

REINTRODUCTIONS



CORE TOPICS:

- Licences and assessments required prior to the reintroduction of animals.
- Obligations on landowners regarding reintroductions.

KEY TAKEAWAYS:

- It is a criminal offence to release, or allow the escape from captivity of, any animal out of its native range without a licence.
- Certain species of animals are protected species meaning that licences will be required to capture them from any existing wild populations for release as part of a reintroduction project.
- Reintroduction projects will need to comply with animal welfare laws during the capture, transportation and keeping of any animals prior to release.
- The impact of any reintroduction on any protected areas will need to be considered and additional assessments and licences may be required.
- Reintroductions should comply with the IUCN Guidelines and the Scottish Code for Conservation Translocations which often require detailed social consultations and ecological surveys.

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1. INTRODUCTION

1.1 Summary

This note explains the legal position in Scotland in relation to the introduction of species outwith their native range and any licences which are or may be required to do that.

Whilst some native species can be re-introduced without the need for a licence, the introduction of non-native or former-native species can involve extensive consultations with the relevant public and community bodies and in many cases special conditions will be imposed during the reintroduction process.

The legal aspects of reintroductions can appear complex, but there are three prevailing themes throughout:

- the protection of species;
- the protection of places (such as designated sites); and
- the legal presumption against introducing a species to a location outwith its “native range”.

Rewilders must always be mindful of the ecological and social impacts of any proposed activity. For that reason, engagement with the local community (including landowners) and conducting detailed ecological surveys form an integral part of understanding feasibility and outcome. The length and depth of these processes ought not to be underestimated. However, since these are primarily policy issues which are highly fact specific, rather than legal issues, they are not addressed in this note. Instead, throughout this note we refer to guidance issued by NatureScot which outlines what may be appropriate in terms of surveys and other local engagement.

KEY QUESTIONS WHEN PLANNING A REINTRODUCTION PROGRAMME:

Considering the following questions will help rewilding projects navigate what licences may be required for reintroductions:

- The type of animal or species being reintroduced, and whether it is being reintroduced to a place outwith its native range. If it is, then a “non-native species licence” will be required.
- How and from where the specimens to be reintroduced will be obtained. Any plan to capture specimens from the wild may require a licence where the species is a European protected species or is protected under the WCA 1981. There are also relevant restrictions regarding the methods of trapping and holding of any animals which will need to be complied with.
- The place to which the animal or species is being introduced. If the reintroduction is happening within a protected area or could impact a nearby protected area, specific consents and assessments may be required (e.g., Habitats Regulations Appraisal).
- Any licences required to allow for the ongoing management and monitoring of the reintroduced animals.

In all cases NatureScot should be consulted prior to reintroduction to ensure that the appropriate licences and authorisations are in place.

1.2 The meaning of *native range* in Scotland

The Wildlife and Countryside Act 1981 (as amended) (the “1981 Act”) sets out the rules for the reintroduction of a species which pivot around the meaning of the “*native range*” of an animal or plant. It is defined in the 1981 Act as: “*the locality to which the animal or plant of that type is indigenous and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by a person.*”

It can be complicated ascertaining the native range of some plants and animals.

A species is considered by NatureScot to be outwith its native range if it has been imported to a location by human action. Even species imported centuries ago are still considered to be outwith their native range regardless of how long ago a non-native species was established in the wilds of Scotland (e.g. rabbits and brown hares).

NatureScot also considers species that were once native in a location, but where either the population has died out or the species no longer has the potential to re-colonise that location naturally, to be outwith their native range. These are termed “*former natives*”. According to NatureScot, once a former native has been reintroduced back into a locality, this area does not become part of its native range because the reintroduction involves being moved by humans.

In some instances, a species may be native to specific localities of Scotland but not others – for instance, a species may not be native to some islands. Genetic differences between populations must also be taken into account. Where different subspecies are recognised, a licence could be required to translocate these variants outwith their native range.

NatureScot has produced an extensive [Guidance Note](#) on this matter and the [Non-native species: code of practice](#) provides further advice. Their website also provides further guidance as to the definition of native range.

Moreover, all species considered to be non-native to Great Britain are outwith their native range in Scotland. The [GB Non-Native Species Information Portal](#) provides information for over 3,000 non-native species in Great Britain (but we would note that this is a non-exhaustive list and less than half of these species are established in the wild in Scotland).

