routine statutory TB testing programme. However, keepers who suspect TB in deer of any species must notify APHA.<sup>103</sup>

## 9.8 Consequences of TB diagnosis

Under the AHA, ministers have the power to order the slaughter of animals infected with (or even suspected of being infected with) TB.<sup>104</sup> Where a keeper suspects an animal has TB, they must immediately: (i) inform DEFRA; (ii) isolate the suspected animal; and (iii) ensure that no carcasses, milk or potentially contaminated equipment leave the farm/isolated space.<sup>105</sup>

Further, rewilders should be aware of the following likely consequences of a positive bovine TB diagnosis:

- movement restrictions imposed on affected animals (unless a licence has been issued by APHA);
- compulsory slaughter and post-mortem examination of animals that have failed a bovine TB test (carried out by APHA);
- an order to clean and disinfect the premises (including facilities, vehicles and equipment) once any bovine TB-positive animals have been removed; and
- possible further testing ordered by APHA.<sup>106</sup>

## 9.9 Consequences of non-compliance with testing requirements

If a keeper fails to carry out a TB test by the specified date:

- the herd will lose its “officially TB-free” status;<sup>107</sup>
- movement restrictions will be imposed on the whole herd (unless a licence has been issued by APHA);<sup>108</sup>
- the keeper will receive reduced compensation for any animals slaughtered as a result of a later TB-positive test;<sup>109</sup> and
- there will be an investigation by the local authority and potential prosecution.

## 9.10 How to regain TB-free status

Whether this status is lost through TB -testing being overdue or a positive TB test result, additional testing carried out by APHA may be required to regain “officially TB-free” status and be free from trade and movement restrictions.<sup>110</sup> Typically, APHA will require two consecutive short-interval tests (usually 60-day intervals) to yield TB-negative results and more frequent testing in the future. APHA will only require one negative test result if the herd is in a low-risk area.

### CASE STUDY – TB OUTBREAK

A rewilder suspects that there has been an outbreak of TB among kept-wild cattle that roam over their land and this has been confirmed by testing. The rewilder is aware that other herds of cattle are kept on adjacent land and, in addition to the strict notification requirements for notifiable diseases set out in the next paragraph, must take steps to: (i) isolate the diseased kept-wild cattle away from the non-diseased portion of the herd and the neighbouring herds; (ii) report the outbreak to DEFRA without delay; and (iii) ensure that no carcasses, milk or potentially contaminated equipment leave the farm or isolated area. APHA will arrange for the removal and slaughter of the affected animal as quickly as possible. The affected cattle will be valued before slaughter and the rewilder will be given appropriate compensation. The rewilder must ensure that the identification documents and tagging requirements for the affected animals are correct and up to date. Additional consequences may include movement restrictions on the affected animals (among others, as outlined in subsection 9.8 Consequences of TB diagnosis above). For the rewilder to regain TB-free status, APHA will conduct further testing (as outlined in subsection 9.10 How to regain TB-free status above).

Rewilders should also be aware of the stricter rules in relation to rabies and other notifiable diseases. DEFRA has a substantial guidance that sets out which diseases are

notifiable.<sup>111</sup> If a rewilder merely suspects that any animal has rabies or another notifiable disease, they must report this to APHA and the local police as soon as possible, unless they have reasonable grounds for believing that someone else has already done so.<sup>112</sup>

## 9.11 Slaughter

Generally, ministers have discretion as to whether animals affected by, or suspected of being affected by, diseases, should be compulsorily slaughtered (and the list of diseases in relation to which ministers have the power to require slaughter can be extended by government order).<sup>113</sup> However, there are some instances where the relevant minister must order slaughter, specifically – if an animal is affected with cattle plague or pleuro-pneumonia. Even if an animal is only suspected of being affected by these diseases (or foot-and-mouth, swine fever and disease of poultry), then the relevant minister may still require slaughter of that animal.

