

DANGEROUS WILD ANIMALS (NORTHERN IRELAND) ORDER 2004

S.I. 2004 No. 1993 (N.I. 16)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Dangerous Wild Animals (Northern Ireland) Order 2004 (“the Order”) was made on 27 July 2004.
2. This Explanatory Memorandum has been prepared by the Department of the Environment to assist the reader in understanding the Order. It does not form part of the Order.
3. The Order is largely based upon the principles contained in the Dangerous Wild Animals Act 1976 in Great Britain.

BACKGROUND AND POLICY OBJECTIVES

4. The purpose of the Order is to introduce regulatory controls over dangerous wild animals kept by private individuals in Northern Ireland.
5. In 1997 concerns were raised about a collection of ‘large cats’ kept in Northern Ireland in the care of a private owner. The incident attracted significant attention and resulted in concerted pressure upon government to introduce legislation in Northern Ireland to control the keeping of dangerous wild animals (DWAs). Given a continuing trend for keeping DWAs as pets, concerns about the risk to public safety and the welfare of the animals remain.
6. In Great Britain the keeping of DWAs is controlled by a licensing system operated by local authorities under the Dangerous Wild Animals Act 1976 (the 1976 Act). The Act’s provisions do not apply to Northern Ireland. While a number of enactments in Northern Ireland deal with wildlife and animal welfare issues generally, none deal sufficiently with the issue of public safety as a consequence of anyone keeping DWAs in a private capacity, and it is this gap in the law that the Order aims to address.

CONSULTATION

7. A consultation paper was issued in February 1999 (prior to devolution) based on proposals to introduce legislation that would follow the broad principles of the 1976 Act. A total of 250 interested organisations and individuals were consulted, including district councils, and 37 responses were received. Overall, there was a broad welcome from respondents for the introduction of legislation, while some responses raised concerns about some of the detailed proposals.
8. A number of respondents advocated that there should be a central panel of experts or an ‘Inspectorate’ to support the necessary licensing, inspection and enforcement functions. The Order makes provision for the Department to seek the support of

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‘suitable expertise’ to assist in the operation of the proposed regime, as it may consider appropriate.

9. Some concern was expressed that exempting zoos, circuses and pet shops from the legislation could create a significant loophole. It is not considered appropriate to include such establishments because the keeping of DWAs in private collections is regarded as the key source of unregulated risk to public safety that must be addressed and adequate regulatory controls already exist in respect of these other establishments.
10. The responses indicated divergent views about the content of the Schedule to the Order, which identifies those animals that are deemed dangerous and therefore come within the scope of the legislation. While gaining broad support from some respondents, others were critical of it, believing that many of the DWAs listed (particularly the smaller species) do not present a real risk to public safety and are only included to satisfy animal welfare concerns. This is a complex and technical area. With one exception, it has been decided to replicate the Schedule that operates in GB relying on the expert advice and guidance that underpinned it. The one exception is to provide the Department with power to exclude farmed species from the Schedule (for example ostrich or wild boar) as it is considered that the issue of risk to public safety is not significant and the welfare of such animals on farms is adequately protected. However, the Order will provide powers to amend the Schedule by subordinate legislation, should experience in NI, changes to the GB schedule or other factors indicate a need to do so.
11. Some respondents were concerned that the powers of entry, inspection, seizure and disposal proposed were excessive. These views were accepted on the basis of the need to achieve an appropriate balance between ensuring effective enforcement of the legislation and avoiding an unnecessary breach of individual rights. It was therefore agreed that the authority of a warrant issued by a Justice of the Peace would be required to support power of entry to any premises where it is suspected that a DWA is being held illegally. In addition, it was also decided that a keeper or licence-holder, whose DWA has been seized, would have a right of appeal to a magistrate’s court against seizure.
12. As the consultation exercise was conducted prior to devolution, further consultation with the Assembly’s Environment Committee about the policy proposals occurred in late 2001. While giving broad support for the introduction of legislation, the Committee expressed concerns about a core element of the proposals i.e. that operational responsibility for the regime should be allocated to the district councils in Northern Ireland. The Committee was concerned that councils would not have sufficient experience or expertise to operate the scheme effectively and that they may face excessive financial burdens arising from potential enforcement cases.
13. The case for a centralised regime has been accepted and the Order makes provision for the Department to operate the proposed licensing, inspection and enforcement regime.
14. A further consultation exercise was carried out between October 2003 and January 2004. A total of 425 organisations/individuals were consulted and 23 responses were received – all welcomed the introduction of the legislation. Meetings were held with both the Police Service of Northern Ireland and the Ulster Society for the Prevention of Cruelty to Animals with regard to their proposals to allow owners to surrender their animals and to make it an offence for any person to sell or give a DWA to someone who did not possess a licence for it. The Order now contains provision for this new offence and authorises the Department, as a transitional measure, to accept without compensation payment, DWAs voluntarily surrendered by their owners.

