

Agenda – Constitutional and Legislative Affairs

Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Monday, 22 May 2017

Meeting time: 13.15

For further information contact:

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1 Introduction, apologies, substitutions and declarations of interest

13.15

Chair's opening statement

2 A Stronger Voice for Wales inquiry: Evidence session 10

13.15

(Pages 1 – 5)

Paul Cairney, Professor of Politics and Public Policy, Division of History and Politics, University of Stirling

CLA(5)–14–17 – Research Service Briefing

3 Instruments that raise no reporting issues under Standing Order

21.2 or 21.3

14.15

(Pages 6 – 9)

CLA(5)–14–17 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments



**SL(5)105 – The Planning (Listed Buildings and Conservation Areas) (Wales)
(Amendment No.2) Regulations 2017**

**SL(5)106 – The Listed Buildings (Urgent Works) (Interest Rate on Expenses) (Wales)
Order 2017**

**SL(5)107 – The Ancient Monuments (Claims for Compensation) (Wales)
Regulations 2017**

**SL(5)108 – The Scheduled Monuments (Review of Scheduling Decisions) (Wales)
Regulations 2017**

**SL(5)109 – The Ancient Monuments (Applications for Scheduled Monument
Consent) (Wales) Regulations 2017**

4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

14.20

Negative Resolution Instruments

**SL(5)110 – The Listed Buildings (Review of Listing Decisions) (Wales) Regulations
2017**

(Pages 10 – 33)

CLA(5)–14–17 – Paper 2 – Regulations

CLA(5)–14–17 – Paper 3 – Explanatory Memorandum

CLA(5)–14–17 – Paper 4 – Report

5 Instruments that raise issues to be reported to the Assembly under Standing Order 21.7

No Procedure

SL(5)104 – Code of Practice for Species Control

(Pages 34 – 70)

CLA(5)–14–17 – Paper 5 – Code of Practice

CLA(5)–14–17 – Paper 6 – Report

6 Paper to note

Correspondence from the Australian Senate Legal Constitutional and Legislation Committee

(Pages 71 – 73)

CLA(5)–14–17 – Paper 7 – Letter from the Chair and Deputy Chair of the Australian Senate Legal and Constitutional Affairs Legislation Committee.

7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

14.25

8 Stronger Voice for Wales inquiry: Consideration of evidence

9 Great Repeal Bill: Discussion

14.30

(Pages 74 – 86)

CLA(5)–14–17 – Research Service Briefing

CLA(5)–14–17 – Paper 8 – Committee’s response to House of Commons Procedure Committee: Great Repeal Bill

Document is Restricted

Agenda Item 3 Amendments with Clear Reports

22 May 2017

SL(5)105 – The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment No.2) Regulations 2017

Procedure: Negative

The Regulations amend the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012.

Regulation 2 replaces the requirement that an application for listed building consent is accompanied by a design and access statement. Instead, an application for listed building or conservation area will need to be accompanied by a heritage impact statement. It also adds to existing provision about the form and manner in which claims for compensation are made, to include reference to claims arising under 28B (compensation for loss or damage caused by interim protection) and section 44D (temporary stop notices: compensation), of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Parent Act: Planning (Listed Buildings and Conservation Areas) Act 1990

Date Made: 4 May 2017

Date Laid: 8 May 2017

Coming into force date: In accordance with Regulation 1(3)

SL(5)106 – The Listed Buildings (Urgent Works) (Interest Rate on Expenses) (Wales) Order 2017

Procedure: Negative

Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the '1990 Act') enables a local authority or the Welsh Ministers to execute works which appear to them to be urgently necessary for the preservation of listed buildings.



This Order makes provision in relation to the rate of interest carried by expenses which a local authority of the Welsh Ministers may recover under section 55 of the 1990 Act, in relation to such works.

Parent Act: Planning (Listed Buildings and Conservation Areas) Act 1990

Date Made: 4 May 2017

Date Laid: 8 May 2017

Coming into force date: 31 May 2017

SL(5)107 – The Ancient Monuments (Claims for Compensation) (Wales) Regulations 2017

Procedure: Negative

These Regulations revoke and replace the Ancient Monuments (Claims for Compensation) (Wales) Regulations 1991 for the purpose of implementing changes made to the Ancient Monuments and Archaeological Areas Act 1979 by the Historic Environment (Wales) Act 2016.

Parent Acts: Ancient Monuments and Archaeological Areas Act 1979; Historic Environment (Wales) Act 2016

Date Made: 4 May 2017

Date Laid: 8 May 2017

Coming into force date: 31 May 2017



SL(5)108 – The Scheduled Monuments (Review of Scheduling Decisions) (Wales) Regulations 2017

Procedure: Negative

The Regulations make provision for the procedure for reviews carried out by the Welsh Ministers in respect of their decision to include a monument in the schedule of monuments compiled by them (under section 1 of the Ancient Monuments and Archaeological Areas Act 1979); or, in the case of a monument which is identified in that schedule by reference to a map maintained by the Welsh Ministers, to make an amendment which adds to the area shown for a monument on that map.

Parent Act: Ancient Monuments and Archaeological Areas Act 1979

Date Made: 4 May 2017

Date Laid: 8 May 2017

Coming into force date: 31 May 2017

SL(5)109 – The Ancient Monuments (Applications for Scheduled Monument Consent) (Wales) Regulations 2017

Procedure: Negative

These Regulations make provision for applications for, and the grant of, scheduled monument consent, including a simplified procedure for making applications.

Parent Act: Ancient Monuments and Archaeological Areas Act 1979

Date Made: 4 May 2017

Date Laid: 8 May 2017

Coming into force date: 31 May 2017



Agenda Item 4.1

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2017 No. 644 (W. 150)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Listed Buildings (Review of
Listing Decisions) (Wales)
Regulations 2017**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the procedure relevant to reviews carried out by the Welsh Ministers in relation to their decision to include a building in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

They include, in particular, provision in relation to the following matters—

— The classes of review to be decided by an appointed person instead of the Welsh Ministers, the grounds for review, procedural requirements relevant to the making of an application and associated requirements (Part 2);

— Procedural provision relevant to the extent that a review is carried out on the basis of written representations (Part 3);

— Procedural provision relevant to the extent that a review is carried out by means of a hearing (Part 4);

— Procedural provision relevant to the extent that a review is carried out by means of local inquiry (Part 5);

— Supplementary matters (Part 6); and

— Procedural provision relevant to the making of a decision on a review (Part 7).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs

and benefits of complying with these Regulations. The Impact Assessment prepared for the Historic Environment (Wales) Act 2016 is relevant and is available from Historic Environment Services (Cadw), Welsh Government, Plas Carew, Cardiff, CF15 7QQ and on the Welsh Government's website at www.wales.gov.uk

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2017 No. 644 (W. 150)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Listed Buildings (Review of
Listing Decisions) (Wales)
Regulations 2017**

Made 4 May 2017

*Laid before the National Assembly
for Wales* 8 May 2017

Coming into force 31 May 2017

The Welsh Ministers, in exercise of the powers conferred on them by section 2D of, and Schedule 1B to, the Planning (Listed Buildings and Conservation Areas) Act 1990⁽¹⁾, and the powers conferred on the Secretary of State by section 93 of that Act and now exercisable by the Welsh Ministers⁽²⁾, make the following Regulations:

PART 1

Preliminary

Title, commencement and application

1.—(1) The title of these Regulations is the Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017 and they come into force on 31 May 2017.

(2) These Regulations apply to Wales.

(1) 1990 c. 9; section 2D was inserted by section 24 of the Historic Environment (Wales) Act 2016 (anaw 4) (“the 2016 Act”). Schedule 1B was inserted by section 24 of, and Schedule 2 to, that Act.

(2) The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

Interpretation

2. In these Regulations—

“the 1990 Act” (“*Deddf 1990*”) means the Planning (Listed Buildings and Conservation Areas) Act 1990;

“applicant” (“*ceisydd*”) means the owner or occupier of the building making an application for a review;

“appointed person” (“*person penodedig*”) means a person appointed by the Welsh Ministers under paragraph 1 of Schedule 1B to the 1990 Act;

“hearing” (“*gwrandawriad*”) means a hearing held under section 2D(5)(b) of the 1990 Act (review of certain listing decisions);

“inquiry” (“*ymchwiliad*”) means a local inquiry held under section 2D(5)(a) of the 1990 Act;

“inquiry statement” (“*datganiad ymchwiliad*”) has the meaning given in regulation 17(1)(a);

“interested person” (“*person â buddiant*”) means any person, other than the applicant, notified or consulted under section 2A of the 1990 Act (duty to consult on certain changes to lists)(**1**) about the Welsh Ministers’ proposal to include the building to which a review relates in a list;

“list” (“*rhestr*”) means a list of buildings of special architectural or historic interest compiled or approved under section 1 of the 1990 Act (listing of buildings of special architectural or historic interest)(**2**);

“review” (“*adolygiad*”) means a review carried out by the Welsh Ministers under section 2D of the 1990 Act;

“specified matters” (“*materion penodedig*”) are, in relation to a review carried out by means of a hearing or an inquiry, the matters as specified by the appointed person to be considered at the hearing or inquiry;

“starting date” (“*dyddiad dechrau*”) has the meaning given in regulation 6(1)(a);

“the Welsh Ministers’ review statement” (“*datganiad Gweinidogion Cymru ar yr adolygiad*”) has the meaning given in regulation 8(1).

(1) Section 2A was inserted by section 24 of the 2016 Act.

(2) Section 1 was amended by sections 26(1) and 41(3) of the 2016 Act.

PART 2

Initial Procedure: Decisions by appointed person, grounds for review and applications for review

Classes of review to be decided by an appointed person

3.—(1) A review applied for on the ground set out in regulation 4 is prescribed as a class of review for the purposes of paragraph 1(1) of Schedule 1B to the 1990 Act.

(2) The decision on a review belonging to the class mentioned in paragraph 1 is to be made by an appointed person.

Grounds for review

4. An application for a review may not be made otherwise than on the ground that the building to which it relates is not of special architectural or historic interest and therefore ought to be removed from a list.

Applications for review

5.—(1) An application for a review must be made to the Welsh Ministers in accordance with this regulation.

(2) An application must consist of—

(a) the form published by the Welsh Ministers (or a form substantially to the like effect), including—

(i) the name of the listed building to which the application relates;

(ii) the address of the listed building or a description of the location of the land on which it is situated;

(iii) the name and address of the applicant;

(iv) a statement confirming whether the applicant is an owner or an occupier of the building;

(v) the name and address of the representative of the applicant (if any) and confirmation as to whether any notice or other correspondence which is required by these Regulations to be sent to the applicant should be sent to the representative instead of the applicant;

(vi) a statement setting out the full particulars of the grounds for the review, including all the matters which the applicant intends to raise in the course of the review and which the applicant considers

- the appointed person should take into account in carrying out the review;
- (vii) a statement as to which of the ways (or combination of ways) mentioned in section 2D(5) of the 1990 Act the applicant considers the review should be carried out; and

(b) the following—

- (i) all documents, materials and evidence which the applicant intends to rely on in the course of the review;
- (ii) a copy of the notice served by the Welsh Ministers in relation to the listed building under section 2D(2) of the 1990 Act;
- (iii) where the applicant is not an owner of the listed building but an owner is known to the applicant, a certificate confirming that the owner of the listed building has been informed of the applicant's intention to request the review;
- (iv) where the applicant is not an owner of the listed building and an owner is not known to the applicant, a signed certificate confirming that the applicant has taken all reasonable steps to identify any such owner but has been unable to do so.

