

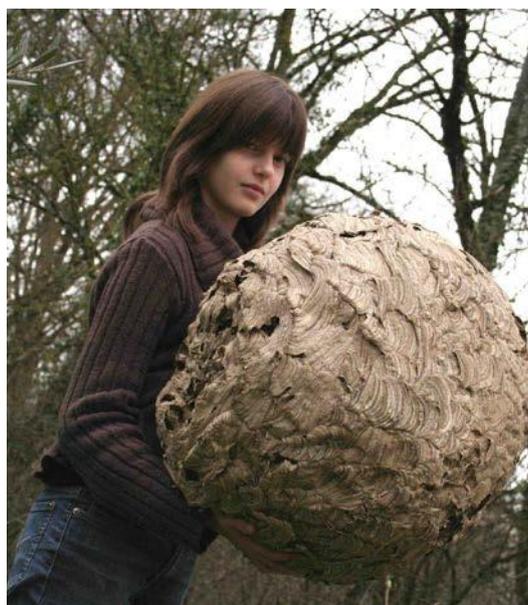
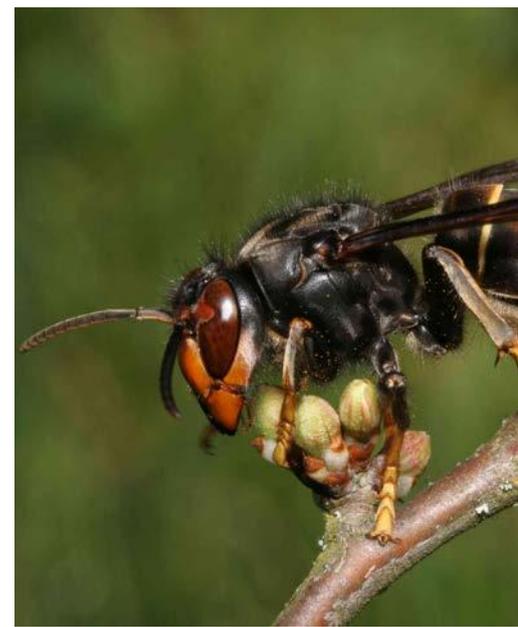


Llywodraeth Cymru
Welsh Government

May 2017

Code of Practice for Species Control Provisions in Wales

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



OGL © Crown copyright 2017 WG31285
Digital ISBN: 978 1 4734 9085 7
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
Top right and central bottom image:
Jean Haxaire
Bottom left and right image: GB NNSS

Contents

Contents	2
1 Introduction	5
2 Overview of species control provisions	7
2.1 Determining co-ordinating responsibility	7
2.2 Existing process.....	7
2.3 How these provisions will be applied	8
2.4 Scope of the measures	8
2.4.1 Naturally colonising species	9
2.4.2 Reintroduced formerly resident native species.....	9
2.4.3 Protect Species and Habitats	10
2.4.4 The significant adverse impact test	11
2.4.5 Widespread non-native species	11
2.4.6 Premises and Dwelling.....	12
2.5 Animal welfare considerations	12
2.6 Safeguarding non-target species	13
2.7 Review of species control provisions	13
2.8 Publication of numbers of agreements and orders	13
3 Species control agreements	14
3.1 What is a species control agreement?	14
3.2 Who can enter into a species control agreement?.....	14
3.3 When should an environmental authority offer to enter into a species control agreement?	14
3.3.1 Formerly resident native species.....	16
3.4 What a species control agreement must contain	17
3.5 Ending an agreement	18

4	Species Control Orders	19
4.1	When an environmental authority may make a species control order.....	19
4.1.1	No known owner	20
4.2	What a species control order should contain	20
4.3	Notice requirements.....	21
4.4	Coming into force of the order	21
4.5	Emergency species control orders.....	22
4.6	Withdrawing a Species Control Order.....	23
4.7	Ending an order	23
5	Powers of entry, enforcement, offences and penalties	25
5.1	Powers of Entry	25
5.2	Enforcement	26
5.3	Offences and penalties	26
6	Responsibility for costs and compensation.....	28
6.1	Responsibility for the costs of species control operations.....	28
6.2	Compensation.....	29
6.3	Disputes.....	29
7	Right to appeal.....	30
8	Annex.....	31
	Part I – Non-native species.....	31
	Native species	32
	Formerly resident native species	33
	Plants – Non-native species	33
	Definitions relating to species.....	32

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>Lamiaeastrum 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>Crocsmia 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.