OPTIONS CONSIDERED

15. Four options were considered, including ‘doing nothing’. This option was discounted because of the ongoing risk to public safety and sustained pressure on the government to act.

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16. An option of introducing a total ban on keeping DWAs privately was considered, but was discounted because it was considered a disproportionate response to the existing problem.
17. The two options remaining were based on following the principles of the 1976 Act. One option involved simply replicating the 1976 Act, while the other involved mostly replicating the 1976 Act, but with additional provisions to take account of operational experience gained in Great Britain. The latter option was adopted because it was considered that this provided the best practical means of addressing the source of public concern associated with the keeping of DWAs while at the same time taking advantage of the operational experience gained in the administration of the 1976 Act. The latter formed the basis for both public consultations.

MAIN ELEMENTS OF THE ORDER

18. The proposed Order in Council will
 - require any person wishing to keep a dangerous wild animal (DWA), as defined in the Schedule to the Order, to obtain a licence from the Department prior to taking ownership of the animal. A licence will be valid for a period of 12 months or such longer period as the Department shall determine. The keeping of a DWA without a licence will be an offence;
 - prohibit the sale of a DWA to any person who is not the current holder of a licence. The sale of a DWA to any person without a licence will be an offence;
 - require the Department to perform a range of checks on any application (i.e. about the applicant, the accommodation and the conditions in which the animal will be kept) before granting a licence. As part of the appraisal process, the Department will be required to receive a report from a veterinary surgeon or other person deemed suitably competent by the Department;
 - require the Department to set a number of mandatory conditions for any licence which it may grant. These will relate to matters such as the welfare of the animal; the person or persons entitled to keep the animal; the number and type of animals which can be kept; and, the place where the animal is to be kept. The Department will also be free to apply other conditions as it sees fit;
 - provide applicants with a right to appeal to a magistrate's court against any decision by the Department to refuse a licence or against any conditions imposed on the grant of a licence;
 - create an offence where the requirements of a licence are not complied with;
 - give the Department powers of entry and inspection for the purposes of assessing an application or determining if the requirements of the legislation or of an existing licence are being complied with;
 - give the Department powers to seize any animal where the requirements of the legislation, or of a licence, are not being complied with. The Department will also be given powers to destroy a seized animal (under veterinary supervision) or otherwise dispose of it;
 - give owners a right of appeal within 21 days to a magistrate's court against seizure and prohibit the Department from destroying or otherwise disposing of a seized animal before the appeal has been determined;
 - establish penalties for any person found guilty of not complying with the requirements of the legislation. Courts will be given power to cancel existing licences or to disqualify any such person from keeping dangerous wild animals;
 - provide transitional arrangements for existing owners to make arrangements to apply for a licence;
 - provide transitional arrangements to allow existing owners to surrender DWAs to the Department;

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- provide for the legislation to come into operation by way of a Commencement Order to ensure that all administrative provisions and capacity are in place to ensure public safety.

COMMENTARY ON THE PROVISIONS OF THE DRAFT ORDER

Comments are not given where the wording is self-explanatory.