Therefore, rewilders should employ some level of disease monitoring and control to minimise the risk of potential mass culling if a disease is out of control or threatening other animals.

Rewilders may be ordered by the Secretary of State to detain the animal prior to removal and slaughter, and/or arrange for the disposal of the animal’s carcass. Furthermore, rewilders must not move the animal or allow it to be removed from the premises on which it is required by notice to be detained for slaughter.<sup>114</sup>

## 9.12 Consequences of non-compliance with applicable law

Failure to comply with any of the relevant laws discussed earlier in this briefing note or a government order can result in up to six months’ imprisonment and/or an unlimited fine.

## 9.13 Fallen stock

When an animal dies, rewilders must consider the laws in relation to the disposal of deceased kept-wild herbivores.<sup>115</sup>

In particular, rewilders should note that it is an offence to leave deceased kept-wild herbivores on site to decompose.

The rules relating to the disposal of deceased animals exist to prevent the spread of disease and pollution. For example, under the AHA it is a criminal offence to dispose of deceased kept-wild herbivores suspected of being contaminated by disease (as defined in section 88(1) of the AHA) near bodies of water.<sup>116</sup>

Whether certain additional rules apply depends on whether the animal is “wild” or not. In an implicit recognition of the importance for soils and scavenger species of animals, deceased “wild” animals may be left to decompose naturally. However, deceased “non-wild” animals (including kept-wild animals) should be disposed of in accordance with the procedures set out in law for the disposal of fallen stock.

This means that where an animal has “died other than by being slaughtered or killed for human consumption, including animals killed for disease control purposes”,<sup>117</sup> rewilders should ensure that the deceased kept-wild herbivore is collected,<sup>118</sup> identified and removed from the land by an approved transporter without undue delay (i.e. as soon as is reasonably practicable in the circumstances).<sup>119</sup> Pending consignment or disposal, rewilders must ensure that animals and birds do not have access to the deceased kept-wild animal.<sup>120</sup>

However, where it is practically difficult to locate or move large deceased kept-wild herbivores there may be some flexibility around the methods and timing of disposal. APHA has sometimes recognised in individual cases that delay is not “undue”. These situations have included poor weather, deceased kept-wild herbivores being in inaccessible areas and the level of decomposition creating more of a risk to human and animal health by moving it than by allowing it to decompose naturally.

Rewilders should be aware that, as stated above, failure to comply with the rules on disposal of fallen stock is a criminal offence. Rewilders should engage with APHA to seek informal guidance when such difficulties arise, or, ideally, in anticipation of any difficulties. DEFRA has also indicated

that only collecting fallen stock every few days would not constitute “undue delay”.<sup>121</sup>

When such difficulties arise, rewilders may use bins as a temporary store for fallen stock if they are kept clean, disinfected, leakproof and have lids.

Further, rewilders must not generally burn or bury fallen stock (except horses, which may be buried) on their land or feed it to red kites or necrophagous birds. However, in specified very remote areas (Lundy Island or the Scilly Isles) fallen stock may be burned or buried.

Rewilders may be permitted to burn, bury or dispose of fallen stock where the removal of such stock is practically impossible or dangerous due to limited access (as a result of geographical or climatic reasons, or during a natural disaster), or would require a disproportionate means of collection. This exception is limited to unusual conditions, however, such as where an animal has fallen down a ravine or is trapped in a bog.<sup>122</sup> Rewilders should contact their local authority before relying on this exception because a site assessment may be required.<sup>123</sup>

Exceptions to the usual disposal requirements may also apply where there is an outbreak of a notifiable disease in certain circumstances.<sup>124</sup>

These obligations apply to persons who have a deceased kept-wild herbivore (or part thereof) under their actual control. This would include a landowner who manages kept-wild animals on their land.

Currently, rewilders with kept-wild large herbivores must still comply with the aforementioned disposal rules and the disease control obligations even if they do not intend to slaughter animals for human consumption.

