

Operational Policy

Dealing with amendment and renewal applications for
wildlife authorities

Prepared by: Conservation and Biodiversity Policy, Department of Environment and Science

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August 2020

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1. Purpose

Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment and Science. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

2. Background

From time to time holders of wildlife authorities request changes to their existing authorities. This occurs in a range of circumstances, for example, changing premises for an authorised activity, changing authority conditions, increasing the number or range of plants/animals to be taken/kept/used, and extensions of authority expiry dates.

Some of the requested changes are of a simple administrative nature, while others may represent a significant change in the possible impacts on the conservation of nature.

Amendments to wildlife authorities are regulated under the *Nature Conservation Act 1992* (the Nature Conservation Act), the *Nature Conservation (Animals) Regulation) 2020* (the Animals Regulation) and the *Nature Conservation (Plants) Regulation) 2020* (the Plants Regulation).

3. Policy intent

The intent of this policy is to clarify the circumstances under which the chief executive or authorised delegate may—

- a) make an amendment to an existing wildlife authority, or
- b) refuse an amendment to an existing wildlife authority.

This policy only considers amendments initiated by a wildlife authority holder and does not consider amendments that may be initiated and made by the chief executive, nor amendments to applications prior to a decision being made.

4. Policy position

4.1 Dealing with amendments that may be applied for

Section 265 of the Animals Regulation and s117 of the Plants Regulation provide that an application for amendment may be made by the wildlife authority holder, and that such applications must be—

- a) in writing; and
- b) accompanied by the prescribed fee for the amendment.

The authorised decision maker must consider and decide, on a case-by-case basis, whether to make or refuse an amendment application made by the wildlife authority holder, under section 268 of the Animals Regulation and s118 of the Plants Regulation.

In circumstances where a wildlife authority was issued for less than the maximum allowable term, it may be extended (by amendment) up to the maximum term for that authority type (as per sections 253-255 of the Animals Regulation and s115 of the Plants Regulation).

Any amendment made to an authority does not make a new authority, and therefore any amendment to an authority's term (or expiry date) must still be calculated from the original commencement date of the authority. When a wildlife authority reaches the end of its maximum term it expires, and the relevant activity can only lawfully continue if a new authority is issued.

Typically, the authorised decision maker would refuse an amendment application in the following circumstances:

- a) Where an amendment application includes a proposal to amend the term of the authority beyond the term paid for
- b) Where an authority has reached, or will imminently reach, its prescribed maximum term, and an amendment application includes a proposal to amend the term of the authority beyond the prescribed maximum term for that type of authority.

Note: If an authority is not yet near its prescribed maximum term the authorised decision maker may decide to amend the term up to the prescribed maximum term.

Although section 265 of the Animals Regulation and s117 of the Plants Regulation do not prevent the approval of a substantial amendment to a wildlife authority, the department's policy position is that generally the decision maker may decide to refuse an amendment application where the decision maker reasonably believes that an amendment would allow activities that are substantially different from the existing wildlife authority:

Where the proposed activities are substantially different, the department's policy position is that it is more appropriate to undertake a thorough assessment of the application, taking into account all legislative and policy considerations, as per the relevant assessment form and processes. The refusal of an amendment application due to a decision that activities would be substantially different, does not mean the activities themselves can't be approved, only that they are not appropriate to be approved via an amendment.

This approach prevents authority holders seeking relatively low risk initial authorities, and then progressively expanding or increasing risks through a series of amendments during the life of the authority, and ensures that all the major issues and risks associated with an activity can be considered holistically.

The only exception to this approach are in the case of "licence type amendments" under the Animals Regulation, which allow for the amendment of the type of licence from standard licence to specialised or advanced licence, or from a specialised licence to an advanced licence. In these cases the authority holder may significantly expand their scale of keep, and range of species they keep in line with the regulated licence conditions, provided they pay the relevant fees, and meet the other relevant requirements (e.g. age, experience). This is supported because standard, specialised and advanced licences all involve the keeping of captive bred animals, and have been designed to function along a continuum of scale and complexity.

