

# REINTRODUCTIONS



## CORE TOPICS:

- Licences and statutory requirements relating to the reintroduction of animals.
- Animal welfare obligations before and after reintroduction.

## KEY TAKEAWAYS:

- Reintroductions into the wild of species which are not “ordinarily resident in” or “regular visitors” to Great Britain will require a release licence.
- Under the Dangerous Wild Animals Act there are further restrictions on the reintroduction of certain native animals including elk, bison, wild boar, lynx and wolves.
- Certain species of animals are protected species meaning that licences will be required to capture them from any existing wild populations.
- The impact of any reintroduction on any protected areas will need to be considered.
- Reintroduction projects will need to comply with animal welfare laws.

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# 1. OVERVIEW

This briefing note addresses some of the key legal obligations and requirements that may apply to any rewilding projects seeking to reintroduce animals to their landscapes in England and Wales.

The legislative framework for wildlife reintroductions varies between England, Wales and Scotland. This note focuses on England and Wales only. While, in general terms, there are similarities between the primary legislative frameworks applicable to reintroductions in England and Wales, these frameworks are administered by different agencies in England (primarily Natural England) and Wales (primarily Natural Resources Wales) and care should be taken to identify any particular regional differences that may apply to a particular wildlife reintroduction project. Engagement with other UK Government agencies, particularly the Department for Environment, Food & Rural Affairs (“Defra”) and the Animal and Plant Health Agency, may also be necessary for some aspects of wildlife reintroduction projects, for example if engaging in importation of wildlife from outside Britain, or in relation to animal welfare requirements.

## 1.1 Relevant guidance for reintroduction projects

Other helpful sources of guidance for those considering a wildlife reintroduction project include:

- **The IUCN Guidelines for Reintroductions and Other Conservation Translocations (“IUCN Guidelines”).**<sup>1</sup> The IUCN Guidelines provide guidance on the justification, design and implementation of wildlife reintroductions and translocations, to maximise the prospects of success of these projects (and minimise any negative impacts). The IUCN Guidelines outline some of the practical steps involved in planning a wildlife reintroduction, including: establishing the project’s objectives, assessing the feasibility of the project, conducting a risk assessment to identify potential impacts of a project, managing project implementation, and conducting project monitoring.

- Defra has published the ‘**Reintroductions and other conservation translocations: code and guidance for England**’ (the “**Reintroductions Code**”),<sup>2</sup> which provides specific guidance (based on the IUCN Guidelines) for reintroduction projects in England. The Reintroductions Code provides further detail on how the IUCN Guidelines interact with the regulatory regime in England. The Code also provides guidance to help in the interpretation of legislation relevant for wildlife reintroductions, however the guidance is non-statutory and does not constitute a legally binding interpretation of the legislation to which it refers.
- Natural England publishes a **Wildlife Reintroduction Scoping Form**<sup>3</sup> which provides a checklist of key considerations that should be taken into account when contemplating a potential reintroduction. It is a requirement to submit this checklist to Natural England when a licence is required as part of a reintroduction project. However, even if a licence is not required, the checklist provides helpful guidance on key considerations to take into account.
- **Other briefing notes in this series**, which provide an overview of other legal considerations which may be relevant for a wildlife reintroduction (including landowner rights and responsibilities, liability considerations, and land-use restrictions).

These Guidelines and Codes are not legally binding. In particular, where these documents interpret or apply legislation or regulations, this guidance is not a legally binding interpretation of the legislation to which it refers, but instead a reflection of the relevant body’s interpretation of the law at a point in time. In this note, we indicate where these forms of guidance may assist in the interpretation of relevant legal requirements, but this does not override the requirements of underlying legislation.

# 2. WHAT LICENCES ARE REQUIRED TO RELEASE ANIMALS INTO THE WILD?

## 2.1 Summary

This flowchart identifies the key questions and considerations to determine whether any licences will be required to release an animal into the wild in England and Wales:

Is the species ordinarily resident in, or a regular visitor to, Great Britain in a wild state?	NO	Licence required under the Wildlife & Countryside Act 1981 (W&C Act 1981) for release “into the wild”
Is the species listed in Schedule 9 of the W&C Act 1981?	YES	Licence required under the W&C Act 1981
Is the species listed as an invasive alien animal under the Invasive Alien Species Regulations? (unlikely for rewilding projects)	YES	Licence required under the Invasive Alien Species (Enforcement and Permitting) Order 2019, and specific restrictions apply
Is the species listed in the Dangerous Wild Animals Act 1976?	YES	Licence required under the Dangerous Wild Animals Act 1976, and specific restrictions apply
Is the species a fish?	YES	Permission required for reintroduction to any inland water
Is the site of the wildlife reintroduction subject to specific protections (e.g. special scientific interest (SSSIs), special areas of conservation (SACs), special protection areas (SPAs), wetlands of international importance (Ramsar sites)	YES	Licences may be required under several pieces of legislation, including the W&C Act 1981 and the Habitats Regulations

## 2.2 When will a licence be required under section 16 W&C Act 1981?

Under Section 14(1)(a) of the Wildlife and Countryside Act 1981 (W&C Act) it is an offence to release (or allow to escape) **into the wild** any animal which is not **“ordinarily resident in and is not a regular visitor to Great Britain in a wild state”** or is listed in Part I, IA or IB of Schedule 9. Any breach of these provisions is punishable by fine and/ or imprisonment.<sup>4</sup>

Where a rewilder wishes to release an animal which fits into either part of this test, a licence is required under section 16 of the W&C Act.