Article 1: Title and Commencement

This Article sets out the title of the Order and provides that Articles 1, 2 and 12 are to come into operation 7 days after the Order is made. The Department is empowered to make a commencement order naming the day or days on which the remaining provisions will come into operation.

Article 2: Interpretation

Paragraph (2) defines the meaning of “a keeper of a DWA” for the purposes of applying the requirements of the Order. A person will normally be regarded as the keeper of a DWA if it is in his possession.

Paragraphs (3) to (4) define exceptions to the definition contained in paragraph (2). The licensing requirements will not apply to any person who has a DWA in his possession because:

- they are preventing it from causing damage;
- they are restoring it to its owner;
- they are providing veterinary treatment to it ;or
- they are transporting the DWA on behalf of someone else;

Paragraph (5) provides definitions for general terms used in the Order.

Paragraph (6) explains that the second column contained in the Schedule to the Order is included for ease of reference purposes only, by providing the common name for each of the types of animal included. In case of dispute or proceedings, only the scientific name contained in the first column is to be used.

Article 3: Licences

This Article, in essence, forms the core of the legislation. It prohibits any person from keeping a DWA without a licence granted by the Department. It forms the basis for the licensing scheme and deals with applications for, and grant of, licences. The purpose is to ensure, first and foremost, that public safety is protected. The Order also seeks to protect the general well being of a DWA by requiring appropriate standards for its accommodation, food and exercise that are appropriate to its species. It is intended that if private individuals wish to keep a DWA, then they must only do so under controlled conditions.

Paragraph (1) requires any person who keeps or intends to keep a DWA to have a licence granted by the Department. Therefore, all existing owners of a DWA at the time that the legislation comes into operation, or potential new owners thereafter, will need to make an application to the Department for approval to keep the DWA. It also specifies that this requirement does not apply in exempted cases that are identified in Articles 6(7), 7 and 9(9). It is intended that anyone who keeps a DWA without a licence will be committing an offence from the moment they take possession of the DWA. Therefore, licences should be obtained before a DWA is acquired.

Paragraph (2) specifies that an application for a licence can only be made by someone who is 18 years of age or more and by someone who has not been disqualified from keeping a DWA under Article 10(2). It also specifies what information must be provided in the application that has to be accompanied by the appropriate fee, which the Department will prescribe by an order.

Paragraph (3) specifies the appraisal process that the Department must complete before it can consider granting a licence. It must be satisfied about a number of matters, including:

- that granting any licence will not be contrary to the public interest in terms of safety, nuisance or otherwise, as considered appropriate;
- that the applicant is a suitable person to keep a DWA. This recognises that a level of responsibility is associated with the keeping of a DWA and the potential threat to public

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safety and the welfare of the DWA if an owner, for whatever reason, cannot look after the DWA properly; and

- that the conditions in which a DWA will be kept and the arrangements for its welfare, are appropriate. As well as seeking to ensure the general well being of a DWA, these requirements will promote responsible ownership.

Paragraph (4) requires the Department to ensure that the application is made by a person who both owns and possesses (or intends to both own and possess) the DWA. The intention is to avoid any possible loophole where someone could argue that they are exempt from the requirements of the Order. The Department can waive this requirement, but only where, in its opinion, there are exceptional circumstances.

Paragraph (5) stipulates that the Department cannot grant a licence unless a suitably qualified person (for example, a veterinary surgeon), who the Department has authorised under Article 5, has inspected the premises where a DWA will be or is being kept and the Department has considered a report of the results of the inspection. This recognises the need for a qualified opinion on compliance with the standards referred to at paragraph (3).

Paragraph (6) empowers the Department, subject to limitations contained in paragraphs (2) to (5), to grant or refuse to grant a licence, as it considers appropriate. Where it grants a licence the Department must attach a number of mandatory conditions to the licence, concerned with matters such as:

- placing restrictions on the numbers and types of DWA that may be kept, the persons who can keep the DWA, the premises where the DWA may be kept, and its movement;
- requiring the licence-holder to have appropriate insurance cover against liability for any damage or injury the DWA may cause, and to provide a copy of a licence to anyone else authorised to keep the DWA;
- requiring the licence-holder to notify the Department in the event of the birth of offspring, or the sale, disposal or death of a DWA; and
- determining the steps to be taken in the event of the escape of a DWA.

