Isle of Man Government

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Introduction of animals and plants to the wild:

guidance on Section 14 of the Wildlife Act, 1990

Japanese knotweed (*Fallopia japonica*) a Schedule 8 species (P. McEvoy)

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Guidance on Section 14 of the Wildlife Act, 1990

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Section 14 of the Wildlife Act (1990)

14 Introduction of new species etc

(1) Subject to the provisions of this Part, if any person releases or allows to escape into the wild any animal which-

(a) is of a kind which is not ordinarily resident in and is not a regular visitor to the Island in a wild state; or

(b) is included in Part I of Schedule 8,

he shall be guilty of an offence.

(2) Subject to the provisions of this Part, if any person plants or otherwise causes to grow in the wild any plant which is included in Part II of Schedule 8 he shall be guilty of an offence.

(3) Subject to subsection (4), it shall be a defence to a charge of committing an offence under subsection (1) or (2) to prove that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his possession.

(5) Any person authorised in writing by the Department may, at any reasonable time and (if required to do so) upon producing evidence that he is authorised, enter any land for the purpose of ascertaining whether an offence under subsection (1) or (2) is being, or has been, committed on that land; but nothing in this subsection shall authorise any person to enter a dwelling.

(6) Any person who intentionally obstructs a person acting in the exercise of the power conferred by subsection (5) shall be guilty of an offence.

Background

1. The purpose of section 14 of the Wildlife Act 1990 ("the Act") is to prevent the release into the wild of certain plants and animals which may cause ecological, environmental, or socio-economic harm.

2. To achieve this section 14 prohibits the introduction into the wild of any animal of a kind which is not ordinarily resident in, and is not a regular visitor to, the Isle of Man ("the Island") in a wild state, or any species of animal or plant listed in Schedule 8 to the Act. In the main, Schedule 8 lists non-native species that are already established in the wild, but which continue to pose a conservation threat to native biodiversity and habitats, such that further releases should be regulated.

3. It has become apparent from the responses to the recent (August 2010) consultation on amendments to Schedule 8 to the Act that there is a need for better understanding of the key elements that make up the offences in section 14. This document represents the views of DEFA (based on similar views of Defra and the Welsh Assembly Government) on the meaning of those elements; it does not, therefore, represent a definitive interpretation of the law. Nor is it necessarily exhaustive as regards each issue but, nevertheless, it is intended as guidance for enforcement agencies, licensing authorities and other interested parties in the Isle of Man.

In the wild

4. A key premise for the prohibitions within section 14 is that it is only introductions into "the wild" that are regulated. In principle, we would define "the wild" as being:

"The diverse range of natural and semi-natural habitats and their associated wild native flora and fauna in the rural and urban environments in general. This can also be broadly described as the general open environment."

5. However, whether an introduction (release or escape) is into "the wild" may well be dependent on the ecology of the species in question and the potentially affected

environment: as such, what constitutes the wild must be judged on a case-by-case basis.

6. For the offence to be committed, a release or allowing to escape into the wild or planting or causing to grow in the wild must occur. Therefore, to understand the application of section 14, one must also understand the offence in its entirety. These issues are considered in detail below.

Animals

7. With respect to the release of animals section 14(1) states:

(1) Subject to the provisions of this Part, if any person releases or allows to escape into the wild any animal which -

(a) is of a kind which is not ordinarily resident in and is not a regular visitor to the Island in a wild state; or
(b) is included in Part I of Schedule 8,

he shall be guilty of an offence.

Animal

8. "Animal" refers to species belonging to the kingdom *Animalia* including, for example, mammals, reptiles, amphibians, birds, fish, insects and other invertebrates.

Release into the wild

9. We consider "release into the wild" to be the active letting-go of an animal, from a condition of captivity, such that it has the freedom to go where it will. In essence, we consider that the deliberate introduction of an animal into an area considered to be "the wild" would be an act of release.

10. Even a release into an enclosure may constitute a breach of section 14 in certain circumstances. The question of whether the offence applies or not in any case is one requiring careful consideration and judgement concerning the nature of the enclosure into which the release is made and whether it contains an area that could be considered to be "the wild".

Exceptions

11. Falconry: In principle, we would not regard the long-standing and traditional practice of falconry as amounting to the commission of the offence. Such birds are clearly expected to return and, competently done, there is no intention to allow the birds their freedom to establish in the wild. The legislation provides a defence if the accused can prove that all reasonable steps have been taken, and all due diligence

has been exercised, in order to avoid committing the offence. Thus the competence of the handler and the degree to which the bird has been properly trained will be relevant considerations. The release of surplus or unwanted birds, with no intention of retrieval, would constitute the offence.

12. Emergency *in situ* assistance: We would not consider it an offence if an individual took *in situ* measures (i.e. in the wild) to free an animal that has become accidentally and unintentionally restrained (e.g. entangled in wire netting). However, were such an animal to be taken into captivity, for example into a vehicle or to a place for rehabilitation, then its subsequent release would only be lawful under the terms of a licence.

