

Appendix 9

Outstanding Issues to be Resolved

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Outstanding Issues to be Considered or Resolved

Throughout the development of this Beaver Management Strategy Framework (BMSF), the Working Group has identified several legal queries that will need to be considered as part of its implementation. These are summarised here for information.

The Environment Agency are considering regulations that might impact on management of beavers to help inform the implementation of the BMSF. These include:

- Salmon and Freshwater Fisheries Act, 1975;
- Eel Regulations 2009;
- Water Resources Act 1991;
- Land Drainage Act 1991;
- Flood and Water Management Act 2010;
- Environmental Permitting Regulations 2016;
- Water Framework Directive Regulations;
- Habitats and Species Regulations;
- Wildlife and Countryside Act, 1981;
- EIA and SEA requirements.

For example:

1991 Land Drainage Act.

Section 25 - Powers to require works for maintaining flow of watercourse.

(1) where any ordinary watercourse is in such a condition that the proper flow of water is impeded, then... the drainage board concerned may, by notice served on a person falling within subsection (3) below, require that person to remedy that condition.

Land drainage for agriculture has the potential to contribute to flood risks to communities living in floodplains downstream. Specific legal clauses in this Act have the potential to conflict with the philosophy of Natural Flood Management (and Working with Natural Processes) that seeks to enable greater capacity for water storage in headwater streams, and on adjacent land, and reduce the speed at which it flows downstream. Beaver dams or other natural debris dams in headwater streams can play a crucial role in reducing flood risk but could fall foul of this Act and clarity needs to be sought on its implications.



1947 Agriculture Act.

Section 98 - *Prevention of damage by Pests*

(1) If it appears to the Minister that it is expedient so to do for the purpose of preventing damage to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or any works on land, he may by notice in writing served on any person having the right so to do require that person to take, within such time as may be specified in the notice, such steps (including such steps, if any, as may be so specified) as may be necessary for the killing, taking or destruction on land so specified of such animals or birds to which this section applies as may be so specified or the eggs of such birds.

(4) 'The animals to which this section applies are rabbits, hares and other rodents, deer, foxes and moles ...'

If beavers are not otherwise protected by law, this section has the potential to apply to beavers as 'other rodents.'

Clarity on the future legal status of beavers is therefore required.

1981 Wildlife and Countryside Act

Section 14P – definitions

The Wildlife and Countryside Act is a complex piece of legislation and will have relevance to the delivery of the BMSF.

It would be helpful to clarify the situation with regards to beavers and how the species is defined, in law. It is clear from the historical evidence that beavers were found in Britain from at least the end of the last ice age, until they were hunted to extinction approximately 400 years ago. Using scientific and English dictionary definitions, this means that beavers are a native and indigenous species to England.

In preparing this document, correspondence with Scottish Natural Heritage has highlighted a specific interpretation that SNH employs to describe terminology associated with native species and their range:

We know that beaver were present in (parts of) Scotland in the past and became extinct from here. This means that the species was found here naturally once (i.e. that it is indigenous to (parts of) Scotland) and so its 'natural range' includes (parts of) Scotland.

The Act goes on to define what is meant by 'native range' in Section 14P as the locality to which the animal is indigenous. This means that once an animal becomes extinct in a locality and it can't re-colonise it naturally, that locality is now outwith its 'native range'.



So, to summarise, beavers in Scotland may be found within their natural range but will always be outwith their native range (& so will always be a 'former native' species in Scotland) and so a licence will always be required for their release back into the wild here.

Karen Taylor, Project Manager, Beavers, SNH (by email 14th November 2018)

Methods for lethal control

Methods deemed acceptable for lethal control are outlined in the Eurasian Beaver Handbook (*Campbell-Palmer et al. 2015*). To ensure the highest standards of welfare are maintained clarification will be necessary regarding the acceptable methods and periods for lethal control and the calibre of firearms and ammunition to be used.

Compensation

The Working Group has discussed in detail whether compensation should be made available for landowners who are directly impacted by beaver activities. Such support has been adopted and proved successful in minimising conflict in Germany and the Czech Republic. The total cost of compensation would be limited if the proposed management hierarchy is followed and a minimum claim level is set. Its use would also be restricted if a new and popular Environmental Land Management Scheme is developed which focusses on making space for water on farmland.

The use of compensatory payments would in the short-term facilitate wider acceptance of beaver activities and the total cost is likely to represent a small fraction of the public goods society would benefit from by the presence of beavers.

By establishing beavers as a wild species where compensation would be offered for losses incurred could set a significant precedent. The issue of compensation is fraught with legal complexities and should be given careful consideration by relevant competent authorities.

Farm Restructuring

Beavers have the capacity in rare circumstances to cause functional separation of field parcels within the same farm holding. This may render areas of land within the holding inaccessible or require a change in farming regime. The Steering Group would like to highlight these risks and suggest consideration needs to be given nationally to incentives for farm restructuring to enable land to be exchanged and consolidated with neighbouring holdings to ensure they remain productive and sympathetically managed. Tax relief for consolidation of land through land purchase or exchange is offered for other reasons in EU countries e.g Land Restructuring Tax Relief in the Republic of Ireland.



Potential Liabilities

In the UK, in common with the vast majority of countries in the world, it remains common law that all wild animals are considered *res nullius* (namely things which have no owner). It is often considered logical therefore that no-one can be held responsible for impacts caused by wildlife as the animals have now owner or keeper.

The Working Group recommends that advice is secured regarding whether there are any responsibilities for owner / occupiers that have beaver activity within their property, or land within their control. This is especially relevant if there are impacts that straddle boundaries and where consensus over management is not possible.

