

# **Review of Part 1 of the Wildlife and Countryside Act Response to the consultation document by Wildlife and Countryside Link**

## **1. Introduction**

Wildlife and Countryside Link (Link) has been campaigning to improve the present law designed to protect threatened species since 1997, and is grateful for the opportunity to comment on proposals to review Part 1 of the Wildlife and Countryside Act 1981 (the WCA).

This response is supported by the following Link members:

Bat Conservation Trust  
Butterfly Conservation  
Buglife – The Invertebrate Conservation Trust  
Herpetological Conservation Trust  
National Federation of Badger Groups  
Plantlife International  
Royal Society for Protection of Birds  
The Wildlife Trusts  
Zoological Society of London

Link recognises that Defra proposes to take forward certain amendments to the WCA, along with other measures relating to biodiversity conservation, through the opportunity provided by the NERC Bill. This response highlights issues that Link considers to be key priorities for delivery through the NERC Bill as well as identifying issues we would like to see taken forward in the medium term through future legislative opportunities.

We note that this review does not consider specific measures to improve the protection of marine species. Link is calling for improved species protection measures in the marine environment, including the extension of domestic wildlife law throughout UK waters (to 200 nautical miles) and provisions to ensure proper enforcement at sea. We await with interest the Government's response to the Review of Marine Nature Conservation, which recognised the need for a complete overhaul of marine species protection, and will continue to advocate these measures in the context of the Government's marine bill. We note, however, that for the time being the WCA remains the key piece of conservation legislation relating to nationally important marine species.

## **2. Measures to be taken forward through the NERC Bill outside of the context of this review**

### **Extension of application of Section 74 Duty (Biodiversity Duty)**

Link strongly supports the proposal in the Policy Statement accompanying the draft NERC Bill regarding the extension of the biodiversity duty to cover all public bodies. We believe that the wording and application of the duty should be consistent with those provided by the Nature Conservation (Scotland) Act 2004:

#### ***1 Duty to further the conservation of biodiversity***

*(1) It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.*

(2) In complying with the duty imposed by subsection (1) a body or office-holder must have regard to—

(a) any strategy designated under section 2(1), and

(b) the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or any United Nations Convention replacing that Convention).

We consider it essential that local authorities are subject to this duty, and would be able to provide numerous examples of the current system failing to conserve BAP priority species and habitats.

### **SSSI legislation**

We also support the improvements to the SSSI legislation outlined in the Policy Statement.

### **3. Part 1 amendments to be taken forward through the NERC Bill**

We are supportive of all of the measures proposed for inclusion in the NERC Bill suggested in the Policy Statement and also in the letter to consultees dated 18 February 2005, namely:

- An offence of being in possession of unapproved pesticides;
- An offence of importing and selling certain non-native species to be listed on a new Part III of Schedule 9 by means of an Order
- A power for the Secretary of State to issue guidance on non-native plants and animals;
- Clarification of the definition of “wild plant”; and
- Application of the provisions of Part I of the 1981 Act to the Crown.

We have noted in this response further measures we would like to see taken forward through the NERC Bill if possible.

### **4. Miscellaneous issues**

#### **Crown immunity**

Link agrees with Defra that it is important that the Crown is seen to take a lead in protecting the environment, and that there is consistency between the European Directives and domestic legislation. Therefore, as noted above, we welcome **Proposal R**, to amend the WCA so that its provisions apply to the Crown.

#### **Consolidation of the 1981 Act and its subsequent amendments**

We support the proposal to consolidate the WCA ‘at an appropriate juncture’ (**Proposal S**). However, we would hope that a consolidation exercise would not be limited to the various amendments to the WCA, but would be seen as an opportunity to renew our approach to species protection. A consolidating Act should incorporate amendments to the WCA and the provisions of the Habitats Regulations, and should also introduce basic legal measures for the protection and conservation of BAP species and habitats. Many BAP species and habitats have protection needs in addition or different to those addressed by the WCA, and such a consolidating Act would require development of new schedules. This would allow a single piece of legislation to protect species in accordance with all of their needs, and would also present the opportunity to introduce legal backing to a species recovery framework.

In the paper *Species Measures – A Way Forward* (2000) Link identified necessary components of a new approach to furthering the conservation of priority species, included in Annex I to this response.