## CASE STUDY: TREATMENT OF FALLEN STOCK IN THE NETHERLANDS

In the Netherlands, there are a number of different situations where deceased kept-wild large herbivores may be left on site to decompose:

- For rewilding sites over 5,000ha (Oostvaardersplassen and Veluwezoom), kept-wild large herbivores such as cattle and horses are treated as wild and can be left on site when they die.
- For rewilding sites between 100 and 5,000 ha, the usual rules on collection of fallen stock apply. However, where deceased kept-wild large herbivores are difficult to remove (e.g. because they are difficult to access or access would cause damage to protected sites or species) they can be left on site.
- Deceased kept-wild large herbivores may also be left on site to provide food for certain species of protected carrion-feeding birds such as vultures, under a derogation in the EU rules that permits carcasses to be left for these purposes.<sup>125</sup>

In England and Wales, generally speaking, kept-wild large herbivores are not currently treated as wild even on large sites. The derogation under which deceased large herbivores may be left to provide food for certain protected species does not apply in England and Wales.

## ENDNOTES

- 1 Technically an omnivore, but included here as the legal treatment is similar to that applicable to large, traditionally domesticated herbivores.
- 2 [Dangerous Wild Animals Act 1976.](#)
- 3 See [s.7 DWA](#) for the full definition of “keeper”. However, there are exceptions in the DWA in situations such as when a person is in possession of the animal for the purpose of: (i) preventing it from causing damage; (ii) restoring it to its owner; (iii) undergoing veterinary treatment; or (iv) being transported by another person. (s.7(1) DWA 1976).
- 4 [Wildlife and Countryside Act 1981.](#)
- 5 See government guidance on how to “[Apply for a licence to keep a wild animal](#)”. Note that the government website directs individuals to ask their local council if unsure of how far removed the animal is from its wild ancestor.
- 6 See [Schedule](#) (Kinds of Dangerous Wild Animals) to the DWA.
- 7 [DWA s.1\(4\).](#)
- 8 The Scottish government website states in relation to bison that fences should be a minimum of 1.5m tall. Wooden fence posts should be a minimum of 15cm in diameter, whereas steel posts should be at least 7cm in diameter. If wire fencing is being used, fences should be made up of at least six strands of wire, 15cm apart. See [website](#).
- 9 [Article](#) regarding the reintroduction of bison in the Netherlands.
- 10 [s.6 DWA.](#)
- 11 [s.4 DWA.](#)
- 12 [Zoo Licensing Act 1981.](#)
- 13 [s.1\(2\) Zoo Licensing Act 1981.](#)
- 14 The Secretary of State may, by order, add or remove any animals from this list either in relation to Great Britain as a whole, or a particular part of it.
- 15 [Department for Environment, Food & Rural Affairs s.14 WCA Guidance \(“DEFRA Section 14 Guidance”\)](#). Whether an introduction or release of an animal will be into the “wild” will ultimately be assessed on a case-by-case basis by Natural England (or Natural Resources Wales, if applicable) and may depend on the ecology of the species and affected environment.
- 16 This form is relevant for large herbivore species listed in Schedule 9 of the WCA (e.g. wild boar) or those that are not species being reintroduced into the wild for conservation purposes (e.g. this could include large herbivores such as European bison, which are proxies for extinct species).
- 17 [The Animals Act 1971.](#)
- 18 Or if they are the head of a household in which a member under the age of 16 owns the animal or has it in their possession; see [s.6 of the AA.](#)
- 19 Although this guidance is in relation to the Zoo Licensing Act 1981 and the question of whether an animal is commonly domesticated is ultimately subject to the discretion of the courts, it is a useful reference point for which animals are more likely to be deemed normally domesticated.
- 20 The criteria for the keeper to be strictly liable for a non-dangerous animal under the AA are:
  - i. the kind of damage caused by the animal was likely (unless restrained) or was likely to be severe;
  - ii. the likelihood of the damage or its severity was due to abnormal (for its species) characteristics in the animal (except at particular times or in particular circumstances); and
  - iii. broadly, those characteristics were known to that keeper.
- 21 From a rewilding perspective, the species most likely to be covered are cattle, deer, horses and pigs, but other livestock species are also covered by the legislation.
- 22 [Health and Safety at Work etc. Act 1974.](#)
- 23 [s.3 HSAWA.](#)
- 24 [Government guidance on the application of the HSAWA to livestock.](#)
- 25 [Schedule 3A HSAWA.](#)
- 26 Please note that although this section refers to imports into “Great Britain” (to reflect the wording in the relevant guidance) it is only intended to cover the position in relation to England and Wales. For the position in Scotland please see the separate briefing note.