(3) An application must be made within the period of 12 weeks beginning with the date on which notice was served on an owner or occupier of the building under section 2D(2) of the 1990 Act.

Notification of receipt of application for review and related requirements

6.—(1) The appointed person must as soon as practicable after receiving an application in accordance with regulation 5 advise the applicant and the Welsh Ministers in writing of—

- (a) the date on which the review is to begin (“the starting date”);
- (b) the reference number allocated to the review; and
- (c) the address to which written communications about the review are to be sent.

(2) The Welsh Ministers must within the period of three working days beginning with the day on which they received notification under paragraph send to the applicant and the appointed person a copy of any representation previously made to the Welsh Ministers under section 2A of the 1990 Act by any interested person.

(3) In this regulation “working day” means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday,

Notice to interested persons and others

7.—(1) The appointed person must as soon as practicable after the expiration of the period referred to in regulation 6(2) give written notice of the review to—

- (a) each interested person; and
- (b) any other person or body that the appointed person considers appropriate.

(2) A notice under paragraph must—

- (a) state the name of the applicant and the address of the listed building to which the review relates;
- (b) set out the matters notified to the applicant under regulation confirm that copies of any representations previously made to the Welsh Ministers under section 2A of the 1990 Act by any interested person have been sent to the applicant by the Welsh Ministers;
- (c) state that any such representations will be considered by the appointed person when making a decision on the review;
- (d) state that further written representations may be made to the appointed person in accordance with regulation 9(2); and
- (e) state how a copy of the application for review and other documents related to the review may be inspected.

Welsh Ministers’ review statement

8.—(1) The Welsh Ministers must, within the period of four weeks beginning on the starting date, send to the applicant and the appointed person a statement setting out all the matters which the Welsh Ministers intend to raise in the course of the review and which they consider should be taken into account by the appointed person in carrying out the review (“the Welsh Ministers’ review statement”).

(2) The Welsh Ministers’ review statement must be accompanied by all documents, materials and evidence which the Welsh Ministers intend to rely on in the course of the review.

(3) Subject to paragraph (5) the applicant must send to the appointed person two copies of any written comments they have about the Welsh Ministers’ review statement so as to be received within the period of six weeks beginning on the starting date.

(4) Where written comments are sent to the appointed person under paragraph (3) or (5), the

appointed person must, as soon as practicable after receipt, send a copy of any such comments to the Welsh Ministers.

(5) The requirement in paragraph (3) is to be construed as permitting the sending of only a single copy of any written comments for the purpose of satisfying that requirement in any case where the applicant elects to send the comments by means of electronic communications.

PART 3

Written representations

Written representations procedure

9.—(1) Subject to paragraph (2), the following documents will be deemed for the purposes of section 2D(5)(c) of the 1990 Act to comprise the following persons' written representations in relation to the review—

- (a) in the case of the applicant—
 - (i) an application made in accordance with regulation 5; and
 - (ii) any written comments made under regulation 8(3);
- (b) in the case of the Welsh Ministers, the Welsh Ministers' review statement and accompanying documents, materials and evidence;
- (c) in the case of an interested person, any written representations previously made under section 2A of the 1990 Act by that person;
- (d) in the case of any person or body given notice under regulation 7(1)(b), any written representations previously made by such person or body about the Welsh Ministers' proposal to include the building to which a review relates in a list.

(2) An interested person or any person or body given notice under regulation 7(1)(b) may, in addition to the representations referred to in paragraph (1)(c) or (d) (whichever the case may be), make further written representations under section 2D(5)(c) of the 1990 Act, and where doing so must send three copies of such representations to the appointed person within the period of four weeks beginning on the starting date.

(3) The appointed person must, as soon as practicable after receipt of any representations made under paragraph (2), send a copy of such representations to the applicant and the Welsh Ministers.

(4) The applicant and the Welsh Ministers must send to the appointed person two copies of any written comments they have about any representations made under paragraph (1)(c), (d) or (2) so as to be received within the period of six weeks beginning on the starting date.

(5) Where the appointed person has received any written comments in accordance with paragraph (4), the appointed person must—

- (a) in the case of any such comments received from the applicant, send a copy to the Welsh Ministers; and
- (b) in the case of any such comments received from the Welsh Ministers, send a copy to the applicant.

(6) Where paragraphs (2) to (4) impose a requirement on any person or body to send more than a single copy of any written representations or comments (whichever the case may be) to any other person or body, such requirement is to be construed as permitting the sending of only a single version of that document for the purpose of satisfying that requirement in any case where the person upon whom the requirement is imposed elects to send the representations or comments by means of electronic communications.

Appointment of assessor

10. Where an assessor is appointed under paragraph 4(1)(b) of Schedule 1B to the 1990 Act (decisions on reviews by person appointed by Welsh Ministers), the appointed person must notify in writing the applicant and the Welsh Ministers of the appointment, the name of the person appointed and the matters on which they will advise.

PART 4

Hearings

Notice of hearing, specified matters and appearances at hearing

11.—(1) Where the appointed person decides that a review is to be carried out by means of a hearing, they must give written notice to that effect to—

- (a) the applicant;
- (b) the Welsh Ministers; and
- (c) any other person or body that the appointed person considers appropriate.

(2) The notice given under paragraph must set out the specified matters, but the inclusion of such matters in the notice does not prevent the appointed person

from allowing the consideration of such other matters as they consider appropriate.

(3) The persons entitled to appear at the hearing are those referred to in paragraph (1)(a) to (c).

(4) The attendance at the hearing of any person who is not entitled to appear is subject to the discretion of the appointed person.

Date and notification of hearing

12.—(1) The appointed person must determine (and may subsequently vary) the date, time and place at which the hearing is to be held.

(2) The appointed person must give to those persons entitled to appear at the hearing not less than four weeks notice of the date, time and place fixed for the holding of the hearing (and any subsequent variation thereof).

Procedure at hearing

13.—(1) Except as otherwise provided in this Part, the procedure at a hearing is to be as the appointed person determines.

(2) The appointed person must state at the commencement of the hearing the procedure that they propose to adopt.

(3) Any person entitled to appear at the hearing may instead be represented by another person.

(4) Where two or more persons have a similar interest in the issues being considered at the hearing, the appointed person may allow one or more persons to appear on behalf of some or all of any persons so interested.

(5) The appointed person may refuse to permit the giving of any evidence which they consider irrelevant or repetitious.

(6) The appointed person may proceed with a hearing in the absence of any person entitled to appear at the hearing.

(7) The appointed person may—

- (a) require any person taking part in, or present at, a hearing who, in the appointed person's opinion is behaving in a disruptive manner to leave; and
- (b) refuse to permit that person to return; or
- (c) permit that person to return only on such conditions as the appointed person may specify,

but any such person may submit to the appointed person any evidence or other matter in writing before the close of the hearing.

(8) The appointed person may take into account any representation or evidence or any other document received from any person before a hearing opens or during the hearing on the condition that the appointed person discloses that fact at the hearing.

(9) The appointed person may from time to time adjourn the hearing and—

- (a) where the date, time and place at which the hearing is to be resumed are announced before the adjournment, must as soon as practicable take reasonable steps to give notice of such date, time and place to any person entitled to appear at the hearing who was absent at the time of the announcement; or
- (b) where the date, time and place at which the hearing is to be resumed are not announced before the adjournment, must—
 - (i) determine (and may subsequently vary) such date, time and place; and
 - (ii) subject to paragraph (10), give to those persons entitled to appear at the hearing not less than four weeks notice of such date, time and place (and any subsequent variation thereof).

(10) Where paragraph (9)(b) applies, the appointed person may give to those persons entitled to appear at the hearing less than four weeks notice of the date, time and place fixed for the resumption of the hearing (and any subsequent variation thereof) in any case where such shorter period is agreed between the applicant, appointed person and the Welsh Ministers.

Appointment of assessor

14. Where an assessor is appointed under paragraph 4(1)(a) of Schedule 1B to the 1990 Act, the appointed person must notify in writing the persons entitled to appear at the hearing of the appointment, the name of the person appointed and the matters on which they will advise.

PART 5

Inquiries procedure

Notice of inquiry, specified matters and appearances at inquiry

15.—(1) Where the appointed person decides that a review is to be carried out by means of an inquiry, they must give notice to that effect to—

- (a) the applicant;
- (b) the Welsh Ministers; and

(c) any other person or body that the appointed person considers appropriate.

(2) The notice given under paragraph must set out the specified matters, but the inclusion of such matters in the notice does not prevent the appointed person from allowing the consideration of such other matters as they consider appropriate.

(3) The persons entitled to appear at the inquiry are those referred to in paragraph (1)(a) to (c).

Date and notification of, and publicity in relation to, inquiry

16.—(1) The appointed person must determine (and may subsequently vary) the date, time and place at which the inquiry is to be held.

(2) The appointed person must give to those persons entitled to appear at the inquiry not less than four weeks notice of the date, time and place fixed for the holding of the inquiry (and any subsequent variation thereof).

(3) The appointed person may make further arrangements for publicising the holding of the inquiry as they consider appropriate in the circumstances.

Service of inquiry statements, documents etc.

17.—(1) The appointed person may by written notice require that any person or body entitled to appear at the inquiry must, by such date as is specified in the notice, send to the appointed person and such other persons or bodies specified in the notice—

- (a) a statement in accordance with paragraph (2) (“inquiry statement”); and
- (b) a copy of every document on the list of such documents comprised in that inquiry statement.

(2) An inquiry statement must contain—

- (a) a written statement which contains particulars of the case relating to the specified matters which a person proposes to put forward at an inquiry;
- (b) a list of documents (if any) which the person putting forward such case intends to refer to, rely on or put in evidence; and
- (c) a list of witnesses specifying—
 - (i) the persons who are to give, or be called to give, evidence at the inquiry;
 - (ii) the matters in respect of which such persons are to give evidence; and
 - (iii) the relevant qualifications of such persons to do so.

Procedure at inquiry

18.—(1) Except as otherwise provided in this Part, the procedure at an inquiry is to be as the appointed person determines.

(2) The appointed person must state at the commencement of the inquiry the procedure that they propose to adopt.

(3) Any person entitled to appear at the inquiry may instead be represented by another person.

(4) Where two or more persons have a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear on behalf of some or all of any persons so interested.

(5) Subject to paragraph (6), any person entitled to appear at the inquiry is entitled to call evidence, to cross-examine persons giving evidence and to make closing statements.

(6) The appointed person may refuse to permit—

- (a) the giving or production of evidence;
- (b) the cross-examination of persons giving evidence; or
- (c) the presentation of any other matter,

which the appointed person considers to be irrelevant or repetitious.

(7) The appointed person may proceed with an inquiry in the absence of any person entitled to appear at the inquiry.