Notwithstanding the need for substantial updating of the legislation (as described above) in the medium term, we note the importance of guidance to those responsible for enforcing species protection legislation. We urge Defra to bring forward consolidated guidance on species protection legislation (including the provisions of the WCA and the Habitats Regulations) as soon as possible.

## 5. Consultation proposals

### General structure of Part I of the Act and the use of Schedules

We support **Proposal A** - to retain the use of Schedules to list the species to which individual provisions apply, and to introduce a requirement for all the Schedules to be reviewed on a regular basis. We suggest there should be an additional requirement for Government to respond to the recommendations made by JNCC within a specified period.

### Recklessness

We welcome **Proposal D** – to pursue discussions with Home Office colleagues over addition of the term ‘recklessly’ to all offences relating to species on Schedules 1, 5 and 8. We hope that these discussions will result in the proposal being taken forward in the near future.

However we caution that this provision does not suit the conservation needs of all species currently or potentially listed on the Schedules equally, and indeed there may be some unreasonable impacts on human activities. We urge that the ability to apply this provision to different parts of the Schedules be made abundantly clear.

Some species need to be protected from reckless killing, taking and injuring. For other species this protection may inhibit the very research and survey that has to underpin conservation efforts. While biology (particularly reproductive rate) does have a clear role in determining which species are not threatened by reckless offences, there is no hard and fast rule. It is therefore preferable if there is the option of protecting species against intentional offences **or/and** reckless offences. Species can therefore receive the protection that best befits them. Invertebrate Link, a coalition which includes some Wildlife and Countryside Link members, has developed three possible means of addressing this issue, which are included in Annex II of to this document.

### Defences

We recognise that Defra does not wish to introduce legislation to penalize genuinely unintentional damage to wildlife through otherwise lawful operations. However, while incidental damage may arguably be unintentional, it is not necessarily unpredictable or unavoidable. We believe that the legislation needs to be amended to ensure that this defence can only be used when all measures have been taken to ensure that an action will not cause damage to protected species, *where it can be reasonably expected*.

We therefore believe that **Proposal F** merits support, provided that Codes of Practice include assessment of predicted impacts, development of mitigation measures with the appropriate SNCO, ongoing monitoring of the operation’s impacts and the efficacy of mitigation measures, and the provision that further measures can be implemented to address any conservation threat identified as a result of such monitoring. We would be keen to assist in the development of codes of practice, and believe that statutory backing of codes should be seriously considered.

We are disappointed that this option is considered only in relation to section 4 of the Act, and not in relation to sections 10 and 13. We do not believe that the Habitats Directive, which

sections 10 and 13 implement, contains provisions which permit the killing, taking etc. of animals and plants, or the destruction of their habitats as the incidental result of otherwise lawful operations. We believe that operations should not be considered 'otherwise lawful' unless they comply with a Code of Practice containing the steps outlined above in relation to sections 10 and 13 as well as section 4.

### **Section 1: Killing, taking and keeping of wild birds**

We welcome **Proposal C** – the introduction of a new schedule of birds whose nests are to be protected on a year-round basis – and Link members look forward to assisting in the identification of species to be included within this new Schedule. We would like to see this proposal carried forward into the NERC Bill.

As we noted in our pre-consultation response, we do not believe the WCA adequately transposes Article 5d of the Birds Directive which prohibits deliberate disturbance “during the period of breeding and rearing” and would urge that the opportunity offered by the NERC Bill be used to extend Schedule 1 and s1(5) to include the protection of displaying birds from disturbance.

### **Section 9: Protection of certain wild animals**

We warmly welcome **Proposal H** – to extend the provisions of Section 9(2) and (5) to cover all Annex IV(a) animals.

However, we believe that to bring the WCA trade provisions more into line with the Habitats Directive, it is necessary to amend Section 16(4). The Directive does not allow for licensing of trade in these species (see below). Currently one can apply to Defra for a license to trade in illegally caught specimens and be granted one. A new clause in 16(4) should apply a duty to appropriate authorities to a) further the conservation of biological diversity in issuing licences, and b) refuse to grant licences for the sale of specimens that were not clearly taken legally.

In addition, to ensure that the provision proposed is watertight we recommend adopting the new definition of wild animal as set out elsewhere. Section 27 - Wild animal - needs to be redefined as follows to include any animal (other than a bird) which is or (before it was killed or taken) was living in the wild, “An animal shall be treated as wild if its mother was not legally in captivity when the egg was produced, or at the time of birth”.