Thank you to Clifford Chance LLP for their legal support in producing this briefing note.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.

The hyperlinks to legislation, guidance and various other external sources within this briefing are correct as of October 2025.

- 27 We are not aware of any restrictions applying to moving animals between England, Scotland and Wales, but rewilders should confirm the position with the relevant authorities.
- 28 Note that there is separate guidance for the import of animals from EU countries and from non-EU countries.
- 29 The exception is that various large herbivore species may be subject to restrictions if they come into contact with an animal covered by the rabies import licensing rules that has not been fully quarantined: see art. 15 and Schedule I, Part III of the Rabies (Importation of Dogs, Cats and Other Mammals) Order.
- 30 Government guidance on 'Live animals (not pet dogs, cats, ferrets): import licence application'.
- 31 APHA can be contacted at 03000 200 301 or imports@apha.gsi.gov.uk.
- 32 See here.
- 33 Commission Regulation (EU) 2023/966 of 15 May 2023.
- 34 Government guidance on how long it takes APHA to process an application.
- 35 Relevant government guidance on how to "Apply for CITES permits and certificates to move or trade endangered species".
- 36 Relevant government guidance on the criminal sanctions for breach of CITES regulations.
- 37 Government guidance.
- 38 Government guidance.
- 39 For further information, see the government guidance on the Balai rules. Further information on general licences.
- 40 See the guidance, which also links to other relevant webpages.
- 41 Risk categories.
- 42 Government guidance.
- 43 Government guidance.
- 44 Government guidance on the "Import of products, animals, food and feed systems (IPAFFS)".
- 45 Government guidance on the documents needed to import live animals from non-EU countries.
- 46 For further information on approval or registration of premises and when this is required see the guidance.
- 47 List of the pre-existing import licences.
- 48 Guidance.
- 49 Derogations are set out in the relevant regulations, e.g. Article 4(5) of Regulation (EC) No 1760/2000 provides a derogation from the standard means of ID for bovine animals intended for cultural and sporting events. If a rewilder wishes to use this derogation, they must apply to the Secretary of State to have their holding registered for this purpose (see The Cattle Identification Regulations 2007/529 and The Cattle Identification (Wales) Regulations 2007/842, Schedule 1, Paragraph 6).
- 50 The Cattle Identification Regulations 2007/529 and The Cattle Identification (Wales) Regulations 2007/842, Reg. 2(1).
- 51 See Schedule 1 paragraph 1 of The Cattle Identification Regulations 2007/529 and The Cattle Identification (Wales) Regulations 2007/842. Note that there are separate timeframes for dairy herds, although dairy cattle are generally not used for ecological restoration activities. Note also that although the relevant rules contain more lenient ear-tagging timeframes for bison, these only apply to American bison and not European bison and so are not relevant to rewilding projects.