### What does “ordinarily resident” and “regular visitor to Great Britain” mean?<sup>5</sup>

- A species is considered by Defra to be **‘ordinarily resident’** in Great Britain if the population has been present in the wild for a significant number of generations and is considered viable in the long term.<sup>6</sup> If an animal has become extinct, even if recently, Defra considers it not to be ‘ordinarily resident.’ For example, the short haired bumblebee which was declared extinct in 2000, and the Eurasian elk which became extinct in the 13<sup>th</sup> century, are considered by Defra to no longer be ‘ordinarily resident’ in Great Britain.<sup>7</sup> Furthermore, if a population only exists in the first generation at another wildlife reintroduction project, it is less likely to be considered by Defra to be ‘ordinarily resident’ in Great Britain.
- A species is likely to be considered by Defra to be a ‘regular visitor’ to Great Britain if it appears with reasonable frequency or predictability, such as seasonal migratory species. Note that vagrants or strays (i.e., specimens found well outside their normal range) are not ‘regular visitors.’<sup>8</sup> For example, in 2008, it was reported that an American Common Nighthawk was blown 3,000 miles off course and ended up in the Isles of Scilly, but this bird is not a ‘regular visitor’.

## “ORDINARILY RESIDENT” AND “REGULAR VISITOR” IN PRACTICE

**The white stork:** In 2019, 24 captive bred white storks were released into the wild in the UK. In 2020, three nests were built in the wild and four chicks successfully fledged. It is unlikely that this small, first-generation population would amount to a species that was ‘ordinarily resident’ in Great Britain. However, the organisation undertaking the project has stated that a licence was not required for a recent white stork reintroduction, as the species was determined by Defra and Natural England to be a ‘regular visitor’ to Great Britain. If a reintroduction project is proposed for white storks, this interpretation should be re-confirmed with Defra. For more information, please see the practical examples relating to a white stork reintroduction below.

**Black grouse:** Black grouse are very uncommon but could still be considered to be ‘ordinarily resident’ in Great Britain in a wild state, in which case a licence would not be required (however this should be checked with the relevant regulatory authority prior to a proposed reintroduction).

### What does a release “into the wild” mean?

- The meaning of what it is to release an animal ‘into the wild’ is not defined in legislation but is generally understood to mean the deliberate introduction of an animal from a condition of captivity into an area considered to be ‘the wild’. Although no legal definition exists, the Reintroductions Code defines ‘the wild’ as *“the diverse range of natural and semi-natural habitats species can live in. It includes the wild native flora and fauna of rural and urban areas, which can be described as the general open environment.”*<sup>9</sup>
- Whether a given release will be considered to constitute a release ‘into the wild’ is a heavily fact dependent question, which cannot always be answered precisely. For example, in some circumstances, the release of an

animal into an enclosure within the general countryside may still be considered by Defra to constitute a release ‘into the wild’. In such cases, whether a release into the enclosure would be considered by Defra to be a release ‘into the wild’ will depend upon whether the enclosed land comprises natural habitats and associated native flora and fauna living in a wild state that may be impacted.

- According to Defra: *“It would create rather perverse outcomes if significant areas of natural habitats containing wild native flora or fauna could be put at risk of being adversely affected by introduced species with regulation precluded merely because of the existence of perimeter fencing or some other boundary feature ultimately confining the introduced species.”*<sup>10</sup>
- In contrast, animals in secure enclosures in environments that are isolated from the general countryside, and from which escape into the general countryside is highly unlikely (e.g. artificial animal enclosures in zoos), are unlikely to be considered to be ‘into the wild’.
- Further information regarding whether a release is likely to be considered by Defra to be a reintroduction ‘into the wild’ is set out in the Reintroductions Code and earlier guidance is contained in Annex A of the 2007 Defra guidance note *Guidance on section 14 of the Wildlife and Countryside Act, 1981.*<sup>11</sup>

### What is Schedule 9 and what does it mean for reintroductions?

Schedule 9 identifies three categories of animals:

- Part I: Non-native animals which are established in the wild;
- Part IA: Native Animals; and
- Part IB: Animals no longer normally present.

A number of species important for rewilding are included in these schedules, e.g. beaver, wild boar, white tailed-eagles and red kites. A number of non-native but widely present species of deer are also included in these schedules.

The specific animals included can change over time so it is best to consult the latest list (available [here](#)) when you are considering a reintroduction.

If a species you wish to reintroduce is included in Schedule 9, you will need to apply for a licence under section 16 W&C Act 1981. Eligibility for a licence can be affected by a wide range of factors that are specific to each wildlife reintroduction project, so it is recommended that expert advice be obtained if it is identified that a licence is or may be required for a reintroduction.

Note that the Invasive Alien Species Regulations separately set out animals (and plants) that it is unlawful to release or allow to escape without a licence. Animals subject to restrictions and therefore requiring a licence for release are those listed in: (a) [Schedule 2 of the Invasive Species Regulations \(Enforcement and Permitting\) Order 2019](#); and (b) [Retained European Commission Implementing Regulation 2016/1141](#).<sup>12</sup>

### How do I get a W&C Act 1981 licence?

England and Wales each have different agencies that are responsible for granting licences under the W&C Act 1981, each of which follow different processes for licence applications. Where a licence is obtained, it will contain a range of conditions, including reporting requirements and limits on the scope of the licence. The failure to comply with a licence condition is a breach of the licence and may result in the licence being revoked, as well as the potential for other sanctions under the W&C Act 1981.