Such an amendment is needed to prevent the sale of the offspring of illegally taken animals. The definition focuses on the mother for two reasons. Firstly, in many species the father is already dead prior to the production of the offspring, and therefore cannot be legally in captivity. Secondly this definition would allow the mating of captive females (e.g. moths) with wild males, as long as in doing this the male was not 'taken' or 'possessed'.

We do not support **Proposal I** – to pursue the option of removing European Protected Species from Schedule 5 to the WCA. The protection afforded to species through the Habitats Regulations differs (and is less strong) from that afforded by the WCA in more ways than that highlighted in the review – i.e. the current inability to apply custodial sentencing options. Link believes it is imperative that the WCA and Habitats Regulations are equivalent in their sentencing options. Unless and until this is addressed (e.g. through a consolidating/overarching piece of species protection legislation) we are opposed to the removal of European protected species from Schedule 5.

### **Section 11: Methods of killing or taking wild animals**

We support **Proposals K and L**.

We also support the intent of **Proposal M**, but believe this needs to be amended such that it would be an offence '*for any person who, while carrying out [inspection of a snare or trap], finds an animal caught by the snare or trap being inspected, fails to release or remove the animal, or to take immediate steps to secure the release or removal of the animal, whether alive or dead*'.

Such an amendment would be necessary to allow the continuation of certain conservation programmes. For example, on Merseyside grey squirrel trapping using live-catch mink traps is carried out by members of the public in their gardens, with the purpose of retaining the local red squirrel population. On finding a red squirrel or other non-target species, they release them immediately. However, grey squirrels must be killed – this is the purpose of the trapping, and their release is illegal under the WCA. Members of the public cannot be expected to do this – instead a local network of volunteers can be contacted to remove and dispose of any grey squirrels, which is done as expeditiously as possible. If the law were to be changed or interpreted to mean that the person whose garden the trap was in was required to deal with the grey squirrel immediately upon finding it, this would effectively mean that trapping would have to cease, which could be significantly (even fatally) damaging to red squirrel conservation on Merseyside.

### **Section 13: Protection of wild plants**

We strongly support **Proposal N**, to extend 13(2) to cover Annex IV(b) plants, in order to make it an offence to possess or sell European protected plant species illegally taken from the wild in EU member states.

We also support **Proposal O**, to extend the definition of wild plant and welcome the intention to take this forward through the NERC Bill.

### **Sections 17-21: Enforcement related issues**

Link disagrees with Defra's conclusion that it would be neither proportionate nor reasonable to introduce a power for police to enter land where they believe an offence is about to be committed. We believe that this provision, along with the provision of a power for a police officer to take any expert person with him or her when entering land, is necessary to deter and/or allow proper investigation and prosecution of wildlife criminals, and to bring the legislation covering England and Wales into line with that of Scotland.

The CRoW Act introduced a power of arrest for selected offences by amending the Police and Criminal Evidence Act. The Criminal Justice Act 2003 in Scotland created a power of arrest in Scotland for **all** offences under Part I. We believe that the power of arrest in England and Wales should similarly be extended to all offences under Part I. One means of achieving this would be for Defra and the Welsh Assembly Government to support the application of a proposal within Section 101(1) of the Serious Organised Crime and Police Bill to offences under the WCA.

## **6. Legislative proposals arising from the consultation on non-native species policy**

Link contributed to the review of non-native species policy, and continues to believe that a strategic legislative and policy framework is necessary to address non-native species. We look forward to continuing to work with Defra in developing this, but we recognise that this review provides a useful opportunity to consult on specific changes to the current legislation. We welcome the proposed use of the NERC Bill as a vehicle to implement a number of measures to help tackle the problems caused by non-native species:

- An offence of importing and selling certain non-native species to be listed on a new Part III of Schedule 9 by means of an Order; and
- A power for the Secretary of State to issue guidance on non-native plants and animals.

However, we believe that a number of the other proposals in this section should also be pursued through the NERC Bill:

- A duty on the Secretary of State to take action, or require action to be taken, to control, contain or eradicate potentially invasive or damaging non-native species to be listed on a new Part III to Schedule 9 (see discussion in relation to proposal W, below)
- In support of this duty, powers of compulsory access to facilitate the control, containment or eradication of non-native species, for protecting native biodiversity. These species to be listed on a new Part III of Schedule 9 (**Proposal X**)
- A prohibition on the translocation of native species outside their native range, unless approved and licensed by the Secretary of State (**Proposal AA**)
- A power to allow a court to impose a restoration order upon conviction of an offence under Section 14 (**Proposal Z**).