- 52 Government guidance on how to "Keep a holding register for cattle to record births, movements and deaths".
- 53 Applications for a cattle passport. Again note that there are different timeframes for dairy cattle and American bison.
- 54 The Cattle Identification Regulations 2007/529 and The Cattle Identification (Wales) Regulations 2007/842, Schedule 1, Ear tags, para. 1(4), Enforcement of Articles 4 to 4d of Regulation (EC) No. 1760/2000.
- 55 The Cattle Identification Regulations 2007/529 and The Cattle Identification (Wales) Regulations 2007/842, Schedule 2, Registration of cattle, para. 1, Registration.
- 56 Reg. 15 of The Cattle Identification Regulations 2007/529 and The Cattle Identification (Wales) Regulations 2007/842.
- 57 Reg. 5 of The Equine Identification (England) Regulations 2018/761 / Reg. 5 of The Equine Identification (Wales) Regulations 2019.
- 58 Reg. 6 of The Equine Identification (England) Regulations 2018 (SI 2018/761) / Reg. 6 of The Equine Identification (Wales) Regulations 2019.
- 59 Under Reg. 13 and 16 of The Equine Identification (Wales) Regulations 2019, the exemption from passporting also applies to horses or ponies in the lists kept by Cymdeithas Merlod y Carneddau and the Hill Pony Improvement Society of Wales (comprising 26 Pony Improvement Societies).
- 60 Reg. 17 of The Equine Identification (England) Regulations 2018/761 / Reg. 16 of The Equine Identification (Wales) Regulations 2019.
- 61 Reg. 19 of The Equine Identification (England) Regulations 2018/761 / Reg. 17 of The Equine Identification (Wales) Regulations 2019.
- 62 The Pigs (Records, Identification and Movement) Order 2011.
- 63 Government guidance on 'Tag, tattoo or slap mark pigs'.
- 64 The Animal Welfare Act 2006.
- 65 This provision captures animals that commonly live in association with humans, i.e. typical farm animals or animals kept as pets such as horses, sheep, pigs, dogs and cats, or animals that are not 'wild' by law – see the section "Ownership of Animals" below.
- 66 Paragraph 14 of the Explanatory Notes to the AWA.
- 67 Annex A of the Zoo Licensing Act guidance. Note that this guidance relates to the Zoo Licensing Act and not the AWA and so it is possible that the animals considered to be commonly domesticated in the British Islands for the purposes of the AWA could differ from this list.
- 68 Section 2(b) of the AWA and Noel Sweeney, A Practical Approach to Animal Welfare Law, 2nd Edition (5m Publishing Ltd, 2017), p.10 which suggests that whether the animal has the freedom to live without control in its own environment is the decisive factor when determining whether it is under the control of man.
- 69 Explanatory Notes to the AWA.
- 70 Paragraph 17 of the Explanatory Notes to the AWA.
- 71 Paragraph 50 of the Explanatory Notes to the AWA.
- 72 Para 21 of the Explanatory Notes to the AWA.
- 73 Code of Practice for the welfare of horses, ponies, donkeys and their hybrids.
- 74 Code of Practice for the Welfare of Pigs. There is also a code of practice relating to the welfare of cattle made under earlier legislation. For further information on relevant codes