#### In England:

- The relevant licensing authority for licences under the W&C Act 1981 in England is Natural England. In order to apply for a licence you must send a licence application form with a conservation translocation project scoping form to [wildlife@naturalengland.org.uk](mailto:wildlife@naturalengland.org.uk). Copies of the relevant forms for applications to Natural England are available on the Natural England website at the following links: [licence application](#); [project scoping form](#).

- The contents of the licence application form should adhere to the principles embodied in the Reintroductions Code. It is stated in the form that the level of detail to be included in the application should be proportionate to the potential impacts of the translocation. This means for low-risk applications, the applicant will need less information to demonstrate that there are no significant risks or legislative constraints. Where risks or legislative constraints are identified by the applicant, the applicant will need to include sufficient detail for Natural England to understand the impacts of the proposal.
- As part of any application, ecological surveys and consultations with the public and/or community will typically need to be carried out. These surveys and consultations will depend on the location and species proposed for reintroduction, and will require consultation with Natural England or Natural Resources Wales (as applicable).

#### In Wales:

- The relevant licensing authority for reintroductions in Wales is Natural Resources Wales. In Wales, the licence application forms are specific to the species proposed for reintroduction. Copies of the relevant forms for applications to the Natural Resources Body of Wales are available [on their website](#).
- The point of contact in the Natural Resources Body of Wales is the Species Permitting Team, which can be contacted at [specieslicence@naturalresourceswales.gov.uk](mailto:specieslicence@naturalresourceswales.gov.uk)

### 2.3 What is the Dangerous Wild Animals Act and how does it impact reintroductions?

#### When will a licence be required?

The Dangerous Wild Animals Act 1976 (“DWAA”) provides that “*no person shall keep any dangerous wild animal except under the authority of a licence granted ... by a local authority.*”<sup>13</sup> There are some limited exemptions to this

requirement in section 5 of the DWAA, including where animals are kept in a zoo under the Zoo Licensing Act 1981.

Schedule 1 of DWAA sets out the list of ‘dangerous wild animals,’ which include ‘exotic’ mammals such as lions, bears and hippos, but also includes a number of important native animals such as bison, elk, wild boar, lynx and wolves.<sup>14</sup> The DWAA means that any reintroduction project seeking to release an animal listed in Schedule 1 into an enclosed area will need to comply with the terms of the DWAA. The Lifescape Project is undertaking work in relation to the DWAA and would be happy to discuss its application with any rewilding projects considering the wild release of any of the species listed in Schedule 1.

A DWAA licence can be obtained from the relevant local authority. For a licence to be granted, a number of conditions must be satisfied, including the following:

- the animal must be kept in secure accommodation from which it cannot escape and such accommodation must have been inspected by a veterinary surgeon or practitioner;
- the animal must be provided with suitable food, drink and exercise;
- all reasonable precautions must have been taken to prevent and control the spread of infectious diseases; and
- appropriate steps must be taken for the protection of the animal in an event of an emergency.

Once granted, a DWAA licence will be subject to strict and ongoing compliance conditions, including a requirement that the applicant hold a current and satisfactory insurance policy insuring him and other persons entitled to keep the animal against damage which may be caused by the animal.

#### How do I get a DWAA licence?

Licences to keep dangerous wild animals are granted by the relevant local authority. An application to a local authority must specify the proposed species of animal and number

of animals to be kept, as well as the premises where any animal will normally be held.<sup>15</sup> The local authority will need to be satisfied that all relevant criteria (including those listed above) are satisfied before granting a licence. A veterinary surgeon or veterinary practitioner authorised by the local authority will need to inspect the premises and produce a report before granting a licence. Failure to have a licence where this is required is a criminal offence punishable by fine.<sup>16</sup>

#### 2.4 Are there any other relevant licences or permissions required for the release of animals?

In addition to the licences described above, the following restrictions should also be taken into account where relevant:

- **Reintroduction of fish species** (including molluscs such as mussels): any such release will be subject to specific regulations and will always require a licence for a wildlife reintroduction project. With limited exceptions, it is an offence to introduce or possess with the intention to introduce any fish, crustaceans or molluscs<sup>17</sup> into inland waters without the permission of the Environment Agency or Natural Resources Wales.<sup>18</sup>
- **Protected areas:** there may be additional statutory or regulatory requirements (including further licences and restrictions) if the proposed wildlife reintroduction is on a site that is subject to specific protections (e.g., SSSIs, SACs, SPAs or Ramsar sites). Those additional requirements may also arise where the reintroduction project may affect such protected sites. Information about whether these designations are applicable to a proposed release site are available on Defra's [MAGIC Maps website](#), and Natural Resources Wales or Natural England may be able to provide further guidance on the consents required in relation to protected sites. Further information on protected sites is also outlined in a separate briefing note (see *Rewilding in England & Wales: Protected Areas* and the *Rewilding in England & Wales: Planning Permission* briefings in this series).
- **Public rights of way:** if a reintroduction project may impact on public rights of way (for example,

if the proposed site for a reintroduction is on land that is subject to a right of way), or may impact on other species (including protected species), such impacts should be considered at an early stage of the reintroduction project. Further information on access-related issues is outlined in a separate briefing note (see *Rewilding in England & Wales: Public Access*).