1.3 Regulatory bodies and the Scottish Code for Conservation Translocations

NatureScot

Various aspects of this note deal with the work of NatureScot, the successor of Scottish Natural Heritage. NatureScot advises the Scottish Government and also controls various aspects of nature conservation in Scotland. It is the main licensing body in Scotland for matters relating to conservation, nature and wild species.

Other Relevant Bodies

NatureScot is the licensing authority for all non-native species. For some actions, permissions from other bodies such as the Scottish Environment Protection Agency (SEPA) or Marine Scotland may be required. NatureScot also works closely with other bodies such as Forestry and Land Scotland to assess any forestry related proposals.

The Scottish Code for Conservation Translocations

NatureScot publish the Scottish Code for Conservation Translocations (the “Code”)¹ along with the Best Practice Guidelines for Translocations in Scotland². These provide the framework for planning and assessing conservation translocations in Scotland. ‘Translocation’ is an umbrella term which includes reintroduction (as well as other deliberate movement and release of species into the wild) and, therefore, it is prudent to consult these documents even if the reintroduction under consideration is not necessarily for traditional conservation purposes.

The Code outlines some of the preliminary steps to consider when obtaining necessary permissions:

- obtain permissions from landowners before collecting or releasing organisms in the wild;
- consult with NatureScot before undertaking translocations which involve protected species or designated sites, or which involve moving species outwith their native range; obtain all necessary legal permissions and licences. Licensing requirements are set out in more detail below;
- where the translocation involves moving organisms to/from other countries, obtain all necessary import/export permissions and licences, and consult with the relevant statutory bodies in all involved countries to establish national legislative requirements; and
- adhere to any relevant animal welfare, health and safety, biosecurity, quarantine and sanitation legislation.

2. LICENCES REQUIRED FOR REINTRODUCTIONS IN SCOTLAND

2.1 Is a licence required under the 1981 Act for the release of an animal outwith its native range?

The legal test under 1981 Act

SECTION 14 – INTRODUCTION OF NEW SPECIES ETC. (APPLICABLE IN SCOTLAND):

1. Subject to the provisions of this Part, any person who

- a. releases, or allows to escape from captivity, any animal -
 - i. to a place outwith its native range; or

- ii. of a type the Scottish Ministers, by order, specify; or
- b. otherwise causes any animal outwith the control of any person to be at a place outwith its native range, is guilty of an offence.

2. Subject to the provisions of this Part, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence.

The ‘non-native species licence’

The above provision creates a legal presumption against introducing a species to a location outwith its native range. A ‘non-native species licence’ is required to sanction the actions referred to in Section 14 that would otherwise be offences under the 1981 Act.

Whether or not a proposed reintroduction or translocation of a species will be outwith its native range is a question of fact depending on the species and the proposed release location.

An offence is not committed where a non-native species licence has been granted by the appropriate authority³. The licencing authority has a great deal of flexibility as to the terms and conditions of non-native species licences. The key features of licences are that they:

- can be general or specific;
- can be granted either to persons of a class or a particular person;
- can be subject to compliance with any specified conditions;
- are modifiable or capable of being revoked at any time by the appropriate authority;

- can be valid only for the period stated in the licence; and
- can be subject to discretionary charges by the appropriate authority if that authority determines that such reasonable sums are appropriate⁴.

Guidance on licence applications

Applications must be lodged with NatureScot. The guidance provided on [NatureScot's website](#) is clear in relation to rewilding and reintroductions – when planning any activities which might involve the release of a non-native species, seek further advice from NatureScot and contact the relevant local office.

Before a non-native species licence can be issued, the following considerations need to be satisfied:

- what alternative options have been considered for the conservation management of the species and why have these been discounted?
- does the translocated species pose any threats to the release site and wider environment?
- what actions will be taken to reduce the risk of the translocated species causing negative impacts, how will any risks be monitored and how will remedial action be implemented if any risk is realised?

For some actions, permissions may also be required from other agencies, such as SEPA and Marine Scotland. For example, in Scotland it is an offence for any person to intentionally introduce any live fish or spawn of any fish into inland waters, or possess them with the intention of introducing them⁵. As such, any conservation translocation of a freshwater fish species to a Scottish site will require the prior “consent in writing of the appropriate authority”⁶. Therefore, translocation of a species of fish may need a number of different licences.

