

Reintroducing wildlife into the United Kingdom: Practical and welfare perspectives

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Abstract

This article analyses the economic, social and ecological case for the reintroduction of certain species of wildlife back into the United Kingdom ("UK") before setting out the complex legal regime to be satisfied for fauna to be introduced into the UK. Attention will then shift to the animal welfare considerations faced by reintroduction projects stemming from both domestic and international law and whether the welfare protection provided to wild animals is sufficient.

Background and the case for reintroduction of wildlife

The Great British Isles are undoubtedly blessed and personified by a rich heritage of wildlife, with the Department for Environment, Food and Rural Affairs' ("DEFRA") 25 Year Plan recognising that there are significant benefits flowing from natural heritage following increased implementation of the contemporary "*natural capital*" approach². Pursuant to such an approach, under which natural environments are recognised by economists as critical to human wellbeing by virtue of their production of essential resources, proper protection and increases in levels of

wildlife can lead to a boost in long term human prosperity³.

Despite such a rich heritage, like so many other regions around the world, wild species of fauna habitual to the UK are increasingly threatened by factors including climate change and the impacts of human development. Such a danger is recognised by DEFRA in their declaration that "[We] are in danger of presiding over massive human-induced extinctions when we should instead be recognising the intrinsic value of the wildlife and plants that are our fellow inhabitants of this planet"⁴. This risk has already materialised for too many species of wildlife which have historically populated the UK, with the Eurasian Lynx (*Lynx lynx*), brown bears (*Ursus arctos*) and the White Stork (*Ciconia ciconia*) being recognised as species once native which have already been driven to local extinction due to human activities⁵.

Fortunately, the damage caused by the loss of wildlife species in the UK is not irreversible where the species in question populate other ecosystems around the globe, primarily thanks to the increasingly prevalent "Rewilding" movement, which is viewed by various groups as involving the restoration of lost species back

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² "A Green Future: Our 25 Year Plan to Improve the Environment" DEFRA, UK Government (2018), p.16

³ Ibid, page 19

⁴ Ibid, p.17

⁵ J Martin "The UK's Extinct animals: can we bring them back?" (2018) the Woodland Trust (<https://www.woodlandtrust.org.uk/blog/2018/02/the-uks-extinct-animals-can-we-bring-them-back/>)



to areas they once inhabited. The reintroduction of native species can have a multitude of benefits for an array of stakeholders, and these benefits have recently been formally recognised by governmental organisations including DEFRA⁶. Reintroduced species brought back into ecosystems are able to fulfil their natural roles, which helps in turn to restore the surrounding habitat to something closer to its true natural state. Moreover, local communities can look forward to tangible social and economic benefits, as reintroductions which have already taken place in the UK have readily demonstrated the benefits to local populations. Examples include the educational programmes delivered by the Cairngorms Wildcat Project⁷ or the economic boost provided by wildlife tourism to Cornwall following the reintroduction of the Red-billed Chough (*Pyrrhocorax pyrrhocorax*)⁸.

⁶ Above (No.2), p.61

⁷ Hetherington D., and Campbell, R "The Cairngorms Wildcat Project Final Report" (2012) Cairngorms National Park Authority (CNPA), Scottish Natural Heritage (SNH), The Royal Zoological Society of Scotland (RZSS), the Scottish

Set against such a background of opportunity to promote and replenish the biodiversity which is so critically important to the conservation of UK's natural habitats, this article considers the formidable practical and legal challenges faced by proposed reintroductions of wildlife.

The Practical and Administrative Legal Regime Faced by Reintroductions

England and Wales has a legal framework regulating the reintroduction of wild animals consisting of various pieces of primary, delegated and EU legislation which interact to present a multifaceted "checklist" of requirements which any project seeking to reintroduce a wild animal must satisfy before any release can properly begin. The regime is founded upon a series of licenses, approvals and permits that must be acquired

Gamekeepers Association (SGA) and Forestry Commission Scotland (FCS), [2.3] p.13 and Appendix 3