Detailed comments on these and other provisions proposed or discussed in this section of the Review are provided below.

We welcome **Proposal T**, and urge that Schedule 9 be reviewed by JNCC as soon as possible, given that the Schedule was last updated in 1992. We are also strongly in favour of the extension of Schedule 9 Part II to cover plants not currently established in the wild in the UK but which are considered to have a high risk of causing damage to native ecosystems.

We are also supportive of **Proposals U and V**. In relation to **Proposal V**, comments are requested on whether Schedule 9 Part II should be extended to cover plants not currently established in the wild in the UK but which are considered to have a high risk of causing damage to native ecosystems. We strongly support this extension, in view of the current lack of control over the introduction of non-native plants compared to animals, and the damage which has been caused by some species, e.g. *Crassula*.

In relation to **Proposal W**, the consultation document considers two alternative proposals:

- i) a duty upon the Secretary of State take action in relation to species listed on a new Part III of Schedule 9 containing identified "high impact" problem species; or*
- ii) a power to allow the Secretary of State to take action, or allow action to be taken, in relation to any Schedule 9 species.*

We **do not agree** with the conclusion in the consultation document in favour of option (ii). We believe that a **duty** on the Secretary of State is more likely to result in action to protect our native biodiversity. We note the concern expressed in the consultation document over the need for discretion over whether action should be taken, but we believe that discretion would be allowed by means of deciding on the species to be added to the new Part III to Schedule 9.

As stated above, we believe that this duty on the Secretary of State should be brought forward through the NERC Bill.

We support **Proposal X** - to introduce powers of compulsory access to protect native biodiversity, in respect of non-native species listed on a new Part III to Schedule 9 – but

would be very concerned about the extension of these powers to cover native species. The definition of 'native biodiversity' needs to extend to include the European territories of Member States, to cope with situations where an established UK non-native is threatening a native European species. The threat posed to the white-headed duck by the introduced ruddy duck is a case in point.

We do not believe that the consultation paper makes a sufficient case for powers of compulsory access being extended to native species. We support the Secretary of State requiring access to facilitate control of particular non-native species, as part of a government-endorsed control or eradication programme, and as a last resort should voluntary measures fail. Compulsion should only be necessary in a relatively few cases. We fail to see how the Secretary of State could justify intervening in a comparatively large number of cases involving the preservation of public health or air safety. We are concerned that decisions to enter land to control native species for these purposes may therefore be taken under delegation from the Secretary of State, based upon an inadequate examination of the risk posed, and lead to uncoordinated and unnecessary application of lethal control.

While **Proposal Y** seems sensible we would be cautious about the terms of the general licence – for example, rehabilitated individuals of non-native species should only be released in locations which already support established populations of those species, which are not subject to localised control programmes. We would further suggest that the species covered by the licence should be carefully considered, and that it should not automatically be applied to all non-natives.

#### **Penalties for section 14 offences**

We consider that the defence in **section 14 (3)** must be addressed, to ensure that the law can be used effectively to protect our native biodiversity against introductions of non-native species. We would support the development and statutory underpinning of codes of practice to this effect. We are in favour of extending the provisions to cover hybrids and species introduced into Europe.

We support the need for clarification of the terms 'non-native', 'wild' and 'release', to increase understanding and hence effectiveness of Section 14. While accepting that is not an easy task, we believe that some guiding principles are apparent.

Any definition of 'non-native' needs to cover all organisms whose presence is ultimately a direct consequence of human activity. We believe that this should encompass taxa at or below the species level, and include those organisms that are native to parts of the UK but that are or might be introduced by people into parts of the country where they do not occur naturally (e.g. hedgehogs on offshore islands). Organisms undergoing a range-change indirectly caused by human activity, via anthropogenic environmental change (e.g. climate change), would not be covered by this definition. Link believes that as a rule those plants defined as 'archaeophytes' (e.g. common poppy *Papaver rhoeas*) are part of the United Kingdom's cultural and biodiversity heritage, and as such, have a conservation status that is equivalent to that of native species.

Any definition of 'wild' should cover any location or area from which the unaided movement or dispersal of non-native organisms into other areas is possible. This would include arable fields, parks and gardens, but exclude secure greenhouses or areas where pinioned non-native wildfowl are kept outside or where animals are kept in cages. While a defence may be necessary to account for exceptional events (such as strong winds bringing a tree down onto a secure fence), there should be a requirement for containing mechanisms to be constructed and maintained to an appropriate standard.

