

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

## Background and Purpose

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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

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

## Scrutiny under Standing Order 21.7

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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

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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**

