

EXPLANATORY MEMORANDUM TO
THE DANGEROUS WILD ANIMALS ACT 1976 (MODIFICATION) (No.2)
ORDER 2007

2007 No. 2465

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The scope of the Dangerous Wild Animals Act 1976 (“the Act”) is being amended by this Order, by substitution of the Act’s Schedule, so as both to include animals not currently listed in the Schedule and also to remove certain animals that are currently listed but which are no longer considered to present a genuine threat to the public. Such amendments to the Schedule were agreed upon following consideration by a selected group of animal experts and public consultation. A list of the species to be added or removed can be found in Paragraphs 7.9 and 7.10 below.

3. **Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments**

3.1 The present Order replaces one made earlier this year (S.I. 2007/1437), before that earlier Order’s coming into force. The reasons for this are: first, because it was wished to amend certain items in the Schedule to be substituted; second, because the absence of any territorial limitation in S.I. 2007/1437 meant that it probably extended also to Scotland (the Act extends to Great Britain), whereas the intention was to substitute the Schedule to the Act only in respect of England and Wales.

4. **Legislative Background**

4.1 Following an independent review of the Act it was decided to replace the Act’s current Schedule listing dangerous wild animals with a revised list (and also to develop deregulatory proposals to revise the Act itself by means of a Legislative Reform Order: this is not part of the present Order).

4.2 This Order substitutes the Schedule to the Act which specifies the kinds of animals to which the provisions of the Act apply. The changes effected by this Order represent the outcome of a further review of the Schedule to the Act as last substituted by S.I.1984/1111 and limit the species specified to those that may present a genuine threat to the public.

5. Territorial Extent and Application

5.1 The Act applies in England, Wales and Scotland but the issues with which it deals have been devolved in Scotland. Accordingly, the Schedule substituted by this instrument will apply in respect of England and Wales only.

6. European Convention on Human Rights

6.1 The Minister of State for the Department for the Environment, Food and Rural Affairs, Mr Phil Woolas, has made the following statement regarding Human Rights:

6.2 ‘In my view the provisions of The Dangerous Wild Animals Act 1976 (Modification) (No.2) Order 2007 are compatible with the Convention rights.’

7. Policy background

7.1 The Dangerous Wild Animals Act 1976 (“the Act”) regulates the keeping of dangerous wild animals. It aims to ensure that where private individuals keep such animals they do so in circumstances which create no risk to the public and safeguard the welfare of the animals. This is done by means of a local authority licensing regime.

7.2 A Schedule to the Act specifies those “dangerous wild animals” regulated by the Act and for which licences are required should people wish to keep them. The Act does not apply to any dangerous wild animal kept in a zoo; circus; pet shop; or registered scientific establishment as these premises are registered under their own specific legislation.

7.3 A review of the Act highlighted that it was in need of updating and revision, it was found to be poorly enforced and there was believed to be wide-spread non-compliance. A number of the species listed in the 1980s were considered to be no more dangerous than domestic cats or dogs and this had further undermined the Act’s credibility.

7.4 A key stage was the Department taking the advice of a selected group of experts in formulating proposals on which species should be removed or added to the current Schedule. The factors that the experts took into account were the likelihood and capacity of the animal producing serious injury. They looked particularly at:

- the animal’s armoury – its tools and its size;
- the animal’s ferocity – its temperament and inclination to use its armoury;
- the harm the animal could do to a child (we believe a threshold of serious injury to a child is consistent with the original intentions of the Act and is a credible threshold);
- the animal’s likely behaviour when unrestrained or cornered outside of the keeper’s premises;
- recorded incident of deaths or serious injury;

- what legislation already exists for regulating the acquisition or keeping of animals.

7.5 The focus was on the protection of the general public in the event of escapes, rather than the owner. In line with past practice and the intention of the Act, the experts excluded from consideration the potential threat of disease transmitted from animals to humans as not every animal would carry disease, and some animals might carry a disease that non-listed animals could carry. There was also no evidence that uncommonly kept animals pose a significant risk of disease to humans compared to common pets. Other legislative regimes and advisory mechanisms are in place to cover animal disease.

7.6 The panel of experts were also mindful that the existing Schedule contained animals considered no more dangerous than common domestic pets, such as dogs or cats and animals that fell into that category were recommended to be removed. Some might view de-listings as weakening the welfare protection given to these animals. However, animal welfare is not a listing criterion and animal welfare legislation should be the main vehicle for ensuring proper welfare. The 1976 Act is intended as a public safety measure and legal advice has confirmed that, if species were listed for reasons other than their dangerousness, then there would be a high risk of a successful legal challenge to their being listed.

7.7 The Department went out to public consultation, setting out its options for improving the effectiveness of the Act. Amending the legislation to update the list of controlled species formed only a part of the Government's preferred option (*"to amend the legislation, to update the list of controlled species and to improve enforcement, and issue revised guidance to local authorities on the Act's application"*). All of the responses to the consultation (107 in total made up: 36 from local authorities; 37 from organisations and 34 from individuals) favoured the Government's preferred option, but almost all made further suggestions for changes to the original proposals or put forward new proposals. Some of the public consultation responses recommended amendments (both additions and deletions) to the list of controlled species but few suggestions were backed up with new evidence in support of them. Only two responses argued there should be no species removed from the list.

7.8 Ministers agreed to the revision of the Act's Schedule, to limit its content to those species which presented a genuine threat to the public, and that those changes should be delayed to come into force alongside or after the Animal Welfare Act came into force (because earlier de-listing of species might mean reduced welfare protection for them).

7.9 This Order adds the following animals to the Schedule: the Argentine black-headed snake, the Peruvian racer (snake), the South American green racer (snake), the Amazon false viper, the Middle eastern thin-tailed scorpion and the Dingo.

7.10 The following animals are no longer listed in the Schedule and so the provisions of the Act no longer apply to them: certain smaller primates

(Woolly lemurs, Tamarins, Night (or owl) monkeys, Titis and Squirrel monkeys), Sloths, the North American porcupine, the Capybara, Crested porcupines, Cacomistles, Racoons, Coatis, Olingoes, the Little coatimundi, Kinkajou, Binturong, certain types of cat (the wild cat, the pallas cat, the little spotted cat, the Geoffroy's cat, the kodkod, the bay cat, the sand cat, the black-footed cat, the rusty-spotted cat; cat hybrids descended exclusively from such excepted species; cat hybrids having a domestic cat as one parent and a first generation hybrid of a domestic cat and a non-excepted cat as the other parent, and cats which are descended exclusively from such excepted hybrids or from such excepted hybrids and a domestic cat), Guanaco, Vicugna, Emus, Sand snakes, the Mangrove snake and the Brazilian wolf spider.

8. Impact

8.1 A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

9. Contact

9.1 Dave Wootton, Defra, Room 1/10 Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB. Tel: 0117 372 8686 or e-mail: dave.wootton@defra.gsi.gov.uk can answer any queries regarding the instrument.