Substantially different

Where the authorised decision maker is considering whether an amendment application would allow for activities that are *substantially different* to the existing authority, they may consider whether the type of activities, or the scale of activities would be increased or expanded from that which is currently authorised.

The following scenarios explain this concept:

Scenario 1

Where the authorised decision maker reasonably believes, based on supporting information, that both—

- (a) the type of activities, **and**
 - (b) the scale of activities,
- would be the same or highly similar to the current authority, the authorised decision maker may make the amendment.

Scenario 2

Where the authorised decision maker reasonably believes, based on supporting information, that either—

- (a) the type of activities, **or**
 - (b) the scale of activities,
- would increase or expand, the authorised decision maker may refuse the amendment application, give the authority holder an information notice as per section 269 of the Animals Regulation or s119 of the Plants Regulation and notify the holder that a new application may be made.

Following a decision, the wildlife authority holder should be notified as per section 5 below.

4.2 Dealing with amendments that must be applied for

Section 80 of the Animals Regulation and s64 of the Plants Regulation require the holder of a wildlife authority to apply for an amendment if any of the following details change—

- a) the holder's name (i.e. an official change of name);
- b) the holder's address on the authority (e.g. postal, residential or business);
- c) if the holder is a corporation, the person in charge of the authorised activity or, if the activity is carried out at the licensed premises for the authority, the person in charge of the premises; or
- d) the licensed premises for the authority, or the place where an animal is kept under the authority.

Under the same sections of both the Animals and Plants Regulations, the holder must before, or immediately after, the change happens:

- a) give the chief executive a notice stating the nature of the change; and
- b) apply to the chief executive for an amendment of the authority to reflect the change.

The authorised decision maker may then make or refuse the amendment application under s268 of the Animals Regulation or s118 of the Plants Regulation.

The department's policy position is that:

- a) For a proposed change of name and/or contact address— the amendment should be made.
- b) For a proposed change of location of activities— the proposed location should be considered by the authorised decision maker against the same criteria that would be applied as part of a new wildlife authority application.
- c) For a proposed new person in charge— the authorised decision maker should consider whether the wildlife authority holder is a suitable person to hold that type of permit using the same criteria that would be applied as part of a new wildlife authority application.

Following a decision, the wildlife authority holder should be notified as per section 5 below.

5. Notifying the wildlife authority holder

If the authorised decision maker decides to make the amendment applied for under s268 of the Animals Regulation or s118 of the Plants Regulation, the authorised decision maker is required to give the wildlife authority holder notice of the amendment under s269 of the Animals Regulation or s119 of the Plants Regulation. The wildlife authority holder should be notified of the decision as soon as practicable.

The Animals Regulation does not require the amendment to be noted on the wildlife authority. However, section 276 of the Animals Regulation and 125 of the Plants Regulation provide the authorised decision maker with the power to require that an authority be returned to the department for a note to be added.

If the authorised decision maker decides to refuse the amendment application, the wildlife authority holder must be provided an information notice about the decision as soon as practicable. The requirements of an information notice are outlined in Schedule 7 of the Animals Regulation and Schedule 5 of the Plants Regulation as follows:

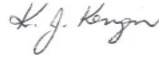
information notice, about a decision, means a notice stating the following—

- a) the decision;
- b) the reasons for the decision;
- c) that the person to whom the notice is given may ask for a review of the decision under this regulation;
- d) how, and the period within which, the review may be started;
- e) if the person may apply for a stay of the operation of the decision under the Act – how the person may apply for the stay;
- f) all rights of internal review under the Administration Regulation;

Approved By

Kirstin Kenyon

8.9.2020



Signature

Date

Executive Director, Wildlife and Threatened Species Operations
Department of Environment and Science

Human Rights Compatibility

The Department of Environment and Science is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this code of practice, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

