

A Review of the Operation of Species Legislation in Great Britain (1999)

Discontinued

King, M., Hepburn, I. and Gubbay, S.

The following unpublished report was commissioned by the Joint Nature Conservation Committee and Wildlife and Countryside Link and written by Miles King, Ian Hepburn and Susan Gubbay. The views expressed in this unpublished report are those of the organisations and individuals consulted, and of the contractors. They do not necessarily reflect the views of the commissioning organisations.

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Download Appendices:

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- Download [Appendix 2](#) (PDF, 7 kb) List of organisations and individuals contacted and their involvement.
- Download [Appendix 3](#) (PDF, 1.82 mb) Table of Questionnaire responses. (This excel file has been divided into single sheets for easy download)
- Download [Appendix 4](#) (PDF, 77 kb) Complete list of issues and proposals.
- Download [Appendix 5](#) (PDF, 72 kb) List of Species on Schedules 5 and 8 and Species defined as Priority by the UK Biodiversity Group.
- Download [Appendix 6](#) (PDF, 75 kb) Case studies of individual species, groups of species and comparisons with other countries.
- Download [Appendix 7](#)(PDF, 16 kb) Data on Enforcement Proceedings



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APPENDIX 7

Information gathered on enforcement proceedings

Apart from birds, the best evidence for effective enforcement of the Act through criminal proceedings against alleged offenders comes from cases brought for bats. The 12 recorded cases brought during the period 1985-1998 are detailed in Table 1 below; see Appendix 5 for the case study of bats with an analysis of these cases.

Table 1: Bat prosecutions under the Wildlife & Countryside Act 1981

Date	Offence/charge	Prosecutor/result	Penalty
1.1985	Spraying poisonous substances	North Yorkshire Police/ guilty	£1,000 fine +£350
7.1985	Spraying poisonous substances	Dyfed/Powys Police/ guilty	£50 fine
8.1985	Spraying poisonous substances	NCC/ guilty	£1,000 fine +£500
2.1986	Spraying poisonous substances	North Yorkshire Police/ guilty*	£500 fine +£200
2.1986	Killing bats (130) by Lindane spray	Procurator Fiscal/ guilty	£5 fine
5.1988	Damage to bat roost	NCC/ no jurisdiction	
?1988	Illegal possession of a dead bat	Yorkshire Police/ guilty	£30 fine
11.1989	Disturbance to bat roost	NCC/ guilty	£1,200 fine +£933
10.1990	Illegal possession of a dead bat	RSPCA/ guilty	£1,200 fine
7.1992	Damage to bat roost & disturbing bats	NCC/ guilty	£1,500 fine
?1994	Illegal possession of a bat	Nottinghamshire Police/ guilty	£100 fine
5.1998	Setting traps in position (1981 W&C Act, Section 11(2))	Hampshire Police/ guilty	6 months conditional discharge +£49

* lost on appeal

Source: based on information in ‘Bats and the law’ by the RSPB and Bat Conservation Trust (RSPB: September 1998)

There have been no enforcement proceedings brought under Section 9 for offences committed involving any marine species, nor have any cases failed to reach court.

There have been no enforcement proceedings brought under Section 13(2) for offences committed involving plants listed on Schedule 8 of the Wildlife and Countryside Act. There have been no cases involving plants listed on Schedule 8 that the contractors are aware of which failed to get to court or were terminated prematurely. One SNCO Conservation Officer stated that prosecution over an incident involving destruction of a schedule 8 plant had never been considered since there were no precedents to draw on. There have been a small number of cases brought under Section 13(1) involving the taking of wild plants without permission, including most recently the removal of moss from a woodland in Derbyshire in 1994. The moss-gatherer was fined £20 for taking 26 full bin liners of moss. More recently cases dealing with the illegal removal of bluebells *Hyacinthoides non-scripta* from woodland in East Anglia were brought under the Theft Act rather than the WCA and there may be some duplication between these two Acts.

There have been two successful prosecutions in England under Section 9(5)(a) of the Wildlife and Countryside Act 1981. The first case brought to court in England revolved around the incidental discovery of a large collection of Lepidoptera during a raid on a suspected egg-collector by the RSPB investigation team. The collection included specimens of the large blue *Maculinea arion* a species fully protected on

Schedule 5 since 1981. The investigators became suspicious that these might have been recently collected, despite the presence of supposedly old data labels on the specimens, when a collection of Ordnance Survey maps was discovered marked with locations of threatened butterfly colonies. The collector admitted that he had falsified the data labels and had actually collected the butterflies in Sweden. The RSPB and Metropolitan Police charged the collector with possession, but unfortunately the case was thrown out on a technicality, when it was brought in the wrong court.

Following this case, an RSPB investigator gave a presentation at the Police Wildlife Liaison Officers Conference in 1993. Shortly thereafter a police officer from Leicester, who had been present at the conference, arrested two people at Leicester Entomological Fair and on 2nd November 1994 charged them with offering for sale Chequered skipper *Carterocephalus palaemon* specimens. The dealer was fined £490 on conviction, while the other was given a conditional discharge.

In 1996 the same man who had previously escaped conviction for possession of large blue *Maculinea arion* was convicted on the 5th November 1996 at Salisbury magistrates, of offering for sale 13 High Brown Fritillary *Argynnis adippe* specimens; he was fined £150. He had already sold two to a collector who was very upset when he found out that they were wild collected. The man was discovered by a policeman who spotted an advert in a local free newspaper. The man had a DoE licence to sell 10 specimens collected before the legislation came into force.

One other case under Section 9 of the Wildlife and Countryside Act failed to reach court due to a technical error. This involved the freshwater pearl-mussel *Margaritifera margaritifera* (see case studies) which has recently been afforded full protection under Section 9. David Phillips, invertebrate specialist with SNH thought there were very good reasons for providing this full protection since the species is protected in European law and there is an active threat from collecting. It had been very difficult to prove killing and injuring prior to the change in legal status.

“Full protection means it is now an offence to have any part of a specimen - possession is illegal. Just before the announcement of the QQR the police [in Scotland] had arrested a collector suspecting her of killing and injuring the mussels while searching for pearls, but had mistakenly charged the person with taking and possessing, which had not come into force at the time of the arrest - she should have been prosecuted for killing and injuring. The logic for full protection is that it allows prosecution of anyone possessing any part of the mussel.”

The above cases strongly suggest that once one prosecution has been initiated for a given section of Part I, even if it fails, a precedent is created. Although this is not a legal precedent it does encourage further action and demonstrates to the Police and Crown Prosecution Service that it is possible to enforce the legislation for species other than birds.