The Department can apply any other conditions to the licence that it may consider appropriate in order to achieve the objectives sought by sub-paragraphs (c) to (f) of paragraph (3), concerned with the welfare of a DWA.

Paragraph (7) also empowers the Department to apply any other conditions to a licence that it may consider appropriate.

Paragraph (8) gives the Department the power to vary the conditions of a licence at any time by adding new conditions. It can revoke any condition, with the exception of those conditions specified in paragraph (6), and it can vary any condition, except the condition requiring a DWA to be kept at the premises specified in the licence.

Paragraph (9) enables any variation to the conditions of a licence requested by the licence-holder to take effect immediately, once approved by the Department. Any variation initiated by the Department will not take effect until the licence-holder has been informed of the variation and given a reasonable time to comply with it.

Article 4: Provisions Supplementary to Article 3

This Article makes a number of general but important provisions, including providing for a right of appeal for applicants and licence-holders against decisions made by the Department, and the creation of offences where the requirements of the Order or of a licence have been contravened. Paragraphs (1) to (3) provide for appeals to a court of summary jurisdiction where any person who has been refused a licence by the Department or does not agree with any condition imposed by a licence, or any variation to it, feels aggrieved. Such an appeal will require to be made within 21 days of receiving notification from the Department.

Paragraph (4) stipulates that a licence issued by the Department will be valid for a period of 1 year, effective from the date that it is issued. This is subject to the provisions contained in paragraphs (5) and (6), and Article 10(2). This paragraph also provides the Department with the power to increase, by order, the period for which a licence is valid.

Paragraph (5) deals with the arrangements for applying for a new licence to replace a licence that is due to expire. Provision is made for the 'old' licence to remain in force until a decision is made by the Department to grant or refuse a new licence, provided the application for a new licence was

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made prior to the expiry date of the old licence. The new licence will be valid from the date of expiry of the old licence.

Paragraph (6) describes the arrangements for dealing with an existing licence in the event of the death of the licence-holder. It makes provision for the licence to remain in force for a period of 28 days from the date of death as if it had been granted to the personal representatives of the deceased. It also makes provision for the licence to remain in force thereafter until a decision is made by the Department to grant or refuse a new licence, provided an application for a new licence was made within the 28 day period.

Paragraph (7) makes it an offence for any person to keep a DWA without a valid licence issued by the Department in contravention of Article 3(1).

Paragraph (8) makes it an offence for a licence-holder to contravene the conditions of a licence. If another person, other than the licence-holder, who is authorised to keep a DWA, contravenes the conditions of a licence, then that person and the licence-holder, will be guilty of the offence.

Paragraph (9) provides for a defence for any person charged with an offence under the provisions of paragraph (8), who can prove that they took all reasonable precautions and exercised all due diligence to avoid contravening the conditions of a licence.

Article 5: Inspection by the Department

This Article provides a comprehensive set of powers of entry and inspection. Such powers are considered necessary to ensure that DWAs are not being kept illegally and that those that are held under licence are being kept in secure, safe and suitable accommodation, and therefore assist in securing the overall objectives of the Order.

Paragraphs (1) & (2) enable the Department to authorise, in writing, a suitably competent person to exercise, on its behalf, powers of entry and inspection to relevant premises in order to gather information necessary to assist the Department appraise an application for a licence.

Paragraph (3) empowers the Department to recover the costs of the inspection carried out under paragraphs (1) and (2) from the person who applied for the licence

Paragraphs (4) and (5) enable the Department to authorise, in writing, a suitably competent person to exercise, on its behalf, powers of entry and inspection to any premises where animals are kept under the authority of a licence, in order to ascertain whether or not the conditions of the licence should be varied, or if the conditions of a licence are being complied with.