(8) The appointed person may—

- (a) require any person taking part in, or present at, an inquiry who, in the appointed person's opinion is behaving in a disruptive manner to leave; and
- (b) refuse to permit that person to return; or
- (c) permit that person to return only on such conditions as the appointed person may specify,

but any such person may submit to the appointed person any evidence or other matter in writing before the close of the inquiry.

(9) The appointed person may take into account any representation or evidence or any other document received from any person before an inquiry opens or during the inquiry on the condition that the appointed person discloses that fact at the inquiry.

(10) The appointed person may from time to time adjourn the inquiry and—

- (a) where the date, time and place at which the inquiry is to be resumed are announced before the adjournment, must as soon as practicable take reasonable steps to give notice of such date, time and place to any person entitled to

appear at the inquiry who was absent at the time of the announcement; or

- (b) where the date, time and place at which the inquiry is to be resumed are not announced before the adjournment, must—
 - (i) determine (and may subsequently vary) such date, time and place; and
 - (ii) subject to paragraph (11) give to those persons entitled to appear at the inquiry not less than four weeks notice of such date, time and place (and any subsequent variation thereof).

(11) Where paragraph (10)(b) applies, the appointed person may give to those persons entitled to appear at the inquiry less than four weeks notice of the date, time and place fixed for the resumption of the inquiry (and any subsequent variation thereof) in any case where such shorter period is agreed between the applicant, appointed person and the Welsh Ministers.

Appointment of assessor

19. Where an assessor is appointed under paragraph 4(1)(a) of Schedule 1B to the 1990 Act, the appointed person must notify in writing the persons entitled to appear at the inquiry of the appointment, the name of the person appointed and the matters on which they will advise.

PART 6

Supplementary matters

20.—(1) The appointed person may in writing, at any time before they give their decision on the review, require the applicant, the Welsh Ministers, any interested person or any other person or body to provide such further information relevant to the review as may be specified.

(2) Such information must be provided in writing within such period as the appointed person may specify.

(3) Where the appointed person requires further information under paragraph, they must allow the applicant and the Welsh Ministers the opportunity to comment on the information so provided in accordance with such arrangements as they consider appropriate.

Site inspections

21.—(1) The appointed person may at any time carry out—

- (a) an unaccompanied inspection of the building to which the review relates; or

- (b) an inspection of the building accompanied by any of the following—
 - (i) the applicant;
 - (ii) any other owner or occupier of the building known to the appointed person;
 - (iii) the Welsh Ministers; and
 - (iv) any other person that the appointed person considers appropriate.

(2) Where the appointed person in any case intends to carry out an inspection, they must give to each of the persons referred to in paragraph (1)(b) such notice as may appear reasonable to them in the circumstances—

- (a) of the date and time of the proposed inspection; and
- (b) as to whether—
 - (i) the appointed person intends to carry out an unaccompanied inspection; or
 - (ii) any of the persons referred to in paragraph (1)(b) are invited to accompany the appointed person in carrying out the inspection.

(3) The appointed person is not bound to defer an inspection if any person invited to accompany them under paragraph (2)(b)(ii) is not present at the time appointed.

Allowing further time

22. The appointed person may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Regulations; and references in these Regulations to a period within which any step is required or enabled to be taken are to be construed accordingly.

Publication of review documents

23.—(1) The appointed person must, as soon as reasonably practicable after receipt, make available for inspection copies of the materials referred to in paragraph (2).

- (2) The materials are—
 - (a) the application for the review;
 - (b) any inquiry statement, other representations, comments, inquiry statement, information or other documents sent to the appointed person in the course of the review.

PART 7

Decisions on review

Notification of decision

24. The appointed person, having concluded that no further evidence is required so as to enable them to make their decision on the review, must as soon as reasonably practicable notify their decision, and the reasons for reaching it, to—

- (a) the applicant;
- (b) the Welsh Ministers;
- (c) each interested person; and
- (d) any person given notice under regulation 7(1)(b).
- (e)

Ken Skates

Cabinet Secretary for Economy and Infrastructure, one
of the Welsh Ministers

4 May 2017

Explanatory Memorandum to the:

1. The Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017;
2. The Scheduled Monuments (Review of Scheduling Decisions) (Wales) Regulations 2017.

This Explanatory Memorandum has been prepared by the Department of Economy, Science and Transport and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the:

1. The Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017
2. The Scheduled Monuments (Review of Scheduling Decisions) (Wales) Regulations 2017

Ken Skates
Cabinet Secretary for Economy and Infrastructure
8 May 2017

1. Description

1.1 The Historic Environment (Wales) Act 2016 (the 2016 Act) has amended the Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act) to allow an owner and/or an occupier to ask the Welsh Ministers to review a decision to:

- schedule a monument,
- enlarge a scheduled area (where the monument is identified by reference to a map maintained by the Welsh Ministers), or
- list a building.

1.2 The Scheduled Monuments (Review of Scheduling Decisions) (Wales) Regulations 2017 (the Scheduling Review Regulations) and the Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017 (the Listing Review Regulations) make provision about:

- the grounds for reviews;
- how and when an application for a review must be made;
- the information that must be provided with an application;
- the classes of reviews to be decided by a person appointed by the Welsh Ministers; and;
- other procedural matters.

1.3 Since the Scheduling Review Regulations and Listing Review Regulations closely mirror one another in their policy intent, structure and detailed provisions, they can be appropriately considered together in this explanatory memorandum.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None

3. Legislative background

3.1 The Welsh Ministers make the Scheduling Review Regulations in exercise of the powers conferred on them by sections 1AE and 60(3) of, and Schedule A2 to the 1979 Act (those enabling provisions having been inserted into the 1979 Act by sections 3(1) and 40(2) of, and Schedule 1 to, the 2016 Act respectively).

3.2 The Welsh Ministers make the Listing Review Regulations in exercise of the powers conferred on them by sections 2D and 93(1) of, and Schedule 1B to, the 1990 Act (sections 2D of, and Schedule 1B to, the 1990 Act having been inserted by section 24(1) of, and Schedule 2 to, the 2016 Act respectively, while section 93(1) of the 1990 Act was amended by section 40(3) of the 2016 Act).

3.4 In accordance with the provisions of section 60(5) of the 1979 Act and section 93(3) of the 1990 Act these statutory instruments follow the negative procedure.

4. Purpose and intended effect of the legislation

4.1 The 1979 Act requires the Welsh Ministers to compile and maintain a schedule of monuments of national importance. The 1990 Act requires them to compile lists of buildings of special architectural or historic interest.

4.2 Following amendments made by the 2016 Act, the 1979 and 1990 Acts now place a duty on the Welsh Ministers to consult the owner, occupier and other appropriate persons if they propose to:

- include a monument on the schedule,
- exclude a monument from the schedule,
- enlarge or reduce the area shown for a scheduled monument (where the monument is identified by a map maintained by the Welsh Ministers),
- include a building on a list, or
- exclude a building from a list.

4.3 If the Welsh Ministers propose to schedule a monument, enlarge a scheduled area or list a building, the historic asset concerned will enjoy interim protection as if already designated until the Welsh Ministers reach a decision.

4.4 Under section 1AE of the 1979 Act (as inserted by section 3 of the 2016 Act), an owner and/or an occupier may ask the Welsh Minister to review their decision to schedule a monument or enlarge a scheduled area. Section 2D of the 1990 Act (as inserted by section 24 of the 2016 Act) provides a comparable right of review if the Welsh Ministers decide to list a building.

4.5 The Welsh Ministers must carry out the requested review employing one or more of the following procedures, as they deem appropriate:

- a public local inquiry (in the case of a scheduled monument) or a local inquiry (in the case of a listed building),
- a hearing, or
- written representations.

Those procedures are well established in planning and listed building consent appeals.

4.6 It is the Welsh Ministers' responsibility to determine whether a monument should be scheduled or a building listed. To introduce independence and transparency into the review process, Schedule A2 of the 1979 Act (inserted by section 3 of, and Schedule 1 to, the 2016 Act) and Schedule 1B of the 1990 Act (inserted by section 24 of, and Schedule 2 to, the 2016 Act) make provision for the Welsh Ministers to prescribe by regulations classes of reviews to be decided by an appointed person.

4.7 Accordingly, the Scheduling and Listing Review Regulations establish that all relevant reviews will be conducted and determined by an appointed person. The Planning Inspectorate will be the appointed person for these reviews.

4.8 Under sections 1AE(6) of the 1979 Act and 2D(6) of the 1990 Act, the Review Regulations set out:

- the grounds for a review;
- how and when an application for a review must be made; and
- the information that must be provided with an application.

4.9 The grounds for review adopted in the Review Regulations consequently reflect the fundamental designation criteria — national importance for scheduled monuments and special architectural or historic interest for listed buildings.

4.10 An application for a review must be received within 12 weeks of the Welsh Ministers' notice of designation (although the Review Regulations give the appointed person discretion to allow further time for any steps in the review process). The application must set out all matters which, in the view of the applicant, the appointed person should take into account in determining the review.

4.11 The Scheduling and Listing Review Regulations also set out how the available review procedures shall be conducted by the appointed person. Although the primary parties to the review are the applicant and the Welsh Ministers, other interested persons can participate. The Review Regulations aim to ensure that all parties to a review are given the opportunity to provide evidence on the appropriateness of the designation.

4.12 The review procedures are triggered by the receipt of the application and the appointed person will set a start date. As soon as possible after receiving the application, the appointed person must notify the Welsh Ministers and interested persons who were consulted on the original designation proposal. The Welsh Ministers have four weeks from the review's start date to submit a review statement, setting out the matters that they consider the appointed person should take into account in determining the review. Interested persons may also make representations to the appointed person within four weeks of the start date.

4.13 Within six weeks of the start date, the applicant and the Welsh Ministers must submit any additional comments that they wish to make on representations that the appointed person has received. At the end of that period, the appointed person may determine the review application on the basis of the written representations received.

4.14 The appointed person may also, having provided written notice to the applicant, the Welsh Ministers and any other person whom they consider appropriate, carry out the review by means of a hearing, or in complex cases, a public inquiry or by any combination of the three procedures.

4.15 Under all three procedures, the appointed person may appoint an assessor to provide advice and assistance in the conduct of the review. The appointed person may, at any time, require any of the parties to the review to provide additional information, and may also carry out a site inspection.

4.16 Regulation 25 of the Scheduling Review Regulations provides powers for the appointed person to require the payment of costs. Such costs may include the entire

administrative costs incurred by the appointed person and any costs arising from the preparation of an aborted hearing or inquiry. The appointed person may also make orders as to costs of participants and who should pay them. The policy intention is that the payment of costs would only apply to unreasonable behaviour, by any party to the review.

4.17 Equivalent provision is unnecessary in the Listing Review Regulations. Paragraph 2(1) of Schedule 1B to the 1990 Act provides that an appointed person has the same powers in relation to a review under section 2D of that Act as the Welsh Ministers have by virtue of section 322C (Costs: Wales) of the Town and Country Planning Act 1990, as applied by section 89 of that Act to the Planning (Listed Buildings and Conservation Areas Act 1990.