The practical examples at the end of this note will help you understand how the licensing provisions apply in practice.

EXAMPLE 1: WCA NON-NATIVE RELEASE LICENCES

A rewilder wants to release the following species:

black grouse: a native bird that until 10 years ago, was known in the area, but is now gone and is unlikely to recolonise naturally (an example of animal being introduced to an area outwith its native range despite still naturally occurring in other parts of Scotland i.e., a former native species);

round-leaved sundew (*drosera rotundifolia*): a native carnivorous plant which may still be in the area but is difficult to find (an example of a plant that is within its native range i.e., a native species);

beaver (an example of an animal that is a protected species);

freshwater pearl mussels; and

wildcat.

As explained above, it is a criminal offence to release any species of animal or cause to grow any plant outwith its native range. Rewilders intending to carry out planned reintroductions of non-native or former-native species must therefore obtain the appropriate consent or licence from NatureScot.

Best practice is for the rewilder to consult with NatureScot in order to ascertain whether consents, such as a non-native species licence, are required before taking any action towards a release. The Scottish Code for Conservation Translocations should also be consulted along with the Best Practice Guidelines for Translocations in Scotland.

It is assumed that the rewilder will already have satisfied themselves that they comply with any applicable pre-

licence conditions and that there are no cross-border complications. In general terms we note the following matters may be of significance: (i) there is an identifiable conservation goal; (ii) there has been consideration as to whether the planned location is a specially protected place of significance or ‘European protected site’ and if appraisals or additional consents are required; (iii) the rewilder has assessed the potential impacts of release on local flora, fauna and existing human activity (i.e., what we might informally term a threat assessment); (iv) the rewilder has assessed whether pre-requisite or post-release management practices are necessary to reduce the risk of the translocated species causing negative impacts to the local ecosystem; and (v) the planned release is the most appropriate form of action in the given instance and alternative options were discounted.

BLACK GROUSE

Releasing black grouse in areas where they are not currently present but used to be found 10 years ago would likely be classified as a reintroduction of a former native species (noting that the designation depends in part on whether the species no longer has the potential to re-colonise the relevant location naturally). Therefore, a licence is likely required for reintroduction of black grouse to their native range or a locality to which the animal was formerly indigenous.

NatureScot work closely with other bodies such as Forestry and Land Scotland and they will advise if the proposal has any forestry related aspect if they consider that the rewilder may need to obtain additional permissions/licences from other bodies. Moreover, all wild birds are given protection under the 1981 Act and the black grouse will be considered a protected species. Therefore, if the rewilding project involves activity such as the handling, capture and/or release, the licence conditions must take account of the protected status of the species and provide consent to appropriate activities.

Best practice dictates that NatureScot should be consulted prior to taking any direct action to reintroduce the species to limit the risks of committing an offence.

ROUND-LEAVED SUNDEW

According to the [Scottish Wildlife Trust](#), round-leaved sundew is common across Scotland and is categorised as a species of 'least concern'. For this reason, it would appear the plant grows widely and most areas of Scotland would likely be classified as within its native range and therefore not require a licence under the WCA.

As a matter of practicality, prior to taking any action to plant the species in the planned area, it would be sensible to determine whether the round-leaved sundew is present in the relevant location. Thereafter, the rewilders should consult with NatureScot and otherwise seek agreement to the effect that the species is native, not protected and the planned site has no special environmental protection status in law or policy.

Best practice dictates that NatureScot should be consulted prior to taking any direct action to reintroduce the species to limit the risks of committing an offence.

BEAVER

In Scotland the beaver is recognised as a European Protected Species. NatureScot figures estimate the median number of beavers in Scotland is 954 beavers across 254 beaver territories, mainly in the Forth and Tay catchments. Since native populations of beavers went extinct in Scotland by the 16th century and those that are now present have been reintroduced, the species is classed as 'former native' in many suitable localities

meaning rewilders will require a licence for reintroduction.

Notably, the Scottish Government recently changed its position to be actively supportive of translocation of beavers outwith their current range in Scotland and the [new Beaver Strategy](#) was published in September 2022.