⁸ I Johnstone, C Mucklow, L Lock, T Cross and I Carter "The return of the Red-billed chough to Cornwall: The first ten years and prospects for the future" (2011) for the RSPB and British Birds

from the relevant authorities and government bodies prior to any release. The aim of some of this raft of legislation is to prevent poorly planned reintroductions having determinantal effects on the participating species and the habitat surrounding the release site. In relation to some legislation that impacts on such projects, the rules were designed and enacted into law long before the idea of species reintroduction became prevalent in the wildlife conservation and rewilding sector and were designed for separate (perfectly legitimate) purposes entirely. Overall, however, the regime does serve a useful purpose in practice, as it forces those involved in species-reintroduction projects to carefully consider every aspect of the planned reintroduction, including what impacts the project might have on the surrounding habitat, wildlife, human populations and even the animals to be released themselves.

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Notwithstanding the above mentioned good intentions of the legislation, the checklist of permissions required presents a considerable administrative and legal challenge to any reintroduction project, as multiple, sometimes long, applications must be completed with supporting expert evidence to different parts of the UK government or its delegated authorities. Whilst the thrust of this article is the welfare considerations surrounding wildlife, the following paragraphs aim

provide a brief insight into some of the legal hurdles involved.

The prohibition under the Wildlife and Countryside Act 1981 (the "WCA")

Section 14(1) of the WCA creates a blanket criminal offence of "Introduction of a new species" which is triggered when "any person releases or allows to escape into the wild any animal which – (a) is a kind which is not ordinarily resident in and is not a regular visitor to Great Britain in a wild state or (b) is included in Part 1 of Schedule 9". This section is supplemented by guidance produced by DEFRA⁹ which when analysed and considered in depth acts to criminalise the act of releasing a wild animal covered by limb (a) or (b) of section 14(1) in England and Wales as a part of any reintroduction exercise¹⁰. Part 1 of Schedule 9 expands the scope of the section, as this includes several species which, whilst already "ordinarily resident" in some parts the UK, a conservation project might seek to introduce other localities, such as the Capercaillie (*Tetrao urogallus*).

For the prohibition under Section 14 WCA to be avoided, a licence is required pursuant to Section 16(4)(c). Under this section an "appropriate authority" is permitted to grant a licence (which can be made subject to a wide range of conditions)¹¹ to a project seeking to reintroduce a prohibited species. Current practice means that Natural England ("NE") is the organisation responsible for issuing licenses in such a scenario¹². Whilst the legislation omits to stipulate criteria an application would need to satisfy, it is recognised by NE that an application would be considered against the appropriate guidelines issued by the International Union for the Conservation of Nature ("IUCN")¹³. In the future, pursuant to the commitment on page 61 of DEFRA's 25 Year Plan,

⁹ "Guidance on Section 14 of the Wildlife and Countryside Act, 1981" (2010) Department for Environment, Food and Rural Affairs

¹⁰ Consider for example paragraphs 8, 9, and 16 which together suggest that even a release into a large wild "enclosure" in the countryside would be caught by the section

¹¹ Section 16(5) WCA

¹² There is currently a "Part 8 Agreement" under Section 78 of the Natural Environment and Rural Communities Act 2006

delegating power from the Secretary of State to NE. The Secretary of State may still issue a licence under Section 78(2)(b) however, widening the spectrum of bodies that could be applied to

¹³IUCN/SSC Guidelines for Reintroductions and Other Conservation Translocations (2013) (v.1) Gland, Switzerland: IUCN Species Survival Commission, viiii + 57 pp

applications will be measured against more specific guidelines produced by DEFRA and/or NE.

These sections of the WCA represent the only legislation in England & Wales that specifically addresses the release of a wild animal in a reintroduction project. The sections therefore make up the core statutory obligations to be considered when approaching a potential species reintroduction project. However, as can be seen below, a raft of other legislation, not specifically designed for the governance of reintroduction projects, may also apply.

Potential quarantine requirements pursuant to the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974 ("RIO")

Reintroduction of certain wildlife could engage the legal regime for ensuring that England and Wales remains a "rabies free" jurisdiction. RIO provides for a general prohibition of "*the landing in Great Britain of*" an animal from outside Great Britain apart from when in accordance to the terms of a licence (a "Landing Licence")¹⁴. In accordance with a Landing Licence granted by APHA, the specimens to be reintroduced would prima facie be subject to a quarantine period of four months, where they would be kept in isolation at the expense of the project seeking to translocate the animals¹⁵. This author notes that, whilst the grounds for the imposition of the such quarantine period are understandable, this could present significant concerns to the physical and behavioural wellbeing of the translocated animals whilst also disrupting the successful and timely execution of a project.