5. Consultation

5.1 Consultation on the proposals for the review procedures was conducted between 19 October 2016 and 13 January 2017.

5.2 Of those who responded, 97% agreed with the proposed grounds on which a review application could be made. None were opposed.

5.3 The consultation also sought views on the requirement that a request for a review must be made within three months of receipt of the notice of designation. A majority of respondents agreed with the proposal, a number pointing to the need to provide certainty on the status of the asset as quickly as possible. Of those that did not agree (27%), the majority argued that a longer period was necessary.

5.4 A significant majority (74%) of respondents also agreed that the proposed procedures outlined in the consultation were reasonable and fair for all involved. A majority (61%) agreed that the information required for reviews was appropriate. Most respondents also agreed (88%) with the proposal for the award of costs to deter unreasonable behaviour.

5.5 The regulations have been amended to take account of the consultation responses, including requiring further information on the location of the historic asset on the review application, regularising the role of the interested persons in the review process and allowing the appointed person flexibility to allow further time if necessary during the process.

5.5 A summary report of the consultation responses is available on the Welsh Government website at: <https://consultations.gov.wales/consultations/regulations-required-historic-environment-wales-act-2016-and-guidance>

6. Regulatory Impact Assessment

6.1 The impacts of the changes to the designation procedures, including the likely costs and impacts of reviews conducted by public local inquiry, hearing or written representations, were considered in the Regulatory Impact Assessment (RIA) prepared for the Historic Environment (Wales) Act 2016 (pages 56 to 60). The RIA anticipated that reviews would be infrequent and, if conducted by the Planning

Inspectorate, have an annual cost for the Welsh Government of £6,750. The cost to the owner of a property to gather evidence and submit a request for a review is estimated to be between £50 and £2,000 (depending upon the nature of the case and whether expert advice from consultants is required). The analysis in the RIA for the Act remains valid and as a result it was not considered necessary to prepare a separate Regulatory Impact Assessment for these Regulations. A copy of the RIA may be obtained from the attached link (<http://www.assembly.wales/laid%20documents/pri-ld10184-em-r/pri-ld10184-em-r-e.pdf>) or from Historic Environment Service (Cadw), Plas Carew, Unit 5/7 Cefn Coed, Parc Nantgarw, Cardiff, CF15 7QQ.]

SL(5)110 – The Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017

Background and Purpose

These Regulations make provision as to the procedure relevant to reviews carried out by the Welsh Ministers in relation to their decision to include a building in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Procedure

Negative.

Technical Scrutiny

We have identified reporting points under Standing Order 21.2(vi) in respect of the English text of this instrument.

In a few places in the Regulations, there is reference to “in paragraph” but there is no paragraph number included. This occurs in regulations 3(2), 6(2), 7(2), 11(2), 15(2) and 20(3).

The same issue occurs in respect of “under regulation” in regulation 7(2)(b).

Additionally, regulation 7(2)(b) does not read properly. This is because a new regulation 7(2)(c) should start at “confirm that copies...”. Regulation 7(2)(c) should then become 7(2)(d), and so on.

These defects were not in the draft Regulations we looked at.

We understand from our correspondence with the Welsh Government, that the hard copy version signed by the Cabinet Secretary did not contain these formatting issues, and that these only exist in the version laid. We have been told by the Welsh Government (but have not seen the original correspondence) that the SI Registrar has sanctioned a reprint of the instrument, so that it reflects the version made.



Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Legal Advisers

Constitutional and Legislative Affairs Committee

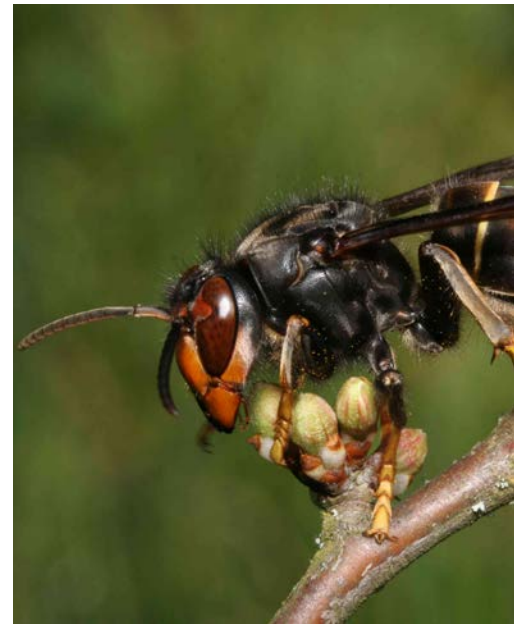
16 May 2017





Code of Practice for Species Control Provisions in Wales

How Species Control Agreements and Species Control Orders should be applied in Wales



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Mae'r ddogfen yma hefyd ar gael yn Gymraeg /
This document is also available in Welsh.

Top left image: Paul Beckwith
Top central image: Natural Resources Wales
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Jean Haxaire
Bottom left and right image: GB NNSS

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1 Introduction

1. This code of practice sets out how the provisions for species control agreements and orders contained in the Wildlife and Countryside Act 1981¹ should be applied by the Welsh Ministers and Natural Resources Wales. This code relates to Wales only. The Department for Environment, Food and Rural Affairs has published a separate code of practice for England.
2. An increasing number of species are being transported, either deliberately or unintentionally, outside their natural range by man. Whilst many of these non-native species may have positive benefits, for example to the agriculture, forestry, horticulture, fisheries and pet sectors, a small percentage of these species, known as invasive non-native species, can have negative impacts. Invasive non-native species are one of the biggest threats to our environment. They cost the UK economy about £2 billion per annum and some even threaten our health. Invasive non-native species do not respect borders and to tackle them, Wales collaborates with the rest of Great Britain; this approach is set out in GB Invasive Non-Native Species Strategy. The Welsh Government takes this issue very seriously and recognises that preventing invasive non-native species becoming established is better than trying to control them after they become established, when it is often very expensive or is no longer a viable option.
3. To do this, the Welsh Ministers and Natural Resources Wales need to be able to act rapidly when a new threat is discovered. Gaining access to property to control a newly arrived invasive non-native species that is causing, or is likely to cause, harm can be vital. Normally this is achieved voluntarily as most landowners are happy to allow access to their land. However, it is necessary to ensure that this can be achieved at all times, even if it is not known who owns the property in question. These new powers will ensure that the Welsh Ministers or Natural Resources Wales can gain access to the land and remove an invasive non-native species before it becomes more widely established.

¹ The measures were introduced by section 23 of the Infrastructure Act 2015, amending the Wildlife and Countryside Act 1981.

4. Illegal reintroductions² of formerly resident³ native species could also, under certain circumstances, have significant negative impacts on environmental, social or economic interests because of changed circumstances since they were last present in Wales. In addition, such reintroductions could have an adverse impact on the welfare of the individual animals that are released if they are released into an environment which is not suitable for their needs. The Welsh Government or Natural Resources Wales may need to act to address unlicensed reintroductions in these circumstances. This will normally be possible by agreement but there may be rare cases where access to land through control powers will be necessary as a last resort.
5. To protect plant health, a Plant Health Order can be used to enforce controls and restrictions on the import, movement and keeping of certain plants, plant pests and other materials. The Plant Health Order totally prohibits the import of some genera and of certain types of material from particular species. The Order also imposes special restrictions, including movement conditions, on a number of crop or forestry species, to protect the UK agricultural, forestry and horticultural industries from particular non-indigenous pests and diseases. The Order requires that you must notify a Plant Health Seed inspector of the presence of any plant pest that is not normally present in Great Britain and likely to be injurious to plants in Great Britain, or is on the list of pests that are banned from the European Community. In Wales, a Plant Health Order allows Statutory Health Notices to be issued by the Animal Plant Health Agency or Natural Resources Wales. Plant Health Order regime is distinct regulation from Species Control Provisions and they will remain operationally separate control mechanisms.

² Species reintroduced without a licence, contrary to Section 14 of the Wildlife and Countryside Act 1981.

³ Schedule 9A of the Wildlife and Countryside Act 1981 defines this category of species as an “animal that is no longer normally present in Great Britain”. For the purposes of this code, this category of species is referred to as a “formerly resident native species”

2 Overview of species control provisions

6. Section 23 of the Infrastructure Act 2015 amended the Wildlife and Countryside Act 1981 by inserting a new Schedule 9A to introduce a statutory regime of species control agreements and orders to ensure that, in appropriate circumstances, landowners take action on invasive non-native species and formerly resident native species, or permit others to enter the land and carry out those operations, to prevent their establishment and spread. The environmental authorities with the powers to make species control agreements or orders in Wales are the Welsh Ministers and Natural Resources Wales.

2.1 Determining co-ordinating responsibility

7. The environmental authorities should refer to any rapid response protocol to determine who should co-ordinate any actions that may be required under these provisions. The co-ordinating body is responsible for offering an agreement or making an order.
8. Where an environmental authority is already funding action under an existing eradication programme prior to these provisions coming into force, it should continue to be responsible for any additional measures required under these provisions.

2.2 Existing process

9. Currently, environmental authorities may make arrangements with owners on a voluntary basis to gain access to their premises to control invasive non-native species. In the majority of cases, these informal arrangements have proved to be effective.
10. Where an environmental authority wishes to gain access to premises, it must first seek agreement with the owner under the current informal approach. Agreement received under this approach is likely to be less of a burden on both the owner and the environmental authority.

2.3 How these provisions will be applied

11. Where an environmental authority has been unable to secure an owner's agreement within a reasonable timeframe on an informal basis, it may consider using these statutory provisions. However, the focus of the statutory provisions remains on negotiating voluntary agreements, where practicable, and the environmental authority must first make reasonable efforts to conclude an effective species control agreement with an owner.
12. However, where this cannot be concluded, the environmental authority has powers to make a species control order to require an owner to take action against an invasive non-native species (and formerly resident native species), or to allow the environmental authority to do so.

2.4 Scope of the measures

13. The scope of these measures includes any animal whose natural range does not include Great Britain (i.e. non-native species) where such species can be shown to be, or be capable of being, invasive. This includes, but is not limited to, the non-native animals that have become ordinarily resident in Great Britain that are listed in Part 1 of Schedule 9 of the Wildlife and Countryside Act 1981.
14. The measures also can be applied to those non-native plant species that are listed on Part 2 of Schedule 9 to the Wildlife and Countryside Act 1981.
15. The scope also extends to animals that are re-introduced to Wales within their natural range but which are no longer normally present in the wild, where this is the result of unlicensed human actions. This includes animals listed on Part 1B of Schedule 9 to the Wildlife and Countryside Act 1981.
16. The scope does not apply to a small number of native species on Part 1A of Schedule 9 that are listed there to ensure that any releases are carried out appropriately.
17. The provisions can be applied in the terrestrial, freshwater and marine environments.
18. Schedule 9 to the Wildlife and Countryside Act 1981 and definitions in relation to species as defined in the the Wildlife and Countryside Act 1981 can be found in the Annex.