NatureScot must be consulted about any project involving beavers. The policy on beavers is moving towards a more liberal hand in dispersing populations across Scotland. However, beavers are designated as a European Protected Species and a former-native species, and so on this basis, a licence would be required to allow the reintroduction of beavers as well as for many activities necessarily involved in a reintroduction project such as the handling, capturing and holding of these animals.

FRESHWATER PEARL MUSSELS

We understand that freshwater mussels are endangered and only native to *some* parts of Scotland; there are a few populations in Southern Scotland and some more abundant populations in the Highlands. In order to ascertain whether a non-native species licence is required, NatureScot should be consulted.

Freshwater pearl mussels are protected under Section 9 of the WCA 1981 which means that it is an offence to capture, take, kill or otherwise disturb these invertebrates. If a rewilder wishes to take specimens of freshwater pearl mussels from the wild to be used in reintroduction projects, they will need to obtain consent and a licence from NatureScot. NatureScot can licence certain activities that would otherwise constitute an offence against freshwater mussels. A licence can be applied for to survey for freshwater mussels, however these are only granted to experienced and suitably trained individuals.

WILDCATS

Wildcats are an indigenous species to Scotland. However, they are not widespread and very few individuals are thought to be left in the wild - it has been estimated that there are only 115 to 314 individuals which suggests their native range is marginal. For most rewilding projects this means wildcats will be considered as a former native species but NatureScot should be consulted to confirm in this instance whether the species is to be considered non-native.

Wildcats are a designated European Protected Species.

Assuming NatureScot confirms that the wildcat is only formerly native to the release area, a licence would be required to allow the reintroduction of wildcats under the WCA. A separate licence would be required for many activities necessarily involved in a reintroduction project such as the handling, capturing and holding of these animals given their status as a European Protected Species.

2.2 Are any other licences or assessments required?

Protected Areas

If a rewilder plans to reintroduce a species within an area that has a protected status (such as a European Site or a Site of Special Scientific Interest (“**SSSI**”)) or if a reintroduction could impact such a site, further licences could be required to ensure that the reintroduction will not negatively impact the protected sites.

To find out if an area is protected visit [SiteLink](#).

The degree of protection afforded to protected areas will depend on their classification and the reason for their designation. A rewilder should be aware of the most important classifications highlighted below.

European Sites

In Scotland, the areas with the highest level of protection are termed “**European Sites**” (formerly known as “Natura 2000” sites), which include Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). European sites are protected under the Habitats Regulations.⁷

The objective of the Habitats Regulations is to ensure that any plan or project that may damage a European Site is assessed and can only go ahead if certain strict conditions are met. All competent authorities (which includes any Minister, local authority, SEPA, NatureScot and Forestry & Land Scotland) must consider whether any plan or proposal will have a ‘likely significant effect’ on a relevant site. If so, they must carry out an ‘appropriate assessment’. The assessment is known as a Habitats Regulations Appraisal⁸. If any proposal to reintroduce animals (including both native or non-native species) may impact the status of a European Site, it will be necessary to consider whether a Habitats Regulations Appraisal is required. The assessment must show, beyond reasonable scientific doubt, that the plan or project will not adversely affect the integrity of the site. The competent authority must consult with NatureScot who will then determine whether there is enough evidence to support that conclusion. More information on this matter can be found on [NatureScot’s website](#).

SSSIs

Separately, areas considered by NatureScot to be of special interest for their flora or fauna, geology or geomorphology, are designated as SSSIs. Together they form a network of the best examples of species, habitats and rock and landform features throughout Scotland. The scheme is now contained in the Nature Conservation (Scotland) Act 2004 (the “**2004 Act**”).

It is an offence for anyone to “intentionally or recklessly damage any natural feature” of SSSIs (see Section 19). The owners and occupiers of land designated as a SSSI must apply to NatureScot for consent to carry out certain operations that could conceivably negatively affect the natural features of SSSIs – such operations are included in a list maintained by NatureScot which is sent to all interested parties. Therefore, NatureScot should be consulted in relation to any proposal for species introduction within or near to SSSIs⁹.

In many cases, a site may be both a SSSI and a European Site, in which case the protections offered by both regimes will apply.

