Species Control Provisions
Draft Code of Practice for England
For public consultation
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Issuing species control agreements and orders

How environmental authorities can make agreements and orders for landowners to control or eradicate invasive non-native animals and plants.

If you represent an environmental authority in England, you may want to control or eradicate invasive non-native animals and plants which are on premises.

For the purposes of this guidance, the following are environmental authorities in England:

- the Secretary of State for Environment, Food and Rural Affairs
- Natural England (NE)
- the Environment Agency (EA)
- the Forestry Commissioners (FC)

You can control or eradicate the animals and plants or minimise the threat they pose in 3 ways.

Unless it’s an emergency, you should try the 3 ways in the following order:

1. Informally agree a plan to control the species with the owner.
2. Draw up a voluntary plan for how to control the species and ask the owner to agree to its terms - this is called a ‘species control agreement’.
3. Issue a ‘species control order’ - a plan which has terms the owner must follow by law - this is usually used after an owner has failed to agree to or implement a species control agreement.

You can offer species control agreements or issue species control orders to any of the following types of owner:

- a freeholder
- a leaseholder
- someone who has legal rights to manage a premises or piece of land and isn’t the freeholder or leaseholder, eg where land is held in trust

If there’s more than one owner, you can deal with the owner you decide is best suited to help you.

Only the Secretary of State can make agreements or issue control orders if the plan to control the species will involve accessing the owner’s home.

Animals and plants you can control

You can draw up agreements or issue control orders for any animal or plant that both of the following apply to:
• isn’t indigenous to England, Scotland or Wales and has been introduced by humans
• if uncontrolled, would be likely to have a significant adverse impact on biodiversity
  or other environmental, social or economic interests

The following animals are examples of non-native species - this is not an exhaustive list:

• Black Large-Mouthed Bass
• Rock Bass
• Bitterling
• Chinese Mitten Crab
• Noble Crayfish
• Red Swamp Crayfish
• Signal Crayfish
• Spiny-cheek Crayfish
• Turkish Crayfish
• Chinese Water Deer
• Muntjac Deer
• Sika Deer
• Any hybrid of Sika Deer
• Fat Dormouse
• Carolina Wood Duck
• Mandarin Duck
• Ruddy Duck
• Flatworm
• Australian Flatworm
• New Zealand Flatworm
• Edible Frog
• European Tree Frog (or Common Tree Frog)
• Marsh Frog
• Bar-headed Goose
• Barnacle Goose
• Canada Goose
• Egyptian Goose
• Emperor Goose
• Snow Goose
• Night Heron
• Slipper Limpet
• Common Wall Lizard
• Prairie Marmot (or Prairie dog)
• American Mink
• Alpine Newt
• Italian Crested Newt
• Eagle Owl
• American Oyster Drill
• Monk Parakeet
• Ring-necked Parakeet
• Chukar Partridge
• Rock Partridge
• Golden Pheasant
• Lady Amherst’s Pheasant
• Reeves’ Pheasant
• Silver Pheasant
- Red-crested Pochard
- Pumpkinseed (or Sun-fish or Pond-perch)
- Black Rat
- Ruddy Shelduck
- Aesculapian Snake
- Grey Squirrel
- Black Swan
- European Pond Terrapin
- African Clawed Toad
- Midwife Toad
- Yellow-bellied Toad
- Red-necked Wallaby
- Wels (or European catfish)
- Zander

**Formerly resident native animals**

You can also take action to control formerly resident native animals - these are animals which are indigenous to England, Scotland or Wales but died out and were later reintroduced by people, for example the Eurasian Beaver or Wild Boar.

**Non-native plants**

You can take action to control the following non-native plants:

- Perfoliate Alexanders
- Red Algae
- Variegated Yellow Archangel
- Yellow Azalea
- Himalayan Balsam
- Cotoneaster
- Entire-leaved Cotoneaster
- Himalayan Cotoneaster
- Hollyberry Cotoneaster
- Small-leaved Cotoneaster
- False Virginia Creeper
- Virginia Creeper
- Purple Dewplant
- Fanwort (or Carolina Water-Shield)
- Water Fern
- Hottentot Fig
- Three-cornered Garlic
- Giant Hogweed
- Water Hyacinth
- Giant Kelp
- Japanese Kelp
- Giant Knotweed
- Hybrid Knotweed
- Japanese Knotweed
When you can’t control animals or plants

Naturally colonising species

You can’t control either of the following:

- species which naturally arrive in England, Scotland or Wales when their natural range extends, eg because of climate change
- species which have been extinct but return due to natural reasons like climate change

You can still control a species if it colonises England, Scotland or Wales from an area where it’s not indigenous.

For example, if the Asian hornet arrives in England from France, where it was accidentally introduced from China by human activity, you could control it as it’s not indigenous to France.