- **Zoo licences:** if wild animals (being animals of a species that is not normally domesticated in Great Britain) are released into enclosures (including very large enclosures), and kept for exhibition to the public, a zoo licence may be required from the relevant local authority under the Zoo Licensing Act 1981.<sup>19</sup> Projects licensed under the Zoo Licensing Act 1981 are subject to detailed compliance requirements – both initially and on an ongoing basis – and specific advice should be obtained if such a project is being considered.

#### 2.5 How do these laws apply in practice?

The following practical examples illustrate indicative licensing considerations for three species: pine marten, white stork and European bison. The conclusions are only indicative and should be confirmed with Natural England or Natural Resources Wales prior to engaging in a reintroduction project.

In addition to the licensing considerations below, a reintroduction project would also need to take into account further considerations such as land use requirements (including protected areas) and impacts on landowners and other stakeholders (including liability for environmental impacts of the project). Some of these considerations are addressed by other briefing notes in this series.

As part of a reintroduction project, ecological surveys and consultations with the public and/or community will also typically need to be carried out. These surveys and consultations will depend on the location and species proposed for reintroduction and will require consultation with Natural England or Natural Resources Wales (as applicable).

### EXAMPLE: PINE MARTEN REINTRODUCTION

**The pine marten was a common carnivore in ancient Britain. Its numbers declined dramatically in the 19th and 20th centuries due to habitat loss and increase in hunting activity. While the pine marten population is recovering in Scotland, its numbers remain very low in England and Wales. Without reintroduction, pine martens are unlikely to re-colonise southern and central England naturally.**

#### The pine marten:

- exists in Scotland and fragmented sites in England and Wales. They are therefore likely to be 'ordinarily resident' in Great Britain. A licence is therefore unlikely to be required under section 14 W&C Act but this interpretation should be checked with Natural England / Natural Resources Wales;
- is not listed in Schedule 9 of the W&C Act 1981 or listed in the Invasive Alien Species Regulations. A licence is therefore not required under this legislation;
- is not on the list of dangerous wild animals in DWAA, so a licence from the local authority is not required;
- is not subject to species-specific legislation in England and Wales; and
- is a protected species under Schedule 5 W&C Act 1981 meaning that a licence will be required to capture specimens from the wild for release as part of any reintroduction project.

**Conclusion:** Subject to any site-specific licensing requirements, a licence is unlikely to be required to re-introduce pine marten as part of an animal reintroduction project in England or Wales, assuming they are considered to be “ordinarily resident” in Great Britain. However, if the project intends to capture pine marten from elsewhere in Great Britain for release as part of this project, a licence will be required as pine marten are listed in Schedule 5 W&C Act 1981 (see below).

In addition, as pine marten reintroductions can be controversial as a result of their potential impact on local ecosystems, it is recommended to engage with and seek advice from Natural England and Natural Resources Wales at an early stage of any such project. These bodies recommend that ecological and social feasibility studies should be undertaken in order to comply with the Reintroductions Code.

### EXAMPLE: THE WHITE STORK

**In 2016, a feasibility study was conducted in relation to a proposed white stork reintroduction in England. In line with the IUCN Guidelines and the supplementary Guidelines for the Translocation of Waterbirds for Conservation Purposes, the feasibility study assessed whether it was feasible and justified to re-establish a free living, breeding population of European white storks (*Ciconia ciconia*) into England. This included a full assessment of the biological suitability of the area, and the ecological and socio-economic costs and benefits of a reintroduction. [The feasibility report](#) is available in an online pdf. According to the feasibility report, “Despite the regular occurrence of vagrants from Europe, and the presence of extensive areas of suitable habitat, the breeding ecology of the species with its strong natal philopatry, indicates that natural re-colonisation is unlikely.”**

#### The white stork:

- was confirmed by Natural England and Defra to be a regular visitor to Britain. Accordingly, a licence was not required under the W&C Act 1981 to re-establish a breeding population of white stork in England (however this should be confirmed for any future project);
- is not a listed species in Schedule 9 of the W&C Act 1981 or listed in the Invasive Alien Species Regulations. A licence is therefore not required under this legislation;
- is not on the list of dangerous wild animals in DWAA, so a licence from the local authority is not required;
- is not subject to species-specific legislation in England and Wales; and
- is not a protected species.

For the 2016 project, the majority of storks donated to the project were rehabilitated wild storks sourced from Warsaw Zoo in Poland. A small number of captive-bred storks were also imported from the Alsace region of France. The specific importation and animal welfare requirements (including licences) would need to be carefully considered, and these will differ depending on the species, country of origin, and mode of transportation.

**Conclusion:** Subject to any site-specific requirements, a licence is unlikely to be required to re-introduce white stork as part of an animal reintroduction project in England or Wales (but licences may be required for other aspects of the re-introduction process, e.g. the capture or importation). Any reintroduction project should also comply with the IUCN Guidelines and the Reintroductions Code, undertaking ecological surveys and social consultations as required.