2.4.1 Naturally colonising species

19. From time to time, species naturally arrive in Great Britain through an extension of their natural range (e.g. as a result of climate change). In addition, it is possible that native species that are currently extinct to Great Britain could naturally recolonise from other parts of their natural range at some stage in the future. All such species are out of scope of these measures as they would be considered as within their natural range.
20. However, where a species colonises Great Britain from an area that is outside of its natural range, it would still fall within scope of the provisions. For example, should the Asian hornet arrive in Wales naturally from France where it was accidentally introduced by human activity from China, it would remain within the scope of these provisions as its natural range does not include France.

2.4.2 Reintroduced formerly resident native species

21. Animals which have not been present in Great Britain for a prolonged period of time (often centuries), such as the wolf or lynx, are distinct from non-native species that have never naturally resided in Great Britain other than as a result of human intervention. However, the release of a formerly resident native species into the wild is regulated to ensure that environmental, social or economic harm, or harm to the welfare of the individuals themselves, does not occur. Such harm may occur, if, for example, the location to which the species is released is unsuitable or if the animals carry disease or harmful parasites.
22. Reintroductions of these species can be a very important conservation action. Reintroductions are thus permissible under a licence from Natural Resources Wales once careful consideration has been given to ensure that releases are in accordance with international recommendations. The scope of these measures does not, therefore, apply to those individuals of any species that are in that location as a result of such a licence.
23. However, if a formerly resident native species is released in an area without a licence from Natural Resources Wales, then species control provisions could potentially be used for those individuals. This includes a species that has been released under licence in one location but has been translocated by human intervention unlawfully to another location. Bringing these unlawfully released species into scope of these provisions is to tackle circumstances where they have been released into an area which is not suitable because of likely environmental, social or economic impacts, or harm to the welfare of the animals themselves.

2.4.3 Protect Species and Habitats

24. The requirements relating to species control agreements or orders and this guidance do not replace or affect any other statutory requirements which may constrain operations on affected land or species.
25. An environmental authority must consider the need [for a protected species licence](#) from Natural Resources Wales if a species control agreement or order could affect a species which is protected under European or domestic wildlife legislation. A number of species of animals and plants are listed in schedules 2 and 5 of the Conservation of Habitats and Species Regulations 2010, and/or in schedules 5 and 8 of the Wildlife and Countryside Act 1981. Carrying out operations which may cause injury, killing or disturbance to such species, or which may damage breeding sites or resting places, could be offences unless carried out in accordance with a licence issued by Natural Resources Wales.
26. An environmental authority should also consider whether the works could significantly affect a Site of Special Scientific Interest (SSSI) designated under the Wildlife & Countryside Act and/or a Special Area of Conservation (SAC) or Special Protection Area (SPA) designated under the EU Habitats or Birds Directives, or a site listed under the 'Ramsar' convention on conservation of wetlands.
27. Under section 28 of the Wildlife & Countryside Act (as amended), an environmental authority should give prior notice to Natural Resources Wales of any operations likely to affect an SSSI (even if the operations would take place outside the SSSI), and have regard to NRW's advice in deciding whether the operations should proceed.
28. If the operations are likely to significantly affect an SAC or SPA, the authority must carry out an appropriate assessment of the implications for the particular habitat or species for which the SPA is designated and, having consulted NRW, may only authorise the operations if they will not adversely affect the integrity of the SAC or SPA concerned. Damaging operations may then only proceed if there are no alternative solutions and the operations are necessary for 'imperative reasons of overriding public interest'. As a matter of policy, the Welsh Government applies substantially the same [approach to Ramsar sites](#) as to SAC and SPA sites.

2.4.4 The significant adverse impact test

29. The scope of these measures in relation to invasive non-native species is limited by a test of whether the species is likely to have a significant adverse impact, if uncontrolled, on biodiversity; other environmental interests; or social or economic interests. In determining whether a species meets this test, the environmental authority must consider available information on its likely impacts, in particular any risk assessment carried out by the Great Britain Non-Native Species Secretariat.
30. In relation to formerly resident native species, the environmental authority must have evidence that the animals are having significant adverse impact to (i) biodiversity; (ii) other environmental interests, or (iii) social or economic interests before it may enter into a species control agreement.

2.4.5 Widespread non-native species

31. These provisions should be used primarily to remove newly arrived invasive non-native species or species that currently have a relatively restricted distribution but have the potential to become more widely spread. In general, it would not be an appropriate use of these powers or an effective use of resources to seek to apply these provisions to invasive non-native species that are already widespread. Other powers may be more appropriate to tackle widely spread invasive non-native species, such as those contained in the Anti-Social Behaviour, Crime and Policing Act 2014 which permit a local authority or the police to make a Community Protection Notice to tackle ongoing problems or nuisances which negatively affect the community's quality of life.
32. Notwithstanding this, there may be some limited circumstances where it may be appropriate to make a species control agreement or order in respect of widespread species. These circumstances are:
- Where a widespread invasive non-native species is being removed through an environmental authority sanctioned eradication programme;
 - Where a widespread invasive non-native species is newly arrived in a geographical area and eradication remains viable;
 - Where a widespread invasive non-native species is likely to have a detrimental impact on a Site of Special Scientific Interest or a Natura 2000 site.

Case Study Example

Floating pennywort is a widespread, highly invasive non-native aquatic plant that can displace native flora and interfere with flood control and drainage systems, clog waterways and impact navigation and recreation. A risk assessment has been carried out for this species. Floating pennywort is listed as an Invasive Alien Species of Union Concern.

An environmental authority initiates a programme to eradicate floating pennywort at a catchment-scale level involving a number of landowners. The environmental authority arranges access on a voluntary basis outside of these provisions with the landowners to remove this species. One landowner refuses the environmental authority access to their land for this purpose, leaving an untreated population of floating pennywort which could spread to surrounding areas and threaten the success of the eradication programme.

In order to ensure that the programme can be completed and the efforts of the other landowners are not wasted, the environmental authority determines that it would be proportionate to offer a species control agreement to the landowner in these circumstances.

2.4.6 Premises and Dwelling

33. The existing definition of “premises” contained in the Wildlife and Countryside Act 1981⁴ applies to these provisions. This states that premises includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport.

34. For the purpose of these provisions the Act has defined a “dwelling” as a building or structure, or part of a building or structure, occupied wholly or mainly as a dwelling.

2.5 Animal welfare considerations

35. It is essential that all species control operations must be carried out in accordance with legal requirements on animal welfare as set out in the Protection of Animals Act 1911, the Wildlife and Countryside Act 1981, the Wild

⁴ Section 27 of the Wildlife and Countryside Act 1981 (as amended)

Mammals (Protection) Act 1996, the Animal Welfare Act 2006, Agreement on International Humane Trapping Standards and the Animal Welfare Standards of the World Organizations of Animal Health. All operations must also be carried out in accordance with best practice to ensure that pain, distress or suffering to the animal is avoided or minimised.

36. Where an environmental authority is not carrying out the operations itself it must advise the owner or party carrying out the operations on the most appropriate method in light of these requirements.

2.6 Safeguarding non-target species

37. The environmental authority should, where practicable, agree methodologies that remove the target species whilst minimising detrimental impacts on non-target species and disruption to legitimate business activities.

2.7 Review of species control provisions

38. The Great Britain Invasive Non-Native Species Strategy is reviewed on a five yearly basis and includes a section on legislative provisions. A review of the operation of these powers will be included as a part of the five yearly Strategy review.

2.8 Publication of numbers of agreements and orders

39. Information on how many species control agreements and orders have been made will be posted annually on the Great Britain Non-Native Species Secretariat's website⁵ and on the Wales Biodiversity Partnership's website⁶. This should also cover the number of species control agreements and orders that have been successfully completed during the year, their purpose, how many are still in force and which species have been the subject of these provisions.

⁵ <http://www.nonnativespecies.org//home/index.cfm?>

⁶ <http://www.biodiversitywales.org.uk/>

3 Species control agreements

3.1 What is a species control agreement?

40. A species control agreement is a voluntary agreement made between an environmental authority and an owner of premises that sets out operations that are required to be taken against an invasive non-native species or formerly resident native species. An owner could be the freeholder, leaseholder or a person who exercises powers of management or control over the land.
41. There is no penalty for failing to comply with a species control agreement, although non-compliance could lead to the making of a species control order.

3.2 Who can enter into a species control agreement?

42. In Wales, the Welsh Ministers and Natural Resources Wales are defined as environmental authorities for the purposes of these provisions. These bodies may enter into a species control agreement with any owner of the premises.
43. In the case where there is more than one owner of the premises, the environmental authority must be satisfied that it is entering into the agreement with the most appropriate owner. For example, a leaseholder may be more appropriate than the landowner if the leaseholder is more actively involved in managing the land.
44. Where any necessary operations may affect a private dwelling e.g. access is required to a roof space, then the agreement (and any subsequent order) may only be entered into by the Welsh Ministers.
45. Natural Resources Wales should inform the Welsh Ministers in advance of offering a species control agreement to an owner. However, the Welsh Ministers have no role in the decision-making process, other than in respect of agreements made by them.

3.3 When should an environmental authority offer to enter into a species control agreement?

46. Where an environmental authority considers that the premises contains an invasive non-native species or formerly resident native species which is in scope

of these provisions and for which control of that species is of sufficient priority and viable, it must first seek to reach an informal agreement with an owner⁷. Where this agreement cannot be reached, the environmental authority may attempt to make a species control agreement with the owner (unless the situation is urgent⁸). It is for the environmental authority to determine whether the control of the species is of sufficient priority and viable to warrant offering a species control agreement to an owner.

47. In reaching a decision as to whether the species is of sufficient priority to warrant offering an agreement, the Welsh Ministers consider that the environmental authority must take the following factors into consideration:

- Whether the species is already part of a national or local environmental authority sanctioned eradication programme. Species subject of a national eradication programme should automatically be considered to be of sufficient priority;
- The evidence from any risk assessment, particularly those carried out by the GB Non-native Species Secretariat;
- Whether the species is listed as a species of Union concern under the EU Invasive Alien Species Regulation⁹;
- Whether the species is widespread¹⁰.

48. In reaching a decision as to whether control of the species is viable, the Welsh Ministers consider that the environmental authority must take the following factors into consideration:

- The results of any risk management analysis of the species carried out by the GB Non-native Species Secretariat;
- The likely success of any operations;
- The likelihood of re-invasion; and
- The costs of the operations, including any potential future costs associated with ongoing control.

49. The development of control plans which are based on best practice guidance and evidence or where this is not available, advice from an appropriate expert.

⁷ See section 2.2

⁸ See Section 4.5

⁹ See Article 4 of EU Regulation 1143/2014 on Invasive Alien Species

¹⁰ See Section 2.4.5

Plans should include best practice biosecurity measures to be in place at the start and throughout a control program.

50. If the environmental authority determines that control of the species is both of a sufficient priority and viable so that a species control agreement should be offered to an owner, it must also satisfy itself that the provisions set out in the agreement are a proportionate response to dealing with the issue. The Welsh Ministers consider that in reaching this decision, the environmental authority must take the following factors into consideration:
- Whether non-lethal methods to remove the risk posed by the species may be equally effective as lethal methods;
 - The potential impacts on non-target species and habitats;
 - The potential impacts on legitimate business activities.
51. If an environmental authority decides to offer a species control agreement to an owner, they should inform the Welsh Ministers. However, the Welsh Ministers have no role in the decision-making process, other than in respect of agreements made by them.