A definition of 'release' appears more straightforward, and should cover deliberate or accidental human activities that facilitate the movement or dispersal of non-native organisms into the wild.

We support **Proposal Z** and, as noted above, would like to see this brought forward through the NERC Bill.

We do not consider the **Weeds Act** to be the best vehicle for tackling non-native invasive species. We believe use of Schedule 9 to be a better approach.

### **Importation, sale and keeping**

We believe that control of import of invasive non-natives is essential. Subject to detail we would support a ban on the import of selected Schedule 9 species through the EU CITES regulations. We are strongly in favour of granting increased powers to plant health inspectors to seize and destroy imported plants found to harbour non-native invasive animal and plant pest species.

We are supportive of **Proposal AA** - to introduce a prohibition on the translocation of native species outside their native range, except under the terms of a licence granted by the Secretary of State. We believe that there is a need to apply this more generally than to, e.g. offshore islands, as the consultation document suggests. We would note that the need for translocations of native species may be identified through the development of adaptive strategies for biodiversity conservation in the face of inevitable climate change. The proposed licensing arrangements would provide a sensible means of controlling and monitoring this.

We are disappointed that the consultation document does not address the issue of translocation of species *within* their native range, which can have adverse environmental impacts and which is currently not regulated. Problems have been observed with a number of species: red squirrels, dormice, water voles, butterflies, reptiles and amphibians in respect of the following issues: introduction of diseased or unfit animals or animals of unsuitable genetic stock; introduction of animals to areas where the habitat is unable to support them or to ecological niches that are already full; introduction to areas where rare species may be detrimentally affected or where the species being released may be wiped out by non-native predators, such as water vole elimination by mink.

Link believes that greater legal controls are needed on the release of native species into the wild through reintroductions and translocations. The controls should apply whether the species is of native wild origin, captive bred or non-UK origin. The law should state that any release should follow specific guidelines, for example the IUCN guidelines on reintroductions.

The law should be amended so that native species cannot be released into the wild without appropriate licensing (with appropriate defence allowing re-release of injured species following recovery). This may most usefully be done through additions to Sections 1, 9 and 13, controlling the release of priority species on Schedules 1, 5 and 8. The use of Section 14 and Schedule 9 (for example as used for controlling barn owl releases), is inappropriate in that the Schedule is inappropriately named and is not regulated by a SNCO. However, licensing for the translocation of native plants within their range is not a feasible option, given the number and range of organisations and individuals involved in wildflower meadow restoration for example. Link would support alternative mechanisms to licensing, which once in place would also start to address the conservation of native genetic integrity and would be happy to provide suggested alternatives on request.

Link also believes it would be appropriate to consider, through the current review, how to control the use of non-native genotypes of native species which might affect the genetic integrity of our plants and animals. Control of possession and sale of all species of bird, animal and plant protected through EC Directives should be included in the legislation both to facilitate the implementation of the Directives (see below) and to assist in controlling the potential establishment of non-native species/genotypes.

## **7. Further issues**

### **SNCO Advice**

Section 10(5) requires XX to seek the advice of the relevant SNCO. We believe that provisions are needed to require XX to 'have regard to' or 'consider' the advice received under this section, and to provide an explanation if the advice is not followed.

### **Review of Schedules 5 and 8**

We believe it would be appropriate to amend sections **22 and 24** of the WCA to enshrine the principles that Schedules 5 and 8 should be reviewed based on scientific criteria, that these criteria should be produced through an open consultation process, and that a similar consultation process should be undertaken as part of the Quinquennial review process.

### **Definition of 'structure'**

We believe that the term 'structure' as it appears in section 9(4) should be formally defined in section 27 so as to include features such as ponds, banks, nests, habitats, plants, trees and hedgerows in addition to man-made and animal-made structures.