### EXAMPLE: EUROPEAN BISON

#### A wildlife project intends to introduce European bison into an enclosed landscape

European Bison are included in Schedule 1 of the DWAA, meaning that they will need to be kept in a secure enclosure under a DWAA licence granted by the local authority (unless they are kept in a licensed zoo).

Depending on the nature and extent of the enclosure, it is possible that Defra will consider a release into an enclosure to be a release “into the wild”, thereby triggering section 14 W&C Act 1981 because European bison are neither “ordinarily resident in Great Britain” nor “a regular visitor” in a wild state. In this case, a release licence under section 16 W&C Act 1981 will be required.

It is currently unclear how these requirements under the DWA and W&C Act 1981 interact and guidance should be sought from Natural England.

Although beyond the scope of this note, projects that have reintroduced bison to date in England have experienced a large number of other regulatory hurdles around how to import and classify the animals. Please get in touch if you are considering a bison project, so that learning can be shared.

### 3. LICENCES TO CAPTURE, KEEP AND TRANSPORT ANIMALS FOR REINTRODUCTION PROJECTS

#### 3.1 Overview

Even if a licence is not required for the reintroduction of a species, the process of obtaining, relocating, and managing reintroduced animals may give rise to additional licensing or compliance requirements. In particular:

- (a) **Obtaining animals from the wild:** the taking of wild birds, and certain species of other wild animals, from a wild location in Great Britain requires a licence and/or may be subject to specific restrictions relating to the method of capture (e.g., restrictions on the types of traps or capture devices used).
- (b) **Keeping, possessing and transporting animals:** in order to reintroduce animals to a new location, it is likely to be necessary to keep and transport those animals in the lead-up to their introduction into a new habitat. This phase of the reintroduction process gives rise to specific animal welfare requirements and related obligations, which will vary depending on the species involved and nature of the reintroduction project.
- (c) **Importing of animals from outside Great Britain:** the importation of any live animals into Great Britain (including from Northern Ireland) requires specific documentation (and in many cases other requirements must be satisfied, such as veterinary checks). These requirements are beyond the scope of this briefing note, as they vary significantly depending on the species and country of export. If it is intended that live animals be imported from outside Great Britain for a reintroduction project, it is recommended that expert advice is obtained.

#### 3.2 Do I need any licences to capture animals from the wild as part of my reintroduction project?

Several pieces of legislation impose restrictions on the taking, possessing and transporting of protected animal species. In order to obtain and transport these animals for the purpose of a reintroduction project, it is generally necessary to obtain a licence from Natural England or Natural Resources Wales.

*In summary:*

Checklist of licences that may be required to capture, take or possess animal species in England and Wales (excluding marine or freshwater reintroductions)		
Is the species a wild bird?	YES	Licence required under the W&C Act 1981, unless the species is listed in Schedule 2 of the W&C Act 1981 and outside the close season
Is the species listed in Schedule 2 of the Habitats Regulations or Schedule 5 of the W&C Act 1981?	YES	Licence required under the Habitats Regulations to take or capture
Is the species listed in Schedule 6 or 6ZA of the W&C Act 1981, or Schedules 2 or 4 of the Habitats Regulations?	YES	Licence required under the W&C Act 1981 or Habitats Regulations to capture an animal using certain methods (e.g. cage traps)
Is the species listed in the Dangerous Wild Animals Act 1976? (See Section 2 above)	YES	Licence required to possess the animal under the Dangerous Wild Animals Act 1976
Is the species listed in Annex IV(a) of the Habitats Directive	YES	Licence is required to possess or transport the animal under the Habitats Regulations

Is the site of the taking subject to specific protections (e.g. special scientific interest (SSSIs), special areas of conservation (SACs), special protection areas (SPAs), wetlands of international importance (Ramsar sites)) (See Section 2 above)	YES	Licences may be required under several pieces of legislation, including the W&C Act 1981 and the Habitats Regulations
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#### Wildlife and Countryside Act 1981

In addition to licences being required to *reintroduce* certain species under the W&C Act 1981, the Act also requires a licence to be obtained in order to *take, possess, or capture* protected species of wild animals. In particular:

- (a) Section 1 provides that a licence is required to take any wild bird or egg of a wild bird (except those specified in Schedule 2 outside the relevant closed season);<sup>20</sup>
- (b) Section 9 makes it an offence to intentionally kill, injure or take any wild animal specified in [Schedule 5](#) (subject to certain exceptions including any such action pursuant to a licence issued under Regulation 55 of the Conservation of Habitats and Species Regulations 2017 (the “**Habitats Regulations**”); and
- (c) Section 11 prohibits the use of certain traps (e.g., cage traps) or other devices for capturing certain animals specified in Schedules 6 and 6ZA (except for limited purposes).

There is some overlap in the species listed in the W&C Act 1981 and the Habitats Regulations (detailed below). Accordingly, it may in some instances be necessary to apply for and obtain licences to obtain and possess protected wild animals under both pieces of legislation (as well as obtaining any licence required to reintroduce those species).

## The Habitats Regulations<sup>21</sup>

The Habitats Regulations protect wild animals and plants of a European protected species or of Community Interest. The list of European protected species that have a natural range which includes any area in Great Britain are set out in [Schedule 2](#) of the Habitats Regulations and include species such as dormouse, natterjack toad, beavers and otters.<sup>22</sup>

Under Regulation 43 of the Habitats Regulations, a person who does any of the following to a European Protected Species is guilty of an offence:

- deliberately captures, injures or kills any wild animal of a European protected species,
- deliberately disturbs wild animals of any such species,
- deliberately takes or destroys the eggs of such an animal, or
- damages or destroys a breeding site or resting place of such an animal.