3.3.1 Formerly resident native species

52. There are additional requirements for the environmental authority to consider where it proposes to offer a species control agreement in respect of a formerly resident native species.
53. The environmental authority must be satisfied that the animals in question are not present in the wild in accordance with the terms of a licence issued by Natural Resources Wales for their reintroduction. Animals that are subject of a licence are not within the scope of these provisions.
54. The environmental authority must also have evidence that the animals are having significant adverse impact on (i) biodiversity; (ii) other environmental interests, or (iii) social or economic interests before it may enter into a species control agreement. This is a different and more stringent test to that applied to invasive non-native species, which only requires an environmental authority to determine that a species if uncontrolled is “likely to have a significant adverse impact”.
55. The environmental authority must also satisfy itself that there is no appropriate alternative way of preventing the impact from that species. This requires the environmental authority to consider all feasible alternative solutions to

addressing the adverse impacts caused by the species and only offer a species control agreement where these have been objectively discounted. The environmental authority should determine the range and type of possible alternatives to be considered, and use its judgement to decide what is feasible in any particular case. Where necessary, it may consult other experts on potential alternatives.

56. The consideration of alternatives should be limited to options which are financially and technically feasible. An alternative should not be ruled out simply because it would cause greater inconvenience or cost. However, there would come a point where an alternative is so expensive or technically difficult that it would be unreasonable to consider it a feasible alternative. The environmental authority is responsible for making this judgement according to the details of each case.

3.4 What a species control agreement must contain

57. In the development of a species control agreement the environmental authority should take steps to have early engagement with the owner. It is essential that the environmental authority involve the owner fully in discussions about the terms of the agreement and consider any concerns before agreement is finalised.

58. A species control agreement must set out clearly:

- The species control operations that are required to be carried out;
- Who is responsible for carrying out these operations – this could be the owner, the environmental authority, or both; and
- The time by which these operations are to be carried out.

59. A species control agreement should also include additional supplementary information as considered appropriate by the parties. If relevant this should include:

- How the operations should be carried out – all operations should be carried out in accordance with best practice guidance and should take into account appropriate animal welfare considerations and biosecurity measures;
- Any payments to be made by either party to the other, or to another person, in respect of operations to be carried out; and
- Operations that must not be carried out – for instance, prohibiting the cutting of an invasive non-native plant species during a specified period.

3.5 Ending an agreement

60. An agreement is effectively ended once an owner has complied with all of its requirements. For the sake of clarity, the environmental authority must provide confirmation of this to an owner in the form of a notice of compliance. The environmental authority should issue the notice of compliance to the owner no later than 21 days after it considers that the agreement has ended.
61. An owner may request that the environmental authority issue a notice of compliance where they consider that they have complied with all the requirements in an agreement but no notice of compliance has been issued by the environmental authority. The environmental authority should consider this request and respond to the owner within 21 days of receipt of the request.
62. The environmental authority should either:
- a) Issue the notice; or
 - b) Decline to issue the notice, setting out the operations that still need to be completed as part of the original agreement.

4 Species Control Orders

4.1 When an environmental authority may make a species control order

63. Section 14(4A) and Schedule 9A of the Wildlife and Countryside Act 1981 empowers an environmental authority to make a species control order in relation to an invasive non-native species or a formerly resident native species in any of the following circumstances:

- Where 42 days have elapsed since the environmental authority made an offer in writing to the owner to enter into a species control agreement but the agreement has not been entered into and the environmental authority considers it unlikely that the owner will enter into any kind of such agreement;
- Where the owner has refused to enter into any kind of species control agreement. The environmental authority should seek confirmation of this in writing from the owner;
- Where an owner has failed to comply with a species control agreement and, having been given a reasonable opportunity to rectify the failure, has not done so;
- Where the environmental authority has been unable to identify an owner and, thus, unable to conclude a species control agreement¹¹;
- Where an environmental authority considers that the making of a species control order is urgently necessary such that the agreement process should be dispensed with.

64. In considering whether to make a species control order, the environmental authority may only proceed having determined the provisions set out in the order are a proportionate response to dealing with the issue. The factors that should be taken into consideration by the environmental authority are the same as those set out in respect of species control agreements¹².

¹¹ See section 4.1.1

¹² See section 3.3

65. There are additional tests to be met in respect of formerly resident native species before an environmental authority may proceed to make a species control order. These are the same tests that apply before a species control agreement can be offered¹³.
66. When an environmental authority are considering issuing a species control order they should discuss this with the owner first and allow the owner an opportunity to resolve any outstanding issues. Before issuing a species control order, an environmental authority should formally write to the owner, explain the purpose of the species control order and the potential consequences should an owner breach it.
67. Natural Resources Wales should inform the Welsh Ministers in advance of making a species control order. However, the Welsh Ministers have no role in the decision-making process, other than in respect of orders made by them.

4.1.1 No known owner

68. Where the environmental authority has been unable to identify an owner, it must place a conspicuous notice on the premises stating its desire to enter into a species control agreement and wait at least five days before then making an order if no owner comes forward. In these cases, the environmental authority must make reasonable efforts to identify an owner before proceeding to place a notice. A Land Registry Search should be carried out as a minimum. Before placing a notice or entering the premises a warrant issued by a Justice of the Peace is required by an environmental authority. An environmental authority can access the premises and begin work if the period for making an appeal has expired (presently 28 days) and no owner has appealed.

4.2 What a species control order should contain

69. A species control order must:

- Specify the species to which the order relates;
- Specify the operations to be carried out;
- Specify who is responsible for carrying out the species control operations; and
- Specify the time by which the operations must be carried out or are proposed to be carried out by the environmental authority.

¹³ See section 3.3.1

70. The Order cannot specify that the operations are carried out until the period for making an appeal has finished, unless it is an emergency species control order.

71. If appropriate, include a map of the premises to which the order relates.

72. If relevant a species control order should also include:

- How the operations are to be carried out;
- Any payments to be made by the environmental authority to the owner or another person for the reasonable costs of the operations;
- Any payments that the owner must make to the environmental authority for the reasonable costs of the operations;
- Any operations that the owner must not carry out;
- Any persons carrying out the operations on the behalf of the environmental authority.

4.3 Notice requirements

73. The environmental authority must give notice in writing of its intention to issue an order where possible to any owner of the premises that it is aware of, not just the owner on whom the order imposes requirements. This is because any owner of the premises has a right of appeal against the order. The environmental authority must make reasonable efforts to identify all known owners of the premises, including Land Registry searches.

74. Additionally, the Welsh Ministers must be notified (unless they are the environmental authority making the order).

4.4 Coming into force of the order

75. Unless it is made under the emergency provision¹⁴, a species control order cannot require an owner to carry out species control operations or allow the environmental authority to do so before the applicable time limit¹⁵, currently 28 days, for making an appeal has expired.

¹⁴ See section 4.5

¹⁵ Time-limits for appeals are governed by the Rules of the First-tier Tribunal; 28 days currently applies to species control order appeals. For more information about how and when an appeal should be brought, please see Rule 22 of the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 (S.I. 2009/1976), as amended by S.I. 2014/2128.

76. Where an appeal against an order is made by the First-tier Tribunal's deadline, the owner is not required to carry out the species control operations, and the environmental authority must not do so, until the appeal has been determined by the First-tier Tribunal or the appeal has been withdrawn by the owner. The First-tier Tribunal aims to carry out an appeal within 30 weeks of its submission by the owner.

4.5 Emergency species control orders

77. In the majority of circumstances, an environmental authority should follow the procedures for making a species control order in the normal manner as set out above. However, there may be exceptional circumstances that could warrant an environmental authority making an "emergency species control order" under the provisions of paragraph 10(2)(c) of Schedule 9A to the Wildlife and Countryside Act 1981.

78. Where an environmental authority is concerned that any delay in carrying out a species control operation would be likely to significantly compromise its objectives in relation to that species, then it may make an "emergency species control order".

79. The environmental authority must determine whether the species is of sufficient priority for control, the control is viable and actions are proportionate to warrant making an "emergency species control order", taking the same factors into consideration which are set out in respect of species control agreements¹⁶ and also if any contingency plan exist for the species.

80. In determining whether to make an "emergency species control order", the environmental authority should also be governed by the principle of overriding public interest, i.e. it should not make an "emergency species control order" unless satisfied that it is clearly in the public interest to do so and that the public interest overrides the private interests of the owner on whom it is served, for example in cases where the species can rapidly spread if it is not eradicated as soon as possible. The significant adverse impact test¹⁷ will be used to establish if there is an overriding public interest. Further, if the species in question is a species of Community interest, the requirements of the Habitats Directive still apply.

¹⁶ See section 3.3

¹⁷ See section 2.4.4

81. An “emergency species control order” may come into force immediately, although any owner may still appeal against it and, in those circumstances, the First-tier Tribunal has the power to suspend the order.

Case Study Example

The environmental authority receives a credible report of an Asian hornet nest on an owner’s land. The environmental authority is satisfied, based on the risk assessment produced by the GB Non-Native Species Secretariat, that it is a species that has significant adverse impacts on biodiversity, social and economic interests. It is also satisfied that this species is of sufficient priority to warrant action as there is a national contingency plan in place for it, and that eradication is a viable option.

Given the Asian hornet is a highly mobile invasive non-native species, the environmental authority determines that the species requires immediate eradication as it may establish and spread quickly. The owner refuses the environmental authority access to the land to confirm the presence of the species. The environmental authority considers the threat posed by this species is such that it cannot wait for the agreement process to be concluded. It concludes that there are reasons of overriding public interest to make a species control order under the emergency provisions. It determines the operations contained in the order – surveillance, followed by eradication if the species is confirmed - are proportionate.

4.6 Withdrawing a Species Control Order

82. An environmental authority may at any time withdraw a species control order. Withdrawal of an order may be necessary if the environmental authority determines that the order is no longer fit for purpose and wishes to replace it. In these circumstances, the environmental authority would have to revoke the order and start the process afresh.

4.7 Ending an order

83. An order is effectively ended once an owner has complied with all of its requirements. For the sake of clarity, the environmental authority must provide confirmation of this to an owner in the form of a notice of compliance. The environmental authority should issue the notice of compliance to the owner no

later than 21 days after it considers the order has been complied with. A copy of this notice should also be sent to the Welsh Ministers.

84. An owner may request that the environmental authority issues a notice of compliance where they consider that they have complied with all the requirements in an order but no notice of compliance has been issued by the environmental authority. The environmental authority should consider this request and respond to the owner within 21 days of receipt of the request.

85. The environmental authority should either:

- a) Issue the notice; or
- b) Decline to issue the notice, setting out the operations that still need to be completed as part of the order.

5 Powers of entry, enforcement, offences and penalties

5.1 Powers of Entry

86. An environmental authority may authorise the use of powers of entry to:

- determine whether to offer a species control agreement, where it has reasonable grounds for suspecting the presence of an invasive non-native species or a formerly resident native species;
- determine whether to make or revoke a species control order, where it has reasonable grounds for suspecting the presence of an invasive non-native species or animals from an unlicensed reintroduction;
- investigate suspected non-compliance with a species control agreement or order;
- carry out species control operations under a species control order;
- place a notice on the premises where it has been unable to notify the owner;
- carry out operations or work itself (or by persons carrying out the operations on behalf of the environmental authority) following a breach of a species control order.