Ramsar Sites

“Ramsar Sites” (designated wetlands under a treaty established in 1971 by UNESCO) can be European sites and/or SSSIs and are therefore protected under the relevant statutory regimes.¹⁰

Protected Species

There are a sizeable number and variety of species which are protected by law in Scotland including beavers, red squirrels, mountain hares, wildcats and all wild birds. For quick reference, NatureScot has published a [table](#) detailing all of Scotland’s protected species including a note of the legislative instruments conferring protection. In addition, NatureScot provides on their website an [A-Z guide](#) for a specific protected species which highlights how to apply for each type of licence.

Under the 1981 Act, there is an obligation not to kill, capture or otherwise disturb the place a protected species occupies

(including their eggs or their nesting sites in case of wild birds). If any person intentionally or recklessly kills, injures, or takes, any wild animal included in Schedule 5 of the 1981 Act, they shall be guilty of an offence under Section 9 of the 1981 Act unless they possess a bespoke ‘protected species licence’¹¹ sanctioning such activity.

Similarly, if any person intentionally or recklessly picks, uproots, destroys or exposes for sale any wild plant, included in Schedule 8 of the 1981 Act they shall be guilty of an offence under Section 13 of the 198 Act, unless such act is shown to be one of the listed lawful exceptions or the person is in possession of a relevant consent sanctioning such activity.

Separately, certain species of animals and plants in Scotland are designated ‘**European Protected Species**’. These species are listed in Schedules 2 and 4 of the Habitats Regulations¹² and includes bats, otters and dolphins. Regulation 39 of the Habitats Regulations makes it an offence, amongst other things, to:

- deliberately or recklessly capture, injure or kill any such animal;
- deliberately to disturb or harass any such animal;
- deliberately to take or destroy the eggs of such an animal; or
- damage or destroy a breeding site or resting place of such an animal.

Regulation 43 extends similar protection to wild plants of European Protected Species as it is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of this designation.

Whenever a European Protected Species is present, a licence will be required to permit any activity that may affect such animals and plants (see Regulation 44) and will only be granted by NatureScot subject to satisfying the three-pronged test noted below.

Badgers are notably absent from both the Habitats Regulations and Schedule 5 of the 1981 Act (as amended). However, both badgers and their setts are legally protected under the Protection of Badgers Act 1992 (as amended). It is an offence to wilfully or recklessly interfere or disturb with a badger sett, and a person must not take, injure or kill a badger without a licence to do so.

In addition, the Nature Conservation (Scotland) Act 2004 (as amended) gave rise to the [Scottish Biodiversity List](#), which identifies species considered by Scottish Ministers to be of principal importance for the conservation of biodiversity. Wildlife reintroduction projects should seek to avoid or mitigate against any significant negative impact on species on this list as a matter of ‘best practice’¹³.

Licensing implications for protected species

The protected species regime has two broad implications for wildlife reintroductions in Scotland: first, the planned capture and release of protected animals for use in reintroduction projects will require a species licence from NatureScot.

In particular:

- Section 1 of the 1981 Act 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);¹⁴
- Section 9 of the 1981 Act prohibits the ‘taking’ of those wild animals specified in Schedule 5; and
- With reference to a European Protected Species, a licence will be required to take, possess or capture such animals (see Regulations 41 and 44 of the Habitats Regulations).

Therefore, if a rewilder plans to reintroduce a protected species, careful thought will need to be given to where the specimens will come from. Any plan to capture the animals from existing populations (either in Scotland or elsewhere) will likely require a licence.

Separately, NatureScot will consider and assess whether the planned reintroduction of any species could negatively impact populations of existing protected species in the locality of any release.

It is advisable to obtain specialist advice from a consultant ecologist if a proposed activity is at risk of committing any of the offences set out above and to develop the supporting body of information required to satisfy the tests/conditions precedent in the licencing regime. For further practical consideration of how the regulations on protected species operate in practice, refer to [NatureScot guidance](#) and see Scenario 2 of Schedule 2.

Dangerous wild animals

The [Dangerous Wild Animals Act 1976](#) (the “DWAA”) applies to Scotland. The “dangerous wild animals” to which it applies are listed in the Schedule which includes a number of UK native species such as wolves, lynx, wild boar and elk.

It is not permitted to keep any dangerous wild animal except under the authority of a ‘dangerous wild animal licence’ granted by a local authority in accordance with Section 1 of the DWAA¹⁵.