Allowing to escape into the wild

13. We would consider an animal as being "allowed to escape into the wild" where adequate steps to ensure its continued captivity/confinement were not taken. This would include negligent or reckless behaviour resulting in the conditions of confinement failing to prevent an animal from freeing itself, e.g. failing to secure the entrance of a pen.

14. Release into a garden or pond or other similar private plot of land may be considered "allowing to escape into the wild" if there is no reasonable impediment to the animal's subsequently finding its way into the wider (unconfined) open environment.

Of a kind

15. It is important to note that the legislation does not use specific taxonomic terms such as "species" which would undoubtedly fetter the legislation's ability to serve its protective purpose. The words "of a kind" offer an important degree of latitude bearing in mind the huge variety of characteristics and traits in the animal world, even amongst similar species or the same broad taxonomic groups, or between international populations. We consider that the words "of a kind" therefore require that the animal prohibited from being introduced should be distinct in some

significant way from animals already ordinarily resident in (or which are regular visitors to) the Island, but need not necessarily be of a different species or sub-species.

Ordinarily resident in a wild state

16. It is our view that for a species to be considered "ordinarily resident", the population should have been present in the wild for a significant number of generations and should be considered to be viable in the long term.

Regular visitor in a wild state

17. A "regular visitor" is considered to be a species which occurs within the Island with reasonable frequency or predictability, for example seasonal migratory species. This does not include species which occur only as vagrants or strays.

In a wild state

18. A species would be considered to be "in a wild state" where the population lives and fends for itself in the wild.

Plants

19. With respect to plants section 14(2) states:

(2) Subject to the provisions of this Part, if any person plants or otherwise causes to grow in the wild any plant which is included in Part II of Schedule 9, he shall be guilty of an offence.

Plant

20. "Plant" refers to species in the kingdom *Plantae*. However, as is the case with respect to Schedule 7 to the Act (protected species), Schedule 8 may also include fungi and algae species.

Planting in the wild

21. The legislation aims to prevent the planting of Schedule 8 listed plant material in the wild where it then poses a threat to our native biodiversity and ecosystems. Our views on the meaning of "the wild" have been discussed above. We consider that planting in the wild would constitute intentionally placing viable plant material in or on suitable medium so that it can grow. This can include, for example, whole plants, seeds, rhizomes, bulbs, corms and cuttings.

22. Although it is impractical to attempt to describe all possible circumstances, we would not consider planting on managed land, where it is expected that the spread of the plant will be kept under control, and where the plant is not having an appreciable adverse impact on habitats and their native biodiversity, as planting in the wild. It would follow that planting in private gardens would not be considered planting in the wild and, in general, this is also likely to apply to larger scale gardens, estates and amenity planting. Conversely, where the plant is inadequately managed or contained and is likely to have an adverse effect on habitats and their native biodiversity, it is more likely that the offence will have been committed. Therefore, whether or not planting is an offence should be judged on a case-by-case basis, taking into account the potential impacts on habitats and native flora and fauna of planting the species in question, and the existence or extent of

management practices employed. Again it is worth noting that the legislation provides a defence if the accused can prove that all reasonable steps have been taken, and all due diligence has been exercised, in order to avoid committing the offence.

Causing to grow in the wild

23. Section 14 does not impose an explicit obligation to manage Schedule 8 species not introduced onto your land by your own actions. However, the law is not entirely clear as to the full scope of the phrase "causes to grow". Based on certain indications in previous UK case law, it may be possible to argue that a landowner who knowingly allows a Schedule 8 species that he did not introduce, to accumulate on his land and create a problem as it spreads to other areas of the wild, and who makes a conscious decision to do nothing about it, is "causing it to grow".

However, this interpretation has not been tested, and whether the offence could apply in these circumstances would have to be established in the courts. The Department is therefore unable to offer a firm view on circumstances of that nature. The requirements of the defence in section 14(3) of the Act should be borne in mind.

24. We would expect that where plants listed in Schedule 8 are grown in private gardens, larger scale gardens, estates and amenity areas etc, reasonable measures will be taken to confine them to the cultivated area so as to prevent their spreading to the wider environment and beyond the landowner's control. It is our view that any failure to do so, which in turn results in the plant spreading to the wild, could be considered as "causing to grow in the wild" and as such would constitute an offence. If the person responsible for the presence of a species in this way does not have sufficient ability or the resources to manage it so as to prevent its spreading to the wild, thereby exposing him or herself to the risk of committing an offence, he/she should seriously consider whether planting a Schedule 8 species is appropriate.

25. Negligent or reckless behaviour, such as inappropriate disposal of garden waste, where this results in a Schedule 8 species becoming established in the wild would constitute an offence.

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