## Annex I

### **A new approach to species recovery (from WCL statement 'Species Measures – A Way Forward', 2000)**

For priority species, we suggest a duty to care for/to further the conservation of priority species be placed upon landowners. This might operate by:

- sites being identified by English Nature (EN) or Countryside Council for Wales (CCW) in conjunction with accredited bodies;
- general management guidelines being developed by EN or CCW;
- the landowner being notified of the presence of priority species by DEFRA agri-environment officers, EN, CCW or local authorities;
- general management guidelines being adapted to specific sites and interpreted for the landowner/manager by DEFRA agri-environment officers, EN or CCW perhaps together with an offer of financial incentives if appropriate;
- monitoring of sites to be implemented by EN, CCW or DEFRA agri-environment officers with support from accredited bodies; and
- rights of access for identification and monitoring to be granted to EN, CCW or DEFRA agri-environment officers and accredited bodies.

## Annex II

### **Legislative options put forward by Invertebrate Link to address the needs of all species in relation to recklessness**

#### **Option 1**

Split 9(1) into two parts; either or both parts to be clearly applied to selected species on the schedules.

#### **Theory**

Some species need to be protected from reckless killing, taking and injuring. For other species this protection may inhibit the very research and survey that has to underpin conservation efforts. While biology (particularly reproductive rate) does have a clear role in determining which species are not threatened by reckless offences, there is no hard and fast rule. It is therefore preferable if there is the option of protecting species against intentional offences or/and reckless offences. Species can therefore receive the protection that best befits them.

Species can be protected from intentional and reckless killing, or either one of these, as appropriate

9(1) Subject to the provisions of this Part, if any person  
a) intentionally kills, injures or takes any wild animal included in Schedule 5,  
b) recklessly kills, injures or takes any wild animal included in Schedule 5,  
he shall be guilty of an offence.

#### **Pros**

- Animals requiring protection from reckless offences can be given the protection that they require.
- Animals whose populations may suffer if protected from reckless offences can be included on Schedule 5 under 'intentionally' only. Listing a species is facilitated if there is consensus within the conservation community. If a species needs protection

from intentional taking or killing, but the offence of reckless killing is likely to criminalise people studying or conserving the species (e.g. running a moth trap or cutting a reedbed), or result in them having to undertake a huge increase in the volume of licensing paperwork then there are likely to be conflicting opinions about the suitability of the species for listing. This potential conflict is avoided by this option as it is clear that it is possible to list a species yet permit reckless taking or killing.

### **Cons**

- More complexity in the Schedule 5 list may lead to reduced clarity unless the formatting and presentation of Schedule 5 is improved.

### **Option 2**

Make 9(1) a strict liability offence but provide additional exclusions in 10.

### **Theory**

All listed species will be protected from all actions resulting in killing, taking and injuring. Section 10 can then be amended to ensure that activities not damaging the populations of species are excluded.

9(1) Subject to the provisions of this Part, if any person kills, injures or takes any wild animal included in Schedule 5, he shall be guilty of an offence.

10(3)(d) any act made unlawful by section 9(1) if he shows that the act was the incidental result of an action with a nature conservation objective and there was a reasonable excuse.

### **Pros**

- This removes the need to prove intent or recklessness, resulting in more cases where prosecution is feasible.
- Allows all species to be protected from reckless offences.
- Enables activities that are of conservation benefit to continue.

### **Cons**

- Redefining Section 10 to exclude certain activities may create unintended loopholes.
- May be viewed as unfair if as a result people are prosecuted for actions that result in killing, taking or injuring, when they had no prior knowledge of what the results of their actions would be. Unless 10(3)c is retained but caveated by a new 10(7) clause that reckless acts cannot rely for their defence on that clause 10(3)c.

### **Option 3**

Include the phrase 'reasonable excuse' in 9(1).

### **Theory**

Reckless killing, taking and injuring could be the result from activities essential either to nature conservation or a number of other standard activities. If 'essential' activities such as habitat management, invertebrate surveys or driving along roads at night in the vicinity of rare moths were to become the subject of prosecutions, this would neither be in the public interest, nor the interest of the species concerned. Including the phrase 'without reasonable excuse' would allow the CPS to decide whether particular cases should be dropped because the defendant would be found to have been behaving reasonably.

(1) Subject to the provisions of this Part, if any person intentionally or without reasonable excuse recklessly kills, injures or takes any wild animal included in Schedule 5, he shall be guilty of an offence.

**Pros**

- Allows all scheduled species to be protected from reckless offences.
- Enables activities to continue as long as there is a reasonable excuse for any resulting unintentional killing, taking or injuring of a protected species.

**Cons**

- The process of deciding if behaviour has been reasonable may result in some variation in interpretation, and an activity may be assessed as reasonable by one individual but unreasonable by another.