The DWAA lists the conditions for the granting of such licences, such as that it must not be contrary to the public interest on the grounds of safety, nuisance or otherwise, and all reasonable precautions will be taken to prevent and control the spread of infectious diseases (Subsections (2)-(5) of Section 1). It is also necessary to ensure that the dangerous wild animal will be held in a secure enclosure, the implications of which will vary by species and the facts of each reintroduction site. Therefore, where a dangerous wild animal licence is granted, there will be various conditions¹⁶ included in the licence bespoke to the local area.

The Scottish government has published a helpful [guide](#) which provides guidance on an individual species basis for the keeping of dangerous wild animals.

2.3 International dynamic

Licence requirements and conditions depend in equal parts upon the particular species being moved, the methods involved, and the place which it is being moved to/from. In some instances multiple countries can be connected to rewilding projects. Where that is the case, NatureScot will require evidence that the necessary licences and permissions have been obtained in the other countries before issuing any Scottish licences or consents.

Animal and plant import law is a large subject in itself and is beyond the scope of this note, save for the following general comments:

Translocations between Scotland and other parts of the UK

Scots law is different to that in the rest of the UK. If translocations involve other parts of the UK, the relevant statutory agencies therefore need to be consulted to obtain advice on their licensing requirements.

Translocations between Scotland and non-UK countries

All EU Member States are bound by the Habitats Directive and Birds Directive. There will be differences in how these Directives have been transposed into domestic legislation. Following Brexit, Scotland has ensured the directives ‘stay operable’. The Scottish Government have published [information](#) on how this has worked logistically. The process with the relevant statutory bodies in the countries concerned should be consulted. The same general advice applies to countries outwith the EU.

International movement of endangered species

As well as complying with all local regulation and consulting with their relevant statutory bodies, it should be borne in mind that the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) places constraints on the international movement of CITES-listed species. The species covered by CITES are listed in three Appendices¹⁷ according to the degree of protection they receive, and permits are required to allow the legal import or export

of those species. Any such projects should also take advice on the application of the Control of Trade in Endangered Species (Enforcement) Regulations 1997.

3. ADDITIONAL LEGAL OBLIGATIONS RELEVANT TO REINTRODUCTIONS

Rewilders must consider whether licences may be required to permit the range of operations necessary for the ongoing management of the species following the reintroduction phase. In many instances, it is a legal requirement for NatureScot to sanction the activity otherwise a rewilder risks committing an offence. This includes the following matters:

3.1 Capturing and trapping

In addition to licences being required to capture and reintroduce species under the provisions of the 1981 Act and Habitats Regulations referred to above, if a rewilder needs to re-trap or capture the animals or their offspring after release for e.g., tagging or monitoring purposes, further licences may be required for those activities. Such licences will be applied for and issued under the same provisions of the 1981 Act and the Habitats Regulations described above.

Separately, legal restrictions on the methods which can be used to capture specified animals from the wild are set out in Section 11 of the 1981 Act. For example, it is an offence to use poisonous substances, self-locking snares, nets, devices for illuminating a target, sounds as a decoy and the use of a mechanically propelled vehicle in immediate pursuit of the animals included in Schedule 6 under the Act (the badger is one such example).

Therefore, when planning reintroduction projects, there will be important considerations on whether the permissions are in place for these reintroduced animals to be legally caught and/or held and the means of doing so, for the purposes of ongoing monitoring etc.

3.2 Monitoring obligations

The precise extent of ongoing obligations for rewilders will vary depending on the factual circumstances in every project. However, it should be noted that the Code reflects an expectation that some form of monitoring will be undertaken: *“As a minimum, all translocation programmes undertaken in Scotland should include some demographic monitoring. The level of detail, and the need (and level of detail) for other forms of monitoring will vary and should be proportional to the scale of the translocation and the associated risks. The greater the distances involved, the more sentient the organism, the greater the biological and socio-economic risks, the greater the need for extensive and detailed monitoring”*¹⁸.

At the outset of the project, it would be sensible to seek input from NatureScot about the appropriate level of monitoring. By way of example, it may be important for a project to mark individual animals that have been reintroduced or have a GPS collar fitted for tracking purposes. Further, if the animals in question are a protected species it may be necessary for NatureScot to authorise the proposed methods of monitoring and include consent within the scope of licence conditions.