Decide if you need to offer a species control agreement

You should only offer a species control agreement if you think:

- the premises contains animals or plants that are covered by this guidance
• the species would be likely to significantly impact biodiversity (eg it threatens native species), environmental interests (eg water quality), economic interests (eg damage to property) or social interests (eg angling) and you believe the species needs to be controlled as a priority
• you have a plan to control it that you believe can work
• your plan is a proportionate response to the problem

Decide if the species is likely to have a significant impact and needs to be controlled as a priority

When deciding if the species needs to be controlled as a priority, you must consider:

• whether the species is part of a national eradication programme - if so it is a priority to remove it - contact the Non-native Species Secretariat to check
• evidence from risk assessments, particularly assessments made by the Non-native Species Secretariat
• whether the species is listed under the EU Invasive Alien Species Regulation

You should also consider whether the species is widespread in England, like grey squirrels or Japanese knotweed - use the Non-native Species Secretariat risk assessments to find out.

If a species is widespread, you shouldn’t use species control agreements or orders to remove or control it unless:

• the species is part of an eradication programme - contact the Non-Native Species Secretariat to check
• you decide the species is newly arrived in a geographical area and that it can be eradicated
• you believe the species is likely to have a damaging impact on a Site of Special Scientific Interest (SSSI) or a Natura 2000 site

Decide if your plan to control species can work

When you’re deciding if your plan to control the species can work, you should consider:

• the results of any Non-native Species Secretariat risk management analysis of the species
• the likelihood of the species re-invading after you carry out your plan
• the likelihood of the plan succeeding
• the cost of your plan and any ongoing costs after it’s finished

Decide if your plan is a proportionate response

If you decide that the species needs to be controlled and your plan can work, you must consider whether it’s a proportionate response to the problem.

To do this, you must consider whether:
• it’d be as effective to use a method that doesn’t involve eradicating the species
• any other species besides the target could be harmed by your plan
• local businesses or their activities could be harmed by your plan – eg the owner

**Offering species control agreements for formerly resident native species**

If you’re offering a species control agreement for a formerly resident native species, you must also:

• make sure that the animals are not present in the wild under a licence issued by Natural England for their reintroduction
• have evidence that the animals are causing a significant negative effect on biodiversity, environmental, social or economic interests
• consider the alternatives - you should only offer an agreement if you’ve decided against all other feasible options

**What to include in a species control agreement**

In your species control agreement, you must include:

• the actions that need to be carried out and who’s responsible for each one, eg the owner, or you, or both
• a deadline by which each action must be done

You can also choose to include:

• how the actions should be done - you should suggest they’re done in a way that minimises distress to the animals
• details of any payments that’ll be made between you and the owner
• details of any payments to third parties from you or the owner
• any actions that you won’t allow as part of the plan, eg cutting a non-native plant species during a specified period

You should talk to the owner about the terms of the agreement before you finalise it.

**Decide who pays to control the species**

You need to pay to control the species unless the owner of the premises was responsible for introducing it.
Offer a species control agreement

When you’ve finalised a species control agreement, you should contact the owner of the land and see if they will enter into it.

Tell the Secretary of State

If you have decided to offer an owner a species control agreement, you should tell Defra’s non-native species team - contact Defra to do this.

When to issue a species control order

A species control order is a document you make setting out a plan of actions to control the species - the owner must meet the conditions of the order by law.

You can serve an owner with a species control order if you think it’s a proportionate response to the problem and any of the following conditions apply:

- it’s been 42 days since you offered them a species control agreement in writing and they haven’t accepted it
- the owner has told you they won’t sign the agreement
- they’ve failed to comply with a species control agreement even after you gave them opportunity to rectify this - it’s up to you to decide how long they have to comply
- you decide it’s an emergency and you need to issue an emergency species control order
- you can’t find who the owner of the premises is

For formerly resident native species

Before you issue a species control order for a formerly resident native species, you must also:

- make sure the animals aren’t present in the wild due to Natural England issuing a licence for their reintroduction
- have evidence that the animals are causing a significant negative effect on biodiversity, other environmental interests, eg water quality, and social or economic interests, eg anglers
- consider the alternatives - you should only offer an order if you’ve decided against all other feasible options

What to include in a species control order

In your species control order you must specify:

- the person responsible for carrying out the tasks you set out in the order - you, or the owner, or both
• the species that you’re trying to control with the order
• a deadline by which the tasks in the order must be completed, by you or the owner

You should also include a map of the premises covered by the order if appropriate.

You can also include:

• how the tasks set out in the order must be carried out
• details of parts of the order you’ve agreed to pay for and who you'll pay, eg the owner or a third party
• details of any parts of the order that the owner must pay you for
• any actions that the owner must not carry out while meeting the conditions of the order
• details of any third parties that you’ve hired to complete parts of the order

**Before you send a species control order**

**Tell Defra**

Before you send a species control order to the owner, you must tell Defra’s non-native species team - [contact Defra](#) to do this.

**When the species control order comes into force**

A species control order comes into force as soon as you’ve made it - you need to send a copy of the order to all known owners and to Defra.

An owner then has 28 days to appeal to the First-tier Tribunal - they don't have to carry out any tasks set out in the order or allow works to take place until the appeal has been resolved or they withdraw it.