It is a separate offence to possess, control, transport, sell or exchange a European protected species or any other animal listed in Annex IV(a) of the Habitats Directive (see [link](#), p 44)<sup>23</sup>.

Such prohibitions are overcome by obtaining a licence under Regulation 55 of the Habitats Regulations. Licences may be granted for a number of reasons including for “*conserving wild animals or wild plants or introducing them to particular areas*”. With some limited exceptions, the licences will be issued by Natural England or Natural Resources Wales who must be satisfied that the grant of the licence would be consistent with the requirements of Article 16(1)(e) of the Habitats Directive (namely “*under strictly supervised conditions, on a selective basis and to a limited extent*” and “*in limited numbers*”).<sup>24</sup> Furthermore, Natural England / Natural Resources Wales must not grant a licence under this Regulation unless it is satisfied: (a) that there is no satisfactory alternative; and (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.<sup>25</sup>

Care must be taken to ensure the contents of any licence application is accurate, as the failure to do so can be a criminal offence.<sup>26</sup>

It is also a criminal offence to fail to comply with a licence condition, unless the relevant individual can show: (a) they took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or (b) the commission of the offence was otherwise due to matters beyond their control.<sup>27</sup> Accordingly, a detailed plan encompassing a risk assessment, a series of controls, owners of those controls, and testing or closure dates for the controls should be drawn up to ensure the terms of the licence are complied with.

Separately, it is an offence to use certain prohibited means of capturing or killing European protected species and those listed in Schedule 4 of the Habitats Regulations (which includes e.g. pine marten and various species of seal)<sup>28</sup>. If these provisions apply to the target species for a relocation, care will need to be taken to ensure these requirements are complied with.

### Specific species-related legislation

In addition to the general protections under the W&C Act 1981 and the Habitats Regulations, there is specific legislation that aims to protect badgers and deer:

- The **Protection of Badgers Act 1992** makes it a criminal offence to “take a badger” or interfere with a badger’s sett,<sup>29</sup> unless a relevant exception applies. If badgers are required for a wildlife reintroduction project or need to be removed for a wildlife reintroduction project, then a licence will be required, either authorising the taking and sale of a badger, or the removal of a badger.
- The **Deer Act 1981** sets out restrictions on taking and killing certain species of deer, including Chinese water deer, fallow deer, red deer, red/sika deer hybrids, roe deer and sika deer. If these species are to be taken or killed as part of a wildlife reintroduction project, then this must not be done in the closed seasons set out in [Schedule 1 of the Act](#).

## 3.3 What animal welfare obligations do I need to comply with?

It is important that all aspects of the reintroduction process, including the capture, transport, holding and release of a species, are designed so as not to cause stress, harm or death to the translocated species. The Animal Welfare Act 2006 (“**AWA**”) and other relevant welfare legislation such as, in the case of mammals, the Wild Mammals (Protection) Act 1996 (“**WMPA**”) impose specific requirements and duties on those that interact with animals to ensure appropriate levels of animal welfare protection. In particular, anyone acting under a licence issued by Natural England or Natural Resources Wales is expected to comply with all relevant animal welfare legislation, including the AWA. If the species to be translocated is captured in another country, you will also need to comply with any relevant animal welfare legislation of that country (including EU law) and should also consider relevant best practice principles such as the IUCN Guidelines.

### Scope of the AWA and WMPA

The AWA imposes obligations on individuals in relation to “protected animals,” which include both domesticated animals, and wild animals under human control. In particular:

- **Animals of a kind “commonly domesticated”** in the British Islands are “protected animals” under the AWA, whether or not they are “under the control of man” on a permanent or temporary basis. Kinds of animals which are considered commonly domesticated in the British Islands are those “*whose collective behaviour, life cycle, or physiology has been altered as a result of their breeding and living conditions being under human control, in the British Islands, for multiple generations.*”<sup>30</sup>
- **Wild animals** (animals of a kind not “commonly domesticated” in the British Islands) are also “protected animals” under the AWA where they are either (i) under human control, be it on a temporary or permanent basis; or (ii) are no longer under human control (for example, animals that have escaped captivity) but are not yet living “in a wild state”. Therefore, wild animals kept for the purposes of reintroduction projects may



be protected under the AWA, for example, whilst they are held in an enclosure (potentially including large areas of fenced land), pen or cage trap, during transportation, whilst caught in a net (including a mist net) or snare, or whilst held in the hand.<sup>31</sup>

The WMPA extends animal welfare obligations to certain wild mammals that are not otherwise subject to protections under the AWA. The WMPA defines a “wild mammal” as any mammal which is not a “protected animal” within the meaning of the AWA, meaning that the WMPA applies to wild mammals which are not otherwise subject to the protections contained under the AWA.