Notwithstanding such stringent conditions, there are several grounds on which the need for a quarantine period can be avoided. Firstly, where an animal is introduced from another EU state pursuant to the Balai Directive (defined and discussed further below) the need for a quarantine period can be completely waived¹⁶. Furthermore, under the RMO1A Guidance Note, APHA may waive the requirement for animals

from certain biological orders to be quarantined. An example of this could be a potential Landing Licence application for reintroduction of the Eurasian Beaver (*Castor fiber*) could be waived under the ROM1A Guidance Note¹⁷.

If DEFRA, APHA and NE together sought to adapt the existing legal regime to make the logistics of species reintroduction projects less time consuming and costly for those seeking to implement projects, this is an area where a simple policy change could greatly reduce the onerousness of the process. APHA could produce updated guidance that they will waive quarantine periods where a licence has already been issued under the WCA and where certain applicant specific certain conditions have been satisfied.

The Balai Directive¹⁸ regime for cross-border movement of animals within the EU

Rewilding projects in the UK also face the obligation of complying with international legal regimes of which England and Wales is a member. The Balai Directive is a piece of delegated EU legislation which establishes conditions for the import and export of various species of animals within the EU which are not caught by other legislation¹⁹.

The Balai Directive would therefore apply in a scenario where likeminded conservation projects and authorities in different EU member states collaborated to found a population of a species in the UK through the translocation of some members of a population in the relevant EU member state. A good example of this could be a project to re-establish a population of European Elk (*Alces alces*, known a Moose in North America) from another EU state where populations are reasonably abundant²⁰.

For such an intra-European rewilding to take effect in this way, Regulation 5(1) requires the relevant projects to acquire a "*health certificate*" for the specimens being translocated, such health certificate ordinarily

¹⁴ Sections 4(1) and (3) of RIO, the relevant authority in this case would be the Animal and Plant Health Agency ("APHA")

¹⁵ Section 5(1) of RIO

¹⁶ Paragraph 2 of the Notes for Guidance for the Application for a Licence to Import Live Animals other than Pet Dogs, Cats and Ferrets ("RMO1A Guidance Note")

¹⁷ Category 2, Appendix 1 of the RMO1A

¹⁸ Council Directive 92/65/EEC of 13 July 1992 (the "Balai Directive")

¹⁹ The Balai Directive is implemented locally pursuant to the Trade in Animals and Other Related Products Regulations 2011

²⁰ Such as Sweden, Poland, Finland, Latvia or Estonia

being issued by a qualified veterinary physician in the state of origin of the species.

The Balai Directive contains further requirements which would require groups to coordinate the international cooperation of vets as animals can only be moved into premises which are approved by a vet in the state of receipt if the location from which they are sourced is approved by a vet in the state of origin²¹. Considering this, it is clear that even movement of wildlife for purposes of rewilding between EU member states, where legal regimes are harmonised to a greater extent than would be the case between third party nation states, requires a high level of planning and organisation.

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This section has attempted to provide a snapshot of the administrative challenges which must be surmounted by rewilding groups to comply with more procedural legal requirements imposed by the applicable national and international legislation²². This procedural regime is a "living tapestry" and therefore the hurdles faced by conservationists can and do change and may also be completely upended by developments in international law and politics²³.

Reintroductions and Welfare: Transportation of Wildlife

Welfare considerations are of course of the utmost importance to those involved in rewilding projects, as

the specimens being relocated form the centrepiece of the conservation efforts, and the success of the project depends upon the animals being treated with the respect and care required to ensure their physical and behavioural health is not detrimentally affected. It can safely be assumed that the vast majority of those involved in rewilding efforts have animal welfare as their utmost priority in all operations, not just in context of the relevant project objectives being achieved, but also to ensure that both the intrinsic and inherent value of animals is properly respected for the duration of their lives.