3.3 Animal welfare obligations

NatureScot views animal welfare as a priority in any wildlife management practices which arise in connection with planned reintroductions.¹⁹

The provisions of the Animal Health and Welfare (Scotland) Act 2006 (as amended) (the **“AHWA”**) are applicable to any vertebrate species other than human beings. Under the AHWA, it is an offence for a person to cause *“unnecessary suffering”* to any *“protected animal”*.

Animals of a kind *“commonly domesticated”* in the British Islands are *“protected animals”*. Wild animals are also *“protected animals”* under the AHWA whenever they are under human control, be it on a temporary or permanent basis, and possibly even when they are no longer under human control but are not yet living *“in a wild state”* (for example, animals that have escaped captivity)²⁰. Therefore, wild animals kept

for the purposes of reintroduction projects may be protected under the AHWA, for example, whilst temporarily held in an enclosure (including large areas of fenced land), pen or cage trap; during transportation; temporarily held in a net (including a mist net) or snare; or whilst held in the hand.

Unnecessary suffering can occur where a person owns or has otherwise assumed responsibility for a protected animal, and their act or omission, causes unnecessary suffering (see Section 19 AHWA). Whether or not suffering is sanctionable is determined on consideration of a number of factors including, but not limited to, if the purpose was to benefit the animal and whether it was proportionate. A relevant consideration is whether the person knew, or ought reasonably to have known, that the act would have caused the suffering or be likely to do so. Abandonment can also be construed as an offence if, without reasonable excuse, the person neglects an animal for which the person is responsible in circumstances likely to cause it unnecessary suffering (see Section 29).

The AHWA also imposes an obligation on the person responsible for an animal to take reasonable steps to ensure that the *“needs of an animal”* for which they are responsible are met to the extent required by good practice. An animal’s needs shall be taken to include:

- a suitable environment;
- a suitable diet;
- to be able to exhibit normal behaviour patterns;
- to be housed with or apart from other animals; and
- protection from pain, suffering, injury and disease.²¹

The provisions under AHWA would appear to be especially relevant when animals are in transit for the purposes of reintroductions.

3.4 Health and disease control

There are legal obligations relating to animal health and disease control which rewilding projects may need to comply with depending on the circumstances of an animal's release. These obligations are outside the scope of this note.

3.5 'Right to Roam' (Scotland only)

Most of the land suitable for rewilding in Scotland is accessible to the public for recreational, educational, and commercial purposes under the "Right to Roam" legislation²². In essence, it is useful to assume that people may simply appear at any time on any land (so long as they are acting responsibly). Rewilders ought to take this principle into consideration where land has been identified as suitable habitat for species to be (re)introduced in large enclosures, especially where a project is within a range known to be popular for recreational activity. For instance, there could be an immediate conflict if plans are afoot to reintroduce wolves into a large enclosure to the extent it would inhibit or prohibit public access to that area of land. Consultation at an early stage on this type of issue will need to be carefully thought through in order to ensure specific rights of way and the general right to roam are respected or appropriate permissions to exclude access are obtained. For further details we refer to the separate *Rewilding in Scotland: Public Access* note.

3.6 Large enclosures as "zoos"

Rewilders should also be wary of the implications of holding species captive in large enclosures, especially if both prey and predator species will be present (e.g., wolves and red deer). Large enclosures which facilitate public exhibition of wild animals may be subject to the zoo licensing regime²³ and the applicable standards and regulations thereto may give rise to unforeseen limitations on the project, such as, restrictions on permitting live prey in the enclosure. Consultation at an early stage on this type of issue will need to be carefully thought through in order to ensure the fundamental objectives of the project can be achieved.

3.7 Other

Where any licence has been obtained it is of paramount importance to ensure compliance with all conditions as well as to stay abreast of any other legal obligations that arise from time to time.

Beyond the general scope of this note there may be additional specific protections applicable to certain animals under the following legislation: (i) The Offshore Marine Regulations 2007; (ii) The Birds Directive and Wildlife and Countryside Act 1981; (iii) The Protection of Badgers Act 1992; and (iv) The Deer (Scotland) Act 1996.