The WMPA provides that it is an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering. The WMPA includes certain exceptions for humane acts, and those authorised by other laws.<sup>32</sup>

### Responsibility under the AWA

Responsibility for an animal under the AWA generally arises where a person: (i) owns the animal; or (ii) can be said to have assumed responsibility, whether on a temporary or permanent basis, for its day-to-day care or for its care for a specific purpose.<sup>33</sup>

Accordingly, in the context of reintroduction, the persons undertaking the reintroduction will have obligations under AWA to the extent the animal being reintroduced remains under their control or care (including the period during which the animal is within captivity or being transported to the reintroduction site). Others may also have obligations under the AWA, such as the person in charge of transporting the translocated animal.<sup>34</sup>

Where a person is responsible for an animal, they are required under Section 9 of the AWA to take reasonable steps to ensure that the needs of an animal for which they are responsible (as defined in the AWA) are met to the extent required by good practice. For the purposes of the AWA, an animal’s needs shall be taken to include:

- (a) a suitable environment;
- (b) a suitable diet;
- (c) to be able to exhibit normal behaviour patterns;
- (d) to be housed with or apart from or with other animals; and
- (e) protection from pain, suffering, injury and disease.<sup>35</sup>

Other provisions of the AWA which may apply to a wildlife reintroduction include the following:

### Unnecessary suffering (Section 4)

A person commits an offence if:

- (a) their act, or failure to act, causes a protected animal to suffer, either physically or mentally;
- (b) he knew or could be reasonably expected to know that an animal would suffer as a result of that act or failure to act; and
- (c) the suffering is unnecessary.

The AWA also provides that a person responsible for an animal who permits another person to cause unnecessary suffering will also commit an offence if they fail to take reasonable steps to prevent the suffering from taking place, for example, by failing to supervise that other person.<sup>36</sup> An offence of ‘permitting’ unnecessary suffering caused by another can only be committed by a person in relation to an animal for which they are ‘responsible’ (as defined in the AWA).<sup>37</sup>

The AWA sets out considerations to which the courts would have regard in determining whether the suffering is unnecessary. Considerations focus on “*the necessity, proportionality, humanity and competence of the conduct*”.<sup>38</sup> These include whether:

- (a) the suffering could reasonably have been avoided or reduced;

- (b) the conduct which caused the suffering was in compliance with any relevant laws, a licence or code of practice – where suffering inevitably occurs in the course of complying with any regulations, licence or code of practice, an offence would not normally be committed;
- (c) the conduct which caused the suffering was for a legitimate purpose, such as to benefit the animal, or to protect a person, property or another animal;
- (d) the suffering was proportionate to the purpose of the conduct concerned; and
- (e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

If the translocation is under a licence issued by Natural England, it is important to ensure that the requirements of the licence are met, including the use of the appropriate equipment permitted by the licence (e.g., trap, net etc.) and to ensure that it is used competently.

### Mutilation (Section 5 of AWA)

This offence will be particularly relevant to techniques used in wildlife conservation and research where, for example, animals will need to be tagged or identified.

A person commits an offence if they carry out, or cause to be carried out, a procedure that involves “*interference with the sensitive tissues or bone structure of the animal, otherwise than for the purpose of its medical treatment*” (referred to in the AWA as a “prohibited procedure”).<sup>39</sup> Techniques that do not penetrate living tissue are not considered mutilations (e.g., ringing, use of collars, attachment of radio tags by harness or glue and wing clipping by cutting the primary feathers of a bird’s wing).

The AWA makes provision for the Secretary of State and the National Assembly for Wales to specify procedures which will be exempted from this general prohibition of mutilation. An example of such exempt procedures is the Mutilations (Permitted Procedures) (England) Regulations 2007 (as amended) (the “**Mutilations Regulations**”), which permits

certain commonly used wildlife identification techniques to be used, despite technically being “mutilations”, provided that they are carried out in such a way as to minimise pain or suffering, in hygienic conditions and in accordance with good practice.<sup>40</sup> These exceptions include ear clipping/notching, branding, micro-chipping, tattooing and the insertion of tracking devices.<sup>41</sup>

*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 7 October 2022.*

## ENDNOTES

1. International Union for the Conservation of Nature (IUCN), Guidelines for reintroductions and other conservation translocations, 2013 ([link](#)).
2. Department for Environment, Food & Rural Affairs, 'Reintroductions and other conservation translocations: code and guidance for England' (May 2021).
3. Natural England, Conservation translocation project scoping form: <https://www.gov.uk/government/publications/reintroductions-and-conservation-translocations-in-england-code-guidance-and-forms>
4. Wildlife and Countryside Act 1981, s.21.
5. See Department for Environment, Food & Rural Affairs, 'Reintroductions and other conservation translocations: code and guidance for England' (May 2021), Chapter 5.
6. Department for Environment, Food & Rural Affairs, 'Reintroductions and other conservation translocations: code and guidance for England' (May 2021), p. 77.
7. Department for Environment, Food & Rural Affairs, 'Reintroductions and other conservation translocations: code and guidance for England' (May 2021), p. 26.
8. Department for Environment, Food & Rural Affairs, 'Reintroductions and other conservation translocations: code and guidance for England' (May 2021), p. 25.
9. Department for Environment, Food & Rural Affairs, 'Reintroductions and other conservation translocations: code and guidance for England' (May 2021) pp. 24-25.
10. Department for Environment, Food & Rural Affairs, Guidance on section 14 of the Wildlife and Countryside Act 1981 ([link](#)), p. 11. Defra states that the information “represents the views of Defra and the Welsh Assembly Government on the meaning of key elements that make up the offences in section 14; it does not, therefore, represent a definitive interpretation of the law...”.
11. Department for Environment, Food & Rural Affairs, Guidance on section 14 of the Wildlife and Countryside Act 1981 ([link](#)), pp 9-12.
12. See also further guidance at <https://www.gov.uk/guidance/invasive-non-native-alien-animal-species-rules-in-england-and-wales>.
13. Dangerous Wild Animals Act 1976, s.1.
14. In some instances, the DWAA lists certain types of animals, but then creates an exception – for example, ‘old world pigs ... exception: domestic pig other than farmed wild boar’ or ‘horses ... exception: donkey, domestic horse’ or ‘all cats ... exception: the wild cat [amongst others]’. As such, a careful review of the England and Wales schedule (which can be found [here](#)) is required in order to determine if an animal is classed as a dangerous wild animal.
15. Dangerous Wild Animals Act 1976, s.1(2).
16. Dangerous Wild Animals Act 1976, s.6(1).
17. The Salmon and Freshwater Fisheries Act 1975, s.41. The definition of fish includes crustaceans and molluscs.
18. The Salmon and Freshwater Fisheries Act 1975, s.30; The Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015, s.4.
19. Zoo Licensing Act 1981, s 1.
20. The definition of ‘wild bird’ under the Wildlife and Countryside Act 1981 generally does not include game birds (namely pheasant, partridge, grouse (or moor game), black (or heath) game or ptarmigan)