Persons authorised to perform inspections under the provisions of paragraphs (1) and (4) may enter and inspect any premises and any animal or anything else found there, at all reasonable times. Such persons are required to produce evidence of their authority, if required to do so.

Paragraph (6) enables the Department to recover from a licence-holder the costs of an inspection of any premises, which has been authorised under paragraph (4).

Paragraphs (7) to (11) enable the Department to authorise, in writing, a suitably competent person to exercise, on its behalf, powers of entry and inspection to any premises, where it has reasonable grounds to suspect that a DWA is being kept without a licence, in order to confirm if any offence against the Order is being committed. Such inspections must only be carried out under the authority of a warrant issued by a Justice of the Peace, upon application by the Department.

Such a warrant will remain in force until entry and inspection has taken place. Persons authorised to perform inspections under these provisions may enter and inspect any premises and any animal or anything else found there, at all reasonable times. In addition bodily samples can be taken from any animal found there.

Paragraph (12) places a responsibility upon persons undertaking inspections under the provisions of this Article to ensure the premises are no less secure upon leaving than they were when entered. The Department is required to make good or pay compensation to the owner of any premises for any damage caused by authorised persons entering those premises and performing inspections.

Paragraph (13) makes provision for determination by the Lands Tribunal in respect of any dispute arising from the provisions in paragraph (12).

Paragraph (14) makes it an offence for any person to deliberately obstruct an inspection authorised by the Department.

Article 6: Power to Seize and to Destroy Or Dispose of Animals Without Compensation.

This Article provides the Department with powers to seize and dispose of a DWA in certain circumstances, without liability for compensation.

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Paragraph (1) provides powers to any person authorised by the Department under the provisions of paragraphs (4) or (7) of Article 5 to seize a DWA where he believes the DWA is being kept without a licence or the conditions of an existing licence are not being complied with.

Paragraphs (2) & (3) provide a right of appeal for a keeper, or a licence-holder as the case may be, whose DWA has been seized. Such an appeal must be made to a court of summary jurisdiction within 21 days from the date of seizure.

Paragraph (4) provides the Department with powers for dealing with a seized DWA, which can be retained, destroyed or otherwise disposed of, subject to the restrictions provided for by paragraphs (8) (9) and (11).

Paragraphs (5) and (6) empower the Department to designate and pay a suitable person to keep any seized DWA on its behalf for an agreed period.

Paragraph (7) exempts the designated person or body from the requirement to obtain a licence during the agreed retention period.

Paragraph (8) prevents the Department from acting to destroy or dispose of a DWA it has seized until after 21 days from the date of seizure or until the outcome of any appeal has been determined.

Paragraph (9) requires any act of destruction of a DWA seized by the Department to be carried out by or under the supervision of a veterinary surgeon, in order to ensure the humane treatment of the DWA. It is intended that destruction will normally only be considered after all other alternatives have been fully explored.

Paragraph (10) provides exemption from the provisions of paragraphs (8) and (9) where action is required to prevent the animal causing serious danger to the public.

Paragraph (11) prevents the Department from selling or otherwise disposing of a seized DWA for animal experimentation purposes.

Paragraph (12) provides for the clear assignment of ownership where an animal is disposed of by the Department under paragraph (4).

Paragraph (13) exempts the Department from any liability to pay compensation to any person in the exercise of its powers under this Article and without prejudice to paragraphs (12) and (13) of Article 5.

Paragraph (14) enables the Department to recover its costs incurred in exercising its powers under this Article as a civil debt against the keeper of the DWA or the licence holder, as appropriate.

Paragraph (15) makes it an offence for any person to deliberately obstruct any person authorised by the Department in the exercise of the power of seizure.

Article 7: Exemptions

This Article provides for the following types of establishment in which DWAs may be kept to be exempt from the requirement to obtain a licence:

zoos which are licensed under the Welfare of Animals Act (NI) 1972;

pet shops which are licensed under the Welfare of Animals Act (NI) 1972;

circuses; and

scientific establishments for performing animal experiments, which are regulated under the Animals (Scientific Procedures) Act 1986.