4. CONFLICT WITH LANDOWNERS AND OTHERS

Where reintroductions may affect people, it is important to consult with landowners, land users and any other interested groups or individuals. The reintroduction of certain species could affect people's wellbeing, livelihoods and recreational activities.

The Code states that permissions should be obtained from landowners before collecting or releasing organisms in the wild.²⁴ Conflicts are more likely to arise in certain situations; such as where there is disruption to rural economies, restriction on land use, risk of transmissible diseases or risk of direct harm to humans or other animals.

Where reintroductions or translocations lead to conflicts between the conservation goals and the livelihoods or leisure of other stakeholder groups, the Code states that they should not proceed unless acceptable solutions can be developed. An acceptable solution may be, for example, management actions/mitigations (such as containment or control), long-term compensation agreements to offset losses, or a viable exit strategy for reversing the translocation or reintroduction if unacceptable impacts occur. To reduce the risk of conflicts arising, all reintroduction projects should include stakeholder engagement as early as possible. This will help to address

any concerns early on, through dialogue, to identify suitable options and mitigations.

In respect of the liability of rewilders and/or other third parties involved in all such projects, neither the Code nor the 1981 Act specifically address the issue of reintroduced species causing damage to persons, property or the environment. However, liability can arise out of other established legal principles (e.g., delict/tort and the common law) (see the *Rewilding in Scotland: Liability for Damage Caused by Animals* and *Rewilding in Scotland: Liability to Visitors and Neighbours* notes).

Thank you to Burness Paull 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 2022.

ENDNOTES

1. <https://www.nature.scot/doc/scottish-code-conservation-translocations>
2. <https://www.nature.scot/sites/default/files/2019-02/Scottish%20Code%20for%20Conservation%20Translocations%20-%20Summary.pdf>
3. Section 16(4)
4. Section 16(5) of 1981 Act
5. Section 33A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003
6. Section 33A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003
7. European Sites were originally given legal protection under the “Habitats Directive” (Council Directive 92/43/EEC of 21 May 1992). Despite the advent of Brexit their designation persists through domestic legislation in Scotland known as the “Habitats Regulations” (The Conservation (Natural Habitats, etc.) Regulations 1994 (as amended). Various amendments have been made to the Regulations between 2004-2019 which apply only to Scotland; thus the Scottish regime does not precisely mirror the rules in force in England and Wales pursuant to the Conservation of Habitats and Species Regulations 2017.
8. Required under the European Union Council Directive 92/43/ECC on the conservation of natural habitats and of wild fauna and flora which is translated into specific legal obligations in Scotland by the Conservation (Natural Habitats, &c.) Regulations 1994
9. Nature Conservation (Scotland) Act 2004 (as amended)
10. Paragraph 211 of the Scottish Planning Policy, 2014; [Scottish Government Guidance Note, 2019](#)
11. A species licence is a generalised term included within the Code (refer to page 26) used in respect of a licence which required actions involving identified species given specific legislative protection.
12. Since this is a piece of domestic legislation the European Protected Species list has survived Brexit. The corresponding key legislation in England and Wales is the Conservation of Habitats and Species Regulations 2017 which enables the jurisdictions to differ in how they seek to implement species protection on land and inshore waters.
13. Page 26, the Code.
14. 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 WCA 1981 relating to licencing and the prohibition on the use of certain traps.
15. See Section 1 of the 1976 Act
16. Sub-section 6 of the 1976 Act
17. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Appendices I, II and III valid from 14 February 2021: <https://cites.org/sites/default/files/eng/app/2021/E-Appendices-2021-02-14.pdf>
18. Page 44 of the Code, Chapter 9: Monitoring, management, communication
19. Position paper on Wildlife Welfare: https://www.webarchive.org.uk/wayback/archive/20211020105617mp_/https://www.nature.scot/sites/default/files/2020-06/SNH%20Position%20Statement%20Wildlife%20Welfare%20-%202014.pdf
20. See Section 17 of AHWA.
21. See Section 24 of AHWA.
22. The Land Reform (Scotland) Act 2003
23. See Section 1(1) and (2) of the Zoo Licensing Act 1981. The enclosure must allow members of the public access to view the animals for at least seven days per year to be considered a zoo within the meaning of this legislation.
24. Page 8 of the Code, “Stay legal: obtain necessary permissions and adhere to relevant legislation” and Page 30, “Responsible access”

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

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