The First-tier Tribunal aim to carry out an appeal within 30 weeks of it being submitted by the owner.

**Emergency species control orders**

You can issue an emergency species control order which means the owner must allow you to carry out the work immediately - you should only do this if:

• delay in implementing your plan could have significant impact on biodiversity, environmental, social or economic interests - use Non-native Species Secretariat risk assessments to check this or any contingency plans that exist for the species - [contact the Secretariat](#) to check if contingency plans exist
• removing or controlling the species is in the public interest and this overrides the owner’s private interests, eg in cases where the species can rapidly spread if it’s not eradicated as soon as possible

Although an emergency order comes into force as soon as you issue it, an owner can still appeal against it.

The First-tier Tribunal can suspend an emergency species control order if an owner appeals.

**Appeals**

When an owner appeals against a species control order, the First-tier Tribunal will do one of the following:

• keep the order as it is
• rule that you must withdraw or change the order
• suspend the order, if it’s an emergency species control order
• make a new order of its own

**If owners breach a species control order**

If you think that an owner has breached a species control order, eg by failing to do tasks that the order requires them to do, you can do the work and recover the costs from them, minus any money you’d have had to pay them.

Before you do this, you must write to the owner to:

• explain why you think they’ve breached the order
• tell them you’re allowing them a week from the date on the letter to do whatever it is they haven’t done

You might want to allow the owner more than a week if weather or other factors make it impossible for them to do the work in that amount of time.

An owner who fails to comply with any part of a species control order or intentionally stops someone else from doing so can be prosecuted, unless a court decides they have a reasonable excuse.

If they’re found guilty they can be imprisoned for a maximum of 51 weeks, or fined, or both.

If an owner isn’t sure whether their excuse is reasonable, you should tell them to get legal advice.
If you can’t identify the owner

You should try to find the owner of the premises by doing a on land registry search, as a minimum.

If you can’t find the owner of the premises, you must:

- put a notice on the premises that states you want to enter into a species control agreement - you’ll need a warrant issued by a Justice of the Peace
- wait at least 5 days, if there’s no response, consider issuing a species control order

You can access the land and begin work if the 28-day period for making an appeal has expired and no owner has appealed.

Ending agreements or orders

When the tasks are completed

A species control agreement or order ends when the owner has completed all the tasks in it.

When you're satisfied that they owner has done this, you should send the owner a letter within 21 days that confirms that the agreement or order is finished.

If an owner asks you for a letter that confirms an agreement or order is finished, you should respond within 21 days.

Withdrawing species control orders

You can withdraw a species control order at any time, for example if you decide it’s no longer needed.

You must give the owner notice in the same way you did when you made the order, though you don’t have to tell them why you’re withdrawing it.

Powers of entry

Powers of entry are the right for an authorised person to access premises.

You can use powers of entry or authorise others to use them to access an owner’s premises if you need to do any of the following:

- decide whether to offer a species control agreement, eg you’re checking the species that are there
- decide whether to make or withdraw a species control order
• investigate an owner who you believe isn’t complying with an agreement or order
• carry out tasks that are part of a species control order
• put a notice on the premises, if you haven’t been able to find or contact the owner
• carry out work, or have work carried out on your behalf, after an owner breached a species control order

You need a warrant from a justice of the peace to exercise powers of entry in the following circumstances:

• the premises are someone’s home
• the owner has refused to let you into the premises or you expect that they will
• the premises are unoccupied
• the owner is temporarily absent
• giving notice would defeat the purpose of the entry, eg you believe the owner may dispose of species illegally
• you need to enter the premises to carry out tasks as part of an emergency species control order
• you need to enter the premises to carry out tasks where you can’t identify the owner
• you need to enter the premises to put up a notice because you couldn’t identify the owner
• you need to carry out urgent work because you believe the owner has breached a control order

Anyone you authorise to exercise power of entry can take other people, equipment and machinery or materials onto the land.

They can also take samples of anything on the premises.

Compensation for owners

Owners can contact the Secretary of State after the work set out in an order or agreement is finished to ask for compensation for financial loss, eg damage to property caused by:

• any work associated with a species control agreement or order
• your use of powers of entry to access their land

An owner is very unlikely to get compensation if they released the species without a licence that was covered by a control agreement or order.

Disputes

If there’s a dispute between you and an owner and it’s not part of the appeal process, you should try to resolve it according to your usual dispute procedures.

Animal welfare

When you’re controlling species, you must follow relevant animal welfare law:
• the Protection of Animals Act 1911
• the Wildlife and Countryside Act 1981
• the Wild Mammals (Protection) Act 1996
• the Animal Welfare Act 2006
• the Agreement on International Humane Trapping Standards

Species of community interest

Species of community interest are species which member states must protect as part of EU law - they’re listed in Annex II, IV, and V of the EU Habitats Directive.

You may need to apply for a wildlife licence from Natural England to make a species control agreement or order that will affect a species of community interest.

You may also have to make separate licence applications to Natural England for consent if works affect a SSSI or Natura 2000 site, or nationally protected species.