Paragraph (3) gives the Department power to make subordinate legislation to exempt certain species of DWA from the requirement to obtain a licence but individual animals of that species will be exempt only where it is a 'farmed' animal.

The thrust of the legislation is to regulate the keeping of DWAs kept by private individuals as pets, which is regarded as the main area of concern in terms of a potential threat to public safety that is presently unregulated.

Article 8: Restriction on Transferring Ownership of Dangerous Wild Animals

This article makes it an offence for a DWA owner to give or sell his animal to another person unless that person can produce a licence issued by the Department authorising him to keep the DWA in question. The offence does not apply where a DWA is given or sold to a person who proposes to keep it in any of the exempted places or premises specified in Article 7(1) or to any DWA surrendered to the Department as provided for in Article 9(10).

Article 9: Protection of Existing Keepers

Paragraphs (1) to (3) make transitional arrangements for any person in possession of a DWA at the date when Article 3(1) comes into operation. Provided they are not disqualified under the provisions of the Order, such persons will be able to keep their DWA for a period of 90 days without a licence, while they make suitable arrangements to meet the new licensing requirements or make alternative arrangements for the keeping of their DWA. Their DWA may be held for a period longer than 90 days i.e. until 7 days after a decision is made by the Department to grant or refuse a licence, or until the outcome of any appeal is determined, provided an application for a licence was made within the 90 day period of transition.

Paragraphs (4) and (5) make provision for persons in possession of a DWA to surrender them to the Department at premises designated by it during the transitional period i.e. the period between Article 9 coming into operation and when it first becomes unlawful to hold an animal without a licence, as outlined above.

Paragraph (6) enables the Department to retain, destroy or otherwise dispose of any DWA surrendered to it.

Paragraphs (7) to (10) empower the Department to designate and pay a suitable person to keep any surrendered DWA on its behalf for an agreed period without the need for that person to obtain a licence.

Paragraph (11) prohibits the Department from destroying any surrendered DWA unless the destruction is carried out by or under the supervision of a veterinary surgeon.

Paragraph (12) provides exemption from paragraph (11) with regard to any action that has to be taken to prevent a surrendered DWA from presenting a serious and immediate danger to public safety.

Paragraph (13) prohibits the Department from disposing of any surrendered DWA for animal experimentation purposes.

Paragraph (14) confers legal ownership of a surrendered DWA to any person to whom the Department sells or gives it.

Paragraph (15) exempts the Department from any liability to pay compensation to any person in respect of any animal surrendered to it under this Article.

Article 10: Penalties

This Article defines the level of penalty that can be conferred upon any person found guilty of an offence under the Order. It also provides for the cancellation of an existing licence or the disqualification of any person from keeping a DWA for as long as the Court decides, because of a conviction under the Order or another offence under relevant legislation concerning the welfare of animals.

Paragraph (1) determines that any person convicted of an offence under this Order will be liable to a fine not exceeding level 5 on the standard scale, which is currently £5,000.

Paragraph (2) empowers a Court of Summary Jurisdiction to cancel an existing licence, or to disqualify any person from keeping a DWA for any period it decides, where that person has been found guilty of an offence under the provisions of this legislation, or other specified legislation.

Paragraph (3) provides for the suspension of any order made by a Court of Summary Jurisdiction made under the provisions of paragraph (2), pending any appeal.

Article 11: Power of Department to Modify the Schedule

This Article empowers the Department to alter the scope of the legislation by modifying the list of animals contained in the Schedule to the Order. Modifications will require the enactment of subordinate legislation.

Article 12: Orders

This Article makes provision that all subordinate legislation made under the provisions of the Order will be subject to negative resolution, except for an Order under Article 1.

Commencement

19. The introductory provisions are to come into operation on the expiration of 7 days from the day on which the Order is made. The substantive provisions will be brought into operation on a day or days to be appointed by a commencement order.