87. These rights of entry are exercisable at any reasonable time. Certain circumstances require that the powers of entry may only be exercisable subject to a warrant from a justice of the peace. These are where:

- a) the premises are a dwelling;
- b) the owner has refused admission to the premises or it can be reasonably assumed that they will do so;
- c) the premises are unoccupied;
- d) the owner is temporarily absent;
- e) giving notice would defeat the purpose of entry e.g. where an environmental authority has reason to believe the owner might dispose of the species in an inappropriate manner;
- f) entry is required in respect of an emergency species control order;

- g) no owner could be identified;
- h) entry is required to place a notice where no owner could be identified;
- i) entry is required to carry out operations urgently where the environmental authority considers an order has been breached by the owner.

88. In the circumstances (a)-(d) above, a Justice of the Peace may not grant a warrant unless satisfied that at least 48 hours' notice has been given to all known owners of the proposed entry. Where no owner can be identified, the Justice of the Peace may only grant a warrant if they are satisfied that the environmental authority has first placed a notice of the order on the premises conspicuously.

89. A person authorised by an environmental authority to exercise a power of entry may take onto the premises other people as necessary; take any equipment, machinery or materials on to the premises; and may take samples of anything in or on the premises. However, the environmental authority should exercise these powers judiciously and minimise disruption to the owner.

5.2 Enforcement

90. An environmental authority may take action if it considers that the owner who is required by a species control order to carry out an operation has not done so by the date or in the way specified by the order. In these circumstances, it may carry out the operation, or such further work as necessary to ensure that the operation is carried out in the way specified by the order; and recover from the owner any reasonable expenses incurred, less any payment it would have been required to make to the owner to carry out the operations.

91. However, before an environmental authority takes action in this way, it must notify the owner, setting out in writing why it considers a breach of the order has occurred and allow the owner a week to carry out the operations. The environmental authority should consider allowing an extension of this period where there are reasonable grounds to do so e.g. bad weather preventing the completion of the operations.

5.3 Offences and penalties

92. Paragraph 19 of Schedule 9A makes it an offence for a person:

- Without reasonable excuse, to fail to comply with a requirement imposed on them by a species control order;

- To intentionally obstruct a person from carrying out an operation required or proposed under a species control order.

93. A person guilty of either offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine, or both. Where an offence is committed before section 281(5) of the Criminal Justice Act 2003 comes into force, imprisonment may not exceed 6 months.

94. If an owner is not sure whether their excuse is reasonable the environmental authority will advise them to take legal advice.

6 Responsibility for costs and compensation

6.1 Responsibility for the costs of species control operations

95. In the vast majority of cases, the owner of a premises will not have been responsible for the introduction of the species found on their premises. In those circumstances, the environmental authority will meet the costs of all operations. However, if a landowner breaches a species control order this could result in enforcement action and additional cost which may be recovered by the Environment Authority¹⁸.

Case Study Example

The environmental authority enters into a species control agreement with an owner to remove monk parakeets that are nesting in their garden. The owner bears no responsibility for the initial release of the birds into the wild. In these circumstances, the environmental authority will meet all costs of the operations.

96. However, where there is clear evidence that the landowner releases or allows the escape of a species on to their premises¹⁹, then the landowner may be liable for the costs of the operations. A landowner will have a right of appeal to the First-tier Tribunal against any liability for costs which are listed on a species control order²⁰.

Case Study Example

The environmental authority is aware that prairie dogs are routinely escaping into the wild from a wildlife park due to inappropriate containment. The environmental authority enters into a species control agreement with the wildlife park setting out a requirement for improved fencing. The cost of the fencing falls to the wildlife park as it bears responsibility for the animals being released into the wild.

¹⁸ See section 5.2

¹⁹ <http://www.legislation.gov.uk/ukpga/1981/69/section/14>

²⁰ See section 4.2

6.2 Compensation

97. Paragraph 25 of Schedule 9A provides a discretionary power for the Welsh Ministers to make arrangements to compensate an owner in respect of financial loss. Paragraph 25 of Schedule 9A also permits the Welsh Ministers to set a minimum level only over which claims will be considered. All claims should be made directly in writing to the Welsh Ministers.
98. Most species subject of control operations will be wild and, therefore, not belong to any owner. Where they do belong to an owner (e.g. an animal that has escaped from a zoo or wildlife park), their presence in the wild may be as a result of the committing of an offence under section 14 of the Wildlife and Countryside Act 1981, which regulates the release of species into the wild. In these circumstances, there will be no expectation that compensation would be paid for the loss of any species.
99. Compensation should be payable in the event of damage to property caused by operations carried out under a species control agreement or order where the presence of the species was due to no fault on the part of the owner or occupier.

6.3 Disputes

100. Where a dispute arises between an environmental authority and an owner which does not form part of the statutory appeal process, the environmental authority should seek to address the issue through its usual dispute resolution procedures.

7 Right to appeal

101. Any owner of the premises has a right of appeal against the making of, or any provision contained, within a species control order, not just the owner on whom the order imposes requirements. An appeal must be made to the First-tier Tribunal within the deadline set by its statutory rules, currently 28 days from the date on which notice of the order was given.

102. The First-tier Tribunal may:

- affirm the order;
- direct the environmental authority to revoke or amend the order;
- in the case of an emergency species control order, suspend the order; or
- make such other order as the Tribunal thinks fit.

8 Annex

Schedule 9 to the Wildlife and Countryside Act 1981

Animals and plants to which section 14 applies

Part I – Non-native species

Common name	Scientific name
Bass, Large mouthed Black	<i>Micropterus salmoides</i>
Bass, Rock	<i>Ambloplites rupestris</i>
Bitterling	<i>Rhodeus sericeus</i>
Crab, Chinese Mitten	<i>Eriocheir sinensis</i>
Crayfish, Noble	<i>Astacus astacus</i>
Crayfish, Red Swamp	<i>Procambarus clarkii</i>
Crayfish, Signal	<i>Pacifastacus leniusculus</i>
Crayfish, Spiny-cheek	<i>Orconectes limosus</i>
Crayfish, Turkish	<i>Astacus leptodactylus</i>
Deer, Chinese Water	<i>Hydropotes inermis</i>
Deer, Muntjac	<i>Muntiacus reevesi</i>
Deer, Sika	<i>Cervus nippon</i>
Deer, any hybrid of Sika	<i>Any hybrid of Cervus nippon, Cervus and any hybrid of the genus Cervus</i>
Dormouse, Fat	<i>Glis glis</i>
Duck, Carolina Wood	<i>Aix sponsa</i>
Duck, Mandarin	<i>Aix galericulata</i>
Duck, Ruddy	<i>Oxyura jamaicensis</i>
Flatworm	<i>Kontikia andersoni</i>
Flatworm	<i>Kontikia ventrolineata</i>
Flatworm, Australian	<i>Australoplana sanguinea</i>
Flatworm, New Zealand	<i>Artiposthia triangulata</i>
Frog, Edible	<i>Rana esculenta</i>
Frog, European Tree (or Common Tree Frog)	<i>Hyla arborea</i>
Frog, Marsh	<i>Rana ridibunda</i>
Goose, Bar-headed	<i>Anser indicus</i>
Goose, Barnacle	<i>Branta leucopsis</i>
Goose, Canada	<i>Branta canadensis</i>
Goose, Egyptian	<i>Alopochen aegyptiacus</i>
Goose, Emperor	<i>Anser canagicus</i>
Goose, Snow	<i>Anser caerulescens</i>
Heron, Night	<i>Nycticorax nycticorax</i>
Limpet, Slipper	<i>Crepidula fornicata</i>
Lizard, Common Wall	<i>Podarcis muralis</i>

Marmot, Prairie (or Prairie dog)	<i>Cynomys</i>
Mink, American	<i>Mustela vison</i>
Newt, Alpine	<i>Triturus alpestris</i>
Newt, Italian Crested	<i>Triturus carnifex</i>
Owl, Eagle	<i>Bubo bubo</i>
Oyster Drill, American	<i>Urosalpinx cinerea</i>
Parakeet, Monk	<i>Myiopsitta monachus</i>
Parakeet, Ring-necked	<i>Psittacula krameri</i>
Partridge, Chukar	<i>Alectoris chukar</i>
Partridge, Rock	<i>Alectoris graeca</i>
Pheasant, Golden	<i>Chrysolophus pictus</i>
Pheasant, Lady Amherst's	<i>Chrysolophus amherstiae</i>
Pheasant, Reeves'	<i>Syrnaticus reevesii</i>
Pheasant, Silver	<i>Lophura nycthemera</i>
Pochard, Red-crested	<i>Netta rufina</i>
Pumpkinseed (or Sun-fish or Pond-perch)	<i>Lepomis gibbosus</i>
Rat, Black	<i>Rattus rattus</i>
Shelduck, Ruddy	<i>Tadorna ferruginea</i>
Snake, Aesculapian	<i>Elaphe longissima</i>
Squirrel, Grey	<i>Sciurus carolinensis</i>
Swan, Black	<i>Cygnus atratus</i>
Terrapin, European Pond	<i>Emys orbicularis</i>
Toad, African Clawed	<i>Xenopus laevis</i>
Toad, Midwife	<i>Alytes obstetricans</i>
Toad, Yellow-bellied	<i>Bombina variegata</i>
Wallaby, Red-necked	<i>Macropus rufogriseus</i>
Wels (or European catfish)	<i>Silurus glanis</i>
Zander	<i>Stizostedion lucioperca</i>

Part 1A – Native animals

Native species

Common name	Scientific name
Capercaillie	<i>Tetrao urogallus</i>
Chough	<i>Pyrrhocorax pyrrhocorax</i>
Crane, Common	<i>Grus grus</i>
Corncrake	<i>Crex crex</i>
Eagle, White-tailed	<i>Haliaeetus albicilla</i>
Goshawk	<i>Accipiter gentilis</i>
Kite, Red	<i>Milvus milvus</i>
Owl, Barn	<i>Tyto alba</i>

Part 1B – Animals no longer normally present

Formerly resident native species

Common name	Scientific name
Beaver, Eurasian	<i>Castor fiber</i>
Boar, Wild	<i>Sus scrofa</i>