- of practice see the subsection "Species-specific Codes of Practice" below.
- 75 Dutch Animals Act 2011 (in Dutch).
- 76 Case number 200,195.797.
- 77 Codes of Practice and Welfare of Farmed Animals (England) Regulations 2007.
- 78 The Welfare of Farmed Animals (England) Regulations 2007, Schedule 1.
- 79 The Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids.
- 80 The Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids notes that only 9% of horses die of natural causes and keepers should consider euthanasia where the horse is significantly suffering and, among other circumstances: (i) has not responded to treatment; (ii) there is no prospect of recovery and no treatment is available; and (iii) keeping a horse in such a condition would be inhumane.
- 81 The Code of Practice for the Welfare of Pigs.
- 82 Code of Practice for the Welfare of Pigs, p.5.
- 83 See Cattle including Buffalo and Bison (Code of Recommendations for the Welfare of Livestock).
- 84 Therefore, there is no comprehensive list of animals that are considered "domestic" or "wild".
- 85 *Buckle v Holmes* (1925) 134 LT 284.
- 86 *Halsbury's Laws of England*, 6. Absolute property in domestic animals, citing *Brooke's Abridgment*, "Propertie", para 29; cf 2 *BI Com* (14th Edn) 389-399.
- 87 The Animal Health Act 1981.
- 88 Pursuant to s.87(1) AHA, "animals" means cattle, sheep and goats, and all other ruminating animals and swine. Pursuant to s.87(2)–(5), ministers may extend the definition of 'animals' to include any kind of mammal except man, any kind of four-footed beast which is not a mammal, fish, reptiles, crustaceans, or other cold-blooded creatures of any species, and poultry.
- 89 s.88 AHA.
- 90 s.87 AHA.
- 91 s.20 AHA.
- 92 s.15(1) AHA.
- 93 Potential civil liability is long-established for an "owner or possessor" of animals in these circumstances – see *Cooke v Warring* (1836) and *Earp v Faulkner* (1875).
- 94 As recommended by the government guidance "Disease prevention for livestock and poultry keepers".
- 95 For the purposes of this section and the AHA, "minister(s)" refers to the Minister of Agriculture, Fisheries and Food.
- 96 The Tuberculosis in Animals (England) Order 2021.
- 97 A keeper is defined broadly as someone who owns or is responsible for an animal (whether permanently or temporarily), which we expect would cover a rewilder who allows kept-wild herbivores to roam on their land.
- 98 Testing can be arranged through APHA at no cost. APHA will appoint either an authorised vet or an approved tuberculin tester to carry out the required tests.
- 99 These requirements and how to find your area's risk status are set out in the DEFRA Bovine TB Guidance
- 100 Other types of farms that are inherently high risk are less likely to be relevant to rewilding projects. For example these include city farms. For a complete list see the DEFRA Bovine TB Guidance.
- 101 For example, sections 5–7 of the Tuberculosis in Animals (England) Order 2021.
- 102 Relevant government guidance regarding "How to deal with TB in non-bovine animals".
- 103 Relevant guidance from APHA regarding "Tuberculosis in Deer".
- 104 Schedule 3 of the AHA.
- 105 Article 5 of the Tuberculosis in Animals (England) Order 2021.
- 106 Article 12 of the Tuberculosis in Animals (England) Order 2021.
- 107 Article 8 of the Tuberculosis in Animals (England) Order 2021.
- 108 Article 12 of the Tuberculosis in Animals (England) Order 2021.
- 109 Paragraph 4, Part 1, Schedule 1 of the Cattle Compensation (England) Order 2012.
- 110 Government guidance.
- 111 DEFRA guidance for diseases that rewilders would be legally obliged to report.
- 112 Ministers also have powers to declare an area as infected with rabies and enter that area for the purposes of seizing or destroying any animal.
- 113 See section 2(1) of the Specified Diseases (Notification and Slaughter) Order 1992 for the list of notifiable diseases (subject to changes).
- 114 Articles 11(1) and (2) of The Tuberculosis in Animals (England) Order 2021.
- 115 For these purposes, a deceased kept-wild herbivore includes stillborn animals and afterbirth.
- 116 s.35(4) Animal Health Act 1981.
- 117 Article 9 of Retained Regulation (EC) No. 1069/2009, specifying that fallen stock is generally a category 2 animal by-product. Note that in many cases cattle carcasses may be classed as a category 1 animal by-product because these will often contain "specified risk material" for BSE (see Article 8(b) (ii)).
- 118 The landowner may make arrangements for collection themselves or use the National Fallen Stock Company.
- 119 Government guidance.
- 120 reg.4 of the Animal By-Products (Enforcement)(England) Regulations 2013.
- 121 Relevant guidance from DEFRA on "Controls on Animal By-Products".
- 122 Article 19(1)(c) By-Products Regulation Derogation.
- 123 DEFRA guidance on "Controls on Animal By-Products".
- 124 *Ibid*.
- 125 Based on information provided by Ark Rewilding Nederland.