- except for certain provisions of the W&C Act 1981 relating to licencing and the prohibition on the use of certain traps.
21. The Conservation of Habitats and Species Regulations 2017, S.I. 2008/301. ([link](#))
  22. Regulation 47 of the Habitats Regulations creates a similar offence in relation to the plant species specified in Schedule 5, see [link](#). Regulation 47 makes it an offence to be in possession of, or to control, transport, or to offer to or sell or exchange any live or dead plant or part of a plant taken from the wild or listed in Annex II(n) or Annex IV(b) of the Habitats Directive (European Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) without a licence.
  23. The Conservation of Habitats and Species Regulations 2017, Regulation 43(3).
  24. Article 55(7) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, see: <https://www.legislation.gov.uk/eudr/1992/43/contents>
  25. The Conservation of Habitats and Species Regulations 2017, Regulation 55(9).
  26. The Conservation of Habitats and Species Regulations 2017, Regulation 59.
  27. The Conservation of Habitats and Species Regulations 2017, Regulation 60.
  28. The Conservation of Habitats and Species Regulations 2017, Regulation 45.
  29. Protection of Badgers Act 1992, s.1.
  30. Animal Welfare Act 2006, Explanatory Notes, s.2(14) . This will include livestock, domestic pets, stray dogs and feral cats, but will also include feral animals that may be considered wild on the basis that they came from domestic stock, such as feral pigeon, mink, geese, goats and wild boar.
  31. Natural England, Wildlife Management Advice Note, The Animal Welfare Act 2006: what it means for wildlife, April 2019, see: <https://www.gov.uk/government/publications/wildlife-management-advice-notice-the-animal-welfare-act-2006-wml-gu02>.
  32. Wild Mammals (Protection) Act 1996, s.2.
  33. Animal Welfare Act 2006, s.3.
  34. Natural England, Wildlife Management Advice Note, The Animal Welfare Act 2006: what it means for wildlife, April 2019.
  35. Animal Welfare Act 2006, s.9(2).
  36. Animal Welfare Act 2006, s.4(2)(c).
  37. Animal Welfare Act 2006, s.4(2)(a).
  38. Animal Welfare Act 2006, Explanatory Notes, s.4(21).
  39. Animal Welfare Act 2006, s.5(3).
  40. Mutilations (Permitted Procedures) (England) Regulations 2007, s.3.
  41. Mutilations (Permitted Procedures) (England) Regulations 2007, Schedule 1. This is a list of permitted procedures.



## WHO'S BEHIND THIS GUIDANCE?



This note is part of a range of information produced by Rewilding Britain and The Lifescape Project to provide practical guidance to rewilders. Each is designed to help rewilding practitioners across Britain overcome common barriers in their rewilding journey, as identified through conversations with members of our Rewilding Network.

Rewilding Britain's Rewilding Network provides a central meeting point for landowners, land and project managers and local groups in Britain, offering opportunities for collaboration and allowing smaller landowners to take on larger-scale rewilding together. If you find this useful, please consider joining the Network, where those in Britain can explore these issues further with others in the same boat.



The Lifescape Project is a rewilding charity using a multi-disciplinary approach to achieve its mission of catalysing the creation, restoration and protection of wild landscapes. Lifescape's legal team is working to support rewilders in understanding how the law applies to their activities and pursuing systemic legal change where needed to support the full potential of rewilding. These notes form part of Lifescape's Rewilding Law Hub which aims to provide a legal resource centre for those wanting to manage land in accordance with rewilding principles.



### JOIN THE CONVERSATION

We'd love to hear what you've found useful in these notes and where we can help fill gaps in the guidance so that we can make sure they remain an up-to-date practical tool for rewilders.

Get in touch with us at:  
**Rewilding Britain: the Rewilding Network,**  
[www.rewildingbritain.org.uk/rewilding-network](http://www.rewildingbritain.org.uk/rewilding-network)

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