Part 2

Plants – Non-native species

Common name	Scientific name
Alexanders, Perfoliate	<i>Smyrniium perfoliatum</i>
Algae, Red	<i>Grateloupia luxurians</i>
Archangel, Variegated Yellow	<i>Lamiastrum galeobdolon</i> subsp. <i>argentatum</i>
Azalea, Yellow	<i>Rhododendron luteum</i>
Balsam, Himalayan	<i>Impatiens glandulifera</i>
Cotoneaster	<i>Cotoneaster horizontalis</i>
Cotoneaster, Entire-leaved	<i>Cotoneaster integrifolius</i>
Cotoneaster, Himalayan	<i>Cotoneaster simonsii</i>
Cotoneaster, Hollyberry	<i>Cotoneaster bullatus</i>
Cotoneaster, Small-leaved	<i>Cotoneaster microphyllus</i>
Creeper, False Virginia	<i>Parthenocissus inserta</i>
Creeper, Virginia	<i>Parthenocissus quinquefolia</i>
Dewplant, Purple	<i>Disphyma crassifolium</i>
Fanwort (or Carolina Water-Shield)	<i>Cabomba caroliniana</i>
Fern, Water	<i>Azolla filiculoides</i>
Fig, Hottentot	<i>Carpobrotus edulis</i>
Garlic, Three-cornered	<i>Allium triquetrum</i>
Hogweed, Giant	<i>Heracleum mantegazzianum</i>
Hyacinth, Water	<i>Eichhornia crassipes</i>
Kelp, Giant	<i>Macrocystis angustifolia</i>
Kelp, Giant	<i>Macrocystis integrifolia</i>
Kelp, Giant	<i>Macrocystis laevis</i>
Kelp, Giant	<i>Macrocystis pyrifera</i>
Kelp, Japanese	<i>Laminaria japonica</i>
Knotweed, Giant	<i>Fallopia sachalinensis</i>
Knotweed, Hybrid	<i>Fallopia japonica</i> x <i>Fallopia sachalinensis</i>
Knotweed, Japanese	<i>Fallopia japonica</i>

Leek, Few-flowered	<i>Allium paradoxum</i>
Lettuce, water	<i>Pistia stratiotes</i>
Montbretia	<i>Crocasmia x crocosmiiflora</i>
Parrot's Feather	<i>Myriophyllum aquaticum</i>
Pennywort, Floating	<i>Hydrocotyle ranunculoides</i>
Potato, Duck	<i>Sagittaria latifolia</i>
Primrose, Floating Water	<i>Ludwigia peploides</i>
Primrose, Water	<i>Ludwigia grandiflora</i>
Primrose, Water	<i>Ludwigia uruguayensis</i>
Rhododendron	<i>Rhododendron ponticum</i>
Rhododendron	<i>Rhododendron ponticum x</i>
	<i>Rhododendron maximum</i>
Rhubarb, Giant	<i>Gunnera tinctoria</i>
Rose, Japanese	<i>Rosa rugosa</i>
Salvinia, Giant	<i>Salvinia molesta</i>
Seafingers, Green	<i>Codium fragile</i>
Seaweed, Californian Red	<i>Pikea californica</i>
Seaweed, Hooked Asparagus	<i>Asparagopsis armata</i>
Seaweed, Japanese	<i>Sargassum muticum</i>
Seaweeds, Laver (except native species)	<i>Porphyra spp (except P. amethystea, P. leucosticte, P. linearis, P. miniata, P. purpurea & P. umbilicalis)</i>
Stonecrop, Australian Swamp (or New Zealand Pigmyweed)	<i>Crassula helmsii</i>
Wakame	<i>Undaria pinnatifida</i>
Waterweed, Curly	<i>Lagarosiphon major</i>
Waterweeds	<i>All species of the genus Elodea.</i>

Definitions relating to species

“Species” means any kind of animal or plant.

A species is “invasive” if, uncontrolled, it would be likely to have a significant adverse impact on:

- a) biodiversity,
- b) other environmental interests, or
- c) social or economic interests.

A species is “non-native” if:

- a) it is listed in Part 1 or 2 of Schedule 9, or
- b) in the case of a species of animal, it is a species:
 - whose natural range does not include any part of Great Britain, and

- which has been introduced into Great Britain or is present in Great Britain because of other human activity.

References to a species being “present” on premises include its being present at any stage in its life-cycle (for example, as eggs or seeds).

A species of animal is “no longer normally present in Great Britain” if:

- a) it is a species listed in Part 1B of Schedule 9, or
- b) it is a species:
 - whose natural range includes all or any part of Great Britain, and
 - which has ceased to be ordinarily resident in, or a regular visitor to, Great Britain in a wild state.

SL(5)104 – Code of Practice for Species Control Provisions in Wales

Background and Purpose

This code of practice sets out how the provisions for species control agreements and orders contained in the Wildlife and Countryside Act 1981 should be applied by the Welsh Ministers and Natural Resources Wales.

Procedure

None, but the code must be laid before the Assembly.

Scrutiny under Standing Order 21.7

The code is not a statutory instrument so the Committee is not reporting under Standing Order 21.2 or 21.3.

The Committee has considered and reported on the code under:

- Standing Order 21.7(i): as subordinate legislation laid before the Assembly;
- Standing Order 21.7(v): as a legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers.

Reporting points

The heading of the code states (emphasis added): “How Species Control Agreements and Species Control Orders **should** be applied in Wales”.

It seems from this title that the code sets out how such agreements and orders **should** be applied. However, the code also contains a number of things that **must** be done.

The code does not offer any guidance around the meaning of “should” and “must”. In this regard, the Committee notes the helpful approach adopted in the draft HEFCW Financial Management Code (laid before the Assembly on 29 March 2017) which explained the meaning of “must” and “should” and explained the consequences of



failing to comply with the requirements of that code:

4. Where HEFCW uses the term 'must', it means it is a specific legal requirement or requirement under this Code. Institutions must comply with these requirements.
5. HEFCW uses 'should' for items it regards as minimum good practice, but for which there is no specific legislation or for which HEFCW is not setting a requirement under this Code; however, governing bodies must take such guidance into account. HEFCW will consider the extent to which an institution has adopted the 'should' provisions (or alternative, equally robust arrangements) in the Institutional Risk Review - our annual assessment of risk.
6. A summary of 'must' and 'should' provisions is provided at **Annex C**.
7. Where an institution fails, or is likely to fail, to comply with a requirement imposed by this Code, HEFCW may instigate the processes within its Statement of Intervention.

The Committee reports that the code could be drafted in a clearer way to help the Welsh Ministers and Natural Resources Wales understand what "should" means and what "must" means, and the consequences of not doing things that "should" or "must" be done.

Legal Advisers

Constitutional and Legislative Affairs Committee

16 May 2017





THE SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

Mr Huw Irranca-Davies AM
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By email only: seneddcla@assembly.wales

Dear Mr Irranca-Davies

The Australian Senate Standing Committee on Legal and Constitutional Affairs Committee is pleased to provide the following information to the Constitutional and Legislative Affairs Committee of the Welsh Parliament, relating to the inquiry 'A stronger voice for Wales: engaging with Westminster and the devolved institutions'.

The committee

Established as a standing committee in 1970, the Legal and Constitutional Affairs Committee (the committee) can inquire into legislation and other matters as they are referred by the Senate. The committee routinely enquires into matters associated with family law, constitutional law, criminal law, and administrative law. A number of times each year the committee also takes evidence from the Attorney-General's Department and associated agencies, and the Department of Immigration and Border Protection, as part of the Senate estimates process.

A database of all inquiries completed by this committee can be found here: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries.

Outline

This paper will outline the relations between the Australian Commonwealth State and Territory Governments, as well as the Commonwealth Government's inter-institutional relations in the Asia-Pacific region and beyond.

Establishing the Commonwealth of Australia

In 1900 the British Parliament passed legislation to establish the [Australian Constitution](#), which enabled the six then-colonies to govern themselves as the Commonwealth of Australia. The Act came into force on 1 January 1901. The British Monarch (as represented by the Governor-General) is Australia's head of state, and is

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vested with the executive power of the Commonwealth. In practice, executive power is exercised by the Prime Minister of Australia and Cabinet, and the Governor-General acts based on their advice.

Australia's Constitution establishes the parameters for the way in which the Commonwealth Government interacts with State and Territory Governments. It establishes that the Commonwealth Government can only legislate in relation to matters set out in the Constitution (primarily in section 51). States have plenary power to legislate. Section 51(xxxvii), known as the 'referral power', enables the Parliament of any State to refer matters to the Parliament of the Commonwealth, but so that the law shall only extend to States which referred that matter, or which afterwards adopted the law in question.

Intergovernmental relations between the Commonwealth, State and Territory Governments

The Commonwealth Government interacts with the State and Territory Governments in a number of ways. Two of the formal means by which this takes place are through meetings of the [Council of Australian Governments](#) (COAG), and the [Commonwealth Grants Commission](#) (CGC).

The CGC was established in 1933 to help address the imbalance in access to revenue sources between the States and Territories, the barriers of which were drawn up with a limited understanding of Australia's geography and natural resources. The CGC can advise the Commonwealth Government that particular States should be given Financial Assistance Grants for government services, to help ensure that citizens can access comparable levels of schooling, health care, justice and transport regardless of where they live.

COAG is the peak Australian intergovernmental forum. COAG members include the Prime Minister of Australia, the first Ministers of each State and Territory, and the President of the Australian Local Government Association. COAG typically meets twice a year to discuss matters of national significance, and other matters which require coordinated action from all Australian governments. Where COAG makes a formal agreement, this may be contained within [intergovernmental agreements](#). Such agreements have included agreements relating to the funding of public hospitals, the sharing of criminal history information, disability insurance, counter-terrorism, and consumer law. In some instances an intergovernmental agreement may be a precursor to legislation, for example, in the case of the development of Australia's (now) national consumer law system.

As explained above, the Commonwealth Government, and State and Territory Governments may work cooperatively in order to legislate in relation to matters which require a concerted effort (for example, matters in relation to which the States have the power to legislate, but only in relation to their State alone). In such instances, the State Governments may negotiate to:

- refer their power to legislate to the Commonwealth Government so that a national scheme can be implemented; or
- agree to adopt one single piece of model legislation.

Such negotiations typically take place via the COAG forum.

Commonwealth Government inter-institutional relations

The Commonwealth Government maintains close relationships with other nations via diplomatic channels, and through the sharing of information relating to global security, trade, and the environment.

The Commonwealth Government [connects with governments and institutions](#) in the Asia-Pacific Region (and beyond) in a number of ways, including via:

- Asia-Pacific Economic Cooperation (APEC) forum;
- Association of Southeast Asian Nations (ASEAN);
- ASEAN Regional Forum;
- Asia-Europe Meeting (ASEM)

Australia also engages with a number of other international organisations, including the United Nations, G20, Commonwealth of Nations, World Trade Organization, and OECD.

Closing remarks

Australia's formal legal relationship with the United Kingdom differs vastly from that of Wales. While Australia retains its formal legal relationship with the United Kingdom, and the British Monarch is Australia's Head of State, in practice, the Monarch's representative the Governor-General acts on the advice of the Prime Minister and his or her Ministers. By contrast, the Welsh National Assembly and Welsh Government have gradually gained law-making powers from the British Parliament, including a recent vote in 2011 to give the National Assembly greater law-making powers.

The committee thanks the Constitutional and Legislative Affairs Committee of the Welsh Parliament for the opportunity to provide this information.

If you have further questions we would be pleased to discuss these with you. You can contact the Committee Secretary Ms Toni Matulick on +61 (02) 6277 3494 or toni.matulick@aph.gov.au.



Senator the Hon Ian Macdonald

Chair



Senator Louise Pratt

Deputy Chair

Agenda Item 9

By virtue of paragraph(s) vi of Standing Order 17.42

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