

**Decree of the Minister of Agriculture, Nature and Food Quality of
....., No WJZ/43530906, designating animal species that may be
kept (Decree on the list of pets and animals kept for hobby purposes)**

The Minister of Agriculture, Nature and Food Quality,

Having regard to Articles 2.2(1) and 10.1(1) of the Animals Act [Wet dieren];

Hereby decrees the following:

Article 1 Designation of animals

Animal species as referred to in Article 2.2(1) of the Animals Act are designated:

Species (English)	Species (Latin)
Woodland dormouse	Graphiurus murinus
Balochistan gerbil	Gerbillus nanus
Alpaca	Vicugna pacos
Pale gerbil	Gerbillus perpallidus
Brown rat	Rattus norvegicus
Polecat	Mustela putorius
Guinea pig	Cavia porcellus
Chinese striped hamster	Cricetulus barabensis/griseus/pseudogriseus
Chinese water deer	Hydropotes inermis
Pleasant gerbil	Gerbillus amoenus
Donkey	Equus asinus
Ferret	Mustela putorius furo
Domestic goat	Capra aegagrus hircus
Golden hamster	Mesocricetus auratus
Greater Egyptian gerbil	Gerbillus pyramidum
Harrington's gerbil	Taterillus harringtoni
Dog	Canis lupus familiaris
House cat	Felis silvestris catus
House mouse	Mus musculus
Bactrian camel	Camelus bactrianus
Domestic rabbit	Oryctolagus cuniculus domesticus
Llama	Lama glama
Mongolian gerbil	Meriones unguiculatus
Algerian gerbil	Gerbillus garamantis
Horse	Equus caballus
Cattle	Bos taurus
Sheep	Ovis aries
Domestic pig	Sus scrofa domesticus
Water buffalo	Bubalus arnee bubalis

Species (English)	Species (Latin)
Asian garden dormouse	Eliomys melanurus

Article 2 General exemptions for keeping animals of non-designated species

The following keepers shall be exempted from the prohibition referred to in Article 2.2(1) of the Animals Act:

- a. A person who is keeping European fallow deer (*Dama dama*) and Central European red deer (*Cervus elaphus*).
- b. Veterinarians in the exercise of their practice for the purpose of carrying out a veterinary act.
- c. Operators of a zoo with a licence as referred to in Article 4.2(1) of the Animal Keepers Decree [Besluit houders van dieren].
- d. Shelters where, on the basis of an environmental permit for flora and fauna activity as referred to in