Returning to the scenario set out above when a "conservation translocation"²⁴ of wildlife is planned between two EU member states, one significant concern for all involved is the welfare of the specimens translocated during their journey. This is regulated at an EU level, with direct effect in the UK through Council Regulation (EC) No 1/2005 of 22 December 2004 (the "Transportation Regulations"). The regime, nuances and legal issues presented by the Transportation Regulations could be the subject of an entire separate article, however for this article the focus concerns the following points: (i) moving animals for purposes of reintroduction and the interaction with "economic activities"; (ii) the conditions required for the transportation of species being translocated; and (iii) general welfare conditions for any dealings with wildlife specimens being reintroduced.

Moving animals for purposes of reintroduction and the interaction with "economic activities"

The legal protections provided by the Transportation Regulations only apply where animals are being transported "in connection with an economic activity" pursuant to Regulation 1(5). Some guidance is provided as to how and when the necessary connection will be established by paragraph 13 of the preamble which

organisms from one site for release in another. It must be intended to yield a measurable conservation benefit at the levels of a population, species or ecosystem, and not only provide benefit to translocated individuals." (Above (No.13) p.viii) such a term is broken down into: "*(i) reinforcement and reintroduction within a species indigenous range, and (ii) conservation introductions, comprising assisted colonisation and ecological replacement, outside indigenous range"*. Readers with further interest in rewilding more generally are encouraged to read the IUCN guidelines.

²¹ Article 13 of the Balai Directive

²² Readers of this article who remain interested in further requirements should see the licensing framework set out under the Dangerous Wild Animals Act 1976 and also the applicable articles of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

²³ A contemporary example being the United Kingdom's impending departure from the European Union

²⁴ A "Conservation Translocation" is an umbrella term defined by the IUCN as meaning "*is the deliberate movement of*

provides a wide interpretation of such connection stating that it will be met for "*transport which directly or indirectly involves or aims at a financial gain*". Transporting animals for the purposes of a conservation translocation does not per se constitute an economic activity, as those involved in the project do not have as their intention of achieving any financial gain, unless unusual circumstances cause this to be the case²⁵.

Practically, however, many projects will engage Article 1(1) of the Transportation Regulations as those involved will seek to engage specialist hauliers to translocate the wildlife to be released to their new destination. The motivation behind involvement of hauliers is to benefit from their professional experience, as the right operator will undoubtedly have the expertise, personnel and equipment required to transport the animals in the way least disruptive to the specimens involved, as well as providing logistical assistance with all steps of the translocation. This considered, conservation projects that engage hauliers will pay for their services in almost all cases. The financial remuneration by the chosen haulier therefore provides the connection to the requisite "economic activity", meaning that the protections of the Transportation Regulations become applicable to the activities of the haulier.

Welfare conditions during transport

The overall objective of the Transportation Regulations is demonstrated well by the general rule contained in Article 3 that "*No person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them*". Using such a rule as a theme the Transportation Regulations then provide an array of requirements that must be satisfied during the transportation of animals. A non-exhaustive list of these requirements includes that the transporter

confirms that the specimens in question are fit for travel²⁶, the means, method and execution of transport meet minimum prescribed standards²⁷ and that the animals being transported are properly watered and fed during the duration of the transportation²⁸.

'Whilst providing some security as to the welfare of the animals being relocated, it is questionable whether the provisions of the Transportation Regulations are in reality providing satisfactory protection against non-compliance by hauliers.'

The Transportation Regulations go on to provide further stipulations that a haulier would be legally obliged to meet concerning documentation detailing the animals being transported²⁹, the qualifications of those effecting the transportation³⁰ and requirements for longer journey transportation³¹. For journeys with a duration of more than 8 hours, the haulier in question is obliged to maintain a detailed and comprehensive "journey log"³² which is broken down into sections including a detailed table for which the haulier is required to complete in advance to demonstrate the transportation of the animals has been appropriately planned. Whilst more administrative in nature, these requirements are no less important, as failure to properly comply may trigger the infringement and penalty provisions³³ of the Transportation Regulations.

Whilst providing some security as to the welfare of the animals being relocated, it is questionable whether the provisions of the Transportation Regulations are in reality providing satisfactory protection against non-compliance by hauliers. In the UK, non-compliance with

²⁵ It is beyond the scope of this article to consider in detail the different circumstances in which transportation for the purposes of a species translocation by the rewilding organisation itself might be deemed to trigger the Transport Regulations.

²⁶ Article 3(b) of the Transportation Regulations, elaborated in more detail in Chapter I of Annex 1

²⁷ Article 3(c) Transportation Regulations, Chapters II-IV of Annex 1 then provide further technical detail, with additional requirements applicable regarding specific modes of transport

(see for example Chapter IV on further requirements relevant to transportation of animals by sea)

²⁸ Article 2.7 of Chapter III of Annex 1 to the Transportation Regulations

²⁹ Article 4(1) Transportation Regulations

³⁰ Article 6 Transportation Regulations

³¹ Articles 11 and 15 Transportation Regulations

³² The details of which are set out in Annex II of the Transportation Regulations

³³ Articles 25 and 26 Transportation Regulations

the implementing regulations of Transportation Regulations is determined to be a summary offence under the Section 73 of the Animal Health Act 1981 (the "AHA"), for which the maximum punishment is 6 months imprisonment³⁴.

Despite this reasonably strong deterrent, concerns have been raised about the enforcement of the Transportation Regulations at a European level, albeit regarding livestock transportation³⁵. Whilst the more acute scale of relocating animals for the purposes of conservation translocation presents less of a threat to welfare than commercial cattle movements, risks still exist and will need to be eliminated or at least significantly mitigated through careful selection and vetting of a transportation provider along with a keen appraisal of and adjustment to each individual specie's specific needs whilst being transported.

There are also arguments that other more general animal welfare protections would protect specimens whilst in transit, for example the offences contained within Section 4 of the Animal Welfare Act 2006 ("AWA") of intentionally or negligently causing suffering to a wild animal or an animal in captivity. It is noted however that such a provision does not apply save to suffering occurring in England and Wales.

Reintroductions and welfare: Protections of released species

The work of rewilding organisations does not cease once animals have been successfully chosen, transported and relocated into their new habitats as many trial and project periods will continue over a period of several years to gather as much evidence as possible regarding the adaption of the wildlife to their new surroundings, the reaction of the surrounding habitat to the translocated species and the benefits received by the surrounding ecosystem and communities. Considering the long-term duration of any project (and lifespan of the animals in question)

the sustained protection of the welfare of the translocated specimen is of fundamental importance to many of the stakeholders involved. For animals released into the UK, a mosaic of domestic and European legislation attempts to provide adequate protection for wild animals.

Protection under the Wildlife and Countryside Act 1981

Principal among the legislation described above is the WCA, Section 11, which creates a criminal offence where a person sets in position forms of traps calculated to cause grievous bodily harm to any animal³⁶ or the use of bows, crossbows or decoys to kill wild animals³⁷. Whilst such protection is welcome, the WCA provides significant additional layers of protection for animals which are specifically designated within Schedules 5 and 6 of that Act. Examples include making it an offence to set in place poisonous or stupefying substances for the purposes of killing or stunning or the use of automatic weapons, smoke, artificial light or illumination targeting devices³⁸. The result is that where the released species are listed in the schedules of the WCA, the scope of protection they are afforded is considerably widened.

The other, perhaps even more important, protection afforded to wildlife listed in the schedules to WCA is that comprehensive protection is also provided to the habitat in which the animal in question lives. Section 9 makes it an offence to intentionally or recklessly damage or destroy structures or places used by wildlife specified in Schedule 5 for shelter or protection, or to disturb or obstruct any such animal occupying a place of shelter or protection³⁹. This is exceptionally relevant for reintroduced animals, as the local ecosystem they are translocated into will often have been specifically chosen following a painstakingly detailed and scientific site identification process and any changes to such a habitat could cause unpredictable levels distress and disruption to the specimens⁴⁰. Several species which

³⁴ Section 75(2) AHA

³⁵ *The widespread failure to enforce EU law on animal transport: An analysis of reports by the Food and Veterinary Office of the European Commission* (2011) Compassion in World Farming the Food and Veterinary Office of the European Commission

³⁶ Namely, self-locking snares section 11(1)(a) WCA

³⁷ Sections 11(1)(b)-(d) WCA

³⁸ Section 5 of the Wildlife and Countryside Act 1981

³⁹ Section 9(4)(a)-(c) WCA

⁴⁰ See for example the publication "*Reintroduction of the Eurasian Lynx to the United Kingdom: Trial Site Selection*" (2016) AECOM (on commission for the Lynx Trust UK) which sets out the pragmatic and ecological considerations that feed

have already been subject or may in future be subject to species translocation activities, such as the Eurasian Red Squirrel (*Sciurus vulgaris*)⁴¹ and the Eurasian Wildcat (*Felis silvestris silvestris*), have already been listed in Schedule 5 to WCA, and it is vital that conservation organisations work together with the Secretary of State to ensure that all further species forming the subject to rewilding activities are designated in the Schedules to WCA in order to properly protect their welfare.

Protection under the Wild Mammals (Protection) Act 1996 ("WMA")

More general protection is made available to wild mammals pursuant to Section 1 WMA, as this section criminalises activity in which a person attacks (including by way of beating, burning or stabbing) a wild animal with intent to inflict unnecessary suffering. Whilst the penalty upon conviction for contravention of Section 1 can amount to a prison sentence of up to 6 months⁴², there are substantial limitations to the protection afforded by Section 1. The first is the nature of the species covered, as the act expressly only covers mammals, meaning that birds, reptiles and other classes of animals would not be protected. By way of example, this would mean that a reintroduced population of Red-billed Cough⁴³ would not be protected under this legislation.

In addition to the inherent limitations of the species focused legislation, an exception is also provided by Section 2(d) of the WMA. This exempts liability under Section 1 where the attack is executed by means of any "snare, trap, dog, or bird lawfully used for the purpose of killing or taking any wild mammal". Such a derogation presents a risk to translocated wildlife that

sets out the pragmatic and ecological considerations that feed into the site selection process, including human density of the surrounding area (p.3).

⁴¹ See for example the Mid Wales Red Squirrel Project (<https://www.welshwildlife.org/living-landscapes/the-mid-wales-red-squirrel-project/>)

⁴² Section 5(1) WMA

⁴³ The case for the reestablishment of populations of the red-billed cough in the UK is brilliantly made by Richard Meyer in his seminal article R. Meyer "The Return of the Red-billed Cough to England" (2000) British Birds 93: 249-252

⁴⁴ The water vole already faces significant risk from human activities that threaten their fragile riverside habitat, along

can be legally hunted through specific methods. Taking the use of traps as a case in point, an example could be how attempts to reintroduce the water vole (*Arvicola amphibious*) into certain UK waterways could be thwarted through the use of spring traps (some of which are permitted under the Spring Traps Approval (England) Order 2012) targeted at "rodents"⁴⁴.

Protections under the Conservation of Habitats and Species Regulations 2010 ("CHSR")

EU legislation is also a potential source of protection for reintroduced animals. Regulation 41 of the CHSR makes it an offence to deliberately disturb, injure or kill a "European Protected Species"⁴⁵. Whilst the breadth of the conduct covered by this regulation is welcomed, attention must be paid to the definition of European Protected Species, which is limited to those species set out in Schedule 2 to CHSR and Annex IV(a) of the Habitats Directive" *whose natural range includes any area in Great Britain*"⁴⁶. Notable inclusions in these lists for the purposes of rewilding in the UK include the Eurasian Wildcat and the Hazel Dormouse (*Muscardinus avellanarius*)⁴⁷.

Questions may arise as to what amounts to reintroduced animals' "natural range", as it could be argued that since the specimens have been translocated in a reintroduction project, their new habitats in the UK do not constitute their natural range, meaning they are therefore deprived of the protection they would otherwise receive. Such arguments can be dismissed however when the intention of the EU legislative organs is examined, as an official guidance document to the Habitats Directive reveals that "*...when a Species has been re-introduced into its former natural range... this territory should be*

with bad publicity due to commonly being mistaken for brown rats. The plight faced by water voles is well documented by the Wildlife Trusts (<https://www.wildlifetrusts.org/wildlife-explorer/mammals/water-vole>)

⁴⁵ Which implements Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (as the "Habitats Directive")

⁴⁶ Regulation 40(1) CHSR

⁴⁷ The latter being highly threatened and already locally extinct in many areas throughout the UK. The challenges facing hazel dormice and the results of attempts to reintroduce them is carefully considered and explained by the Peoples' Trust for Endangered Species (<https://ptes.org/campaigns/dormice/>).

considered part of its natural range."⁴⁸. Such clear an expression of intent should be sufficient to ensure that the protections offered by the CSHR also extend to reintroduced animals. This expansive interpretation notwithstanding, it is noted that not every species which could be the deserving subject of a conservation project is listed in the Schedules and Appendixes to the CSHR and the Habitats Directive, which should serve as a motivation for conservationist groups to engage in productive dialogues with the relevant authorities to ensure that those species are included in the appropriate lists.

'...it would be an affront to the very purpose of conservation generally, and the rights of the animals being reintroduced, if hunters were again permitted to disturb, shoot and kill released animals...'

Protections under the Hunting Act 2004 ("HA")

The final piece of legislation considered by this article is the Hunting Act 2004⁴⁹. The focus of the HA is to criminalise the activity of hunting any wild animal with a dog or group of dogs⁵⁰. Positively, the HA adopts a wide definition of what constitutes a "wild animal" for the purposes of the legislation which is sufficiently wide to encompass almost any conceivable translocated specimens⁵¹.

Notwithstanding the protection against hunting by dogs, Section 2 goes on to provide that the use of hunting methods set out in Schedule 1 will not amount to an offence in contravention of Section 1⁵². Schedule 1 notably includes hunting in order to "flush out" a wild animal or to "recapture a wild mammal" released from captivity⁵³. As the HA does not contain an explicit

definition of what amounts to a "release from captivity", it is at least arguable that this includes reintroduced specimens, as such animals may have been sourced from captivity and in any event will have been kept in captivity during their transportation as a matter of necessity. This is a clear example of legislation which was designed without species translocation and reintroduction projects in mind, which as such does not fit for purpose in the context of a release of species in such a project, leaving open a potential loop hole.

Whilst it is noted that such hunting needs to be subject to stipulated conditions in order to be permitted, on a prima facie interpretation these provisions would permit hunters to disturb animals which have been translocated. Moreover, one of the conditions to the hunting of animals under these provisions is that "*reasonable steps are taken for the purpose of ensuring that as soon as possible.....wild mammal is shot dead by a competent person*"⁵⁴. This considered, it would be an affront to the very purpose of conservation generally, and the rights of the animals being reintroduced, if hunters were again permitted to disturb, shoot and kill released animals, one of the very causes of their extinction on British shores in the past.

Conclusion

This article has tried to set out the scale of some of the practical and legal challenges facing species conservation translocation projects operating in the UK and discussion of how such challenges should be approached and resolved. Attention was then turned to the legal protections of reintroduced animals released into the wild with a focus on welfare protections. It has been demonstrated that despite several pieces of both national and international legislation offering protection, as is frequently the case with piecemeal legal frameworks, lacunas and holes

⁴⁸ Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC (2007)

⁴⁹ This author notes the vast volume of commentary which, whilst praising the Hunting Act, also highlights its limitations and suggests areas where it could be strengthened, see for example "*Strengthen the Hunting Act*" The League Against Cruel Sports (2018) (<https://www.league.org.uk/hunting-act>) or M Wellsmith "*Wildlife Crime: The Problems of Enforcement*" European Journal on Criminal Policy and Research (2011)

Volume 17, Issue 2, pp 125-148. This article intends to focus on some of the limitations specific to rewilded animals therefore other parts of Hunting Act which may merit discussion in other contexts are not considered here

⁵⁰ Section 1 HA

⁵¹ Section 11(1)(d) HA means this includes "any mammal which is living wild"

⁵² Section 2(1)

⁵³ Paragraphs 1 and 7 of Schedule 1 to the HA respectively

⁵⁴ Paragraphs 1(7)(a) and 7(3)(a) of Schedule 1 to the HA



exist in the protection granted and exploitation of such deficiencies to the detriment of conservation efforts and animal welfare should not be permitted. There is work to be done before we can say that English and Welsh law is fit for purpose in the context of species translocations and in facilitating the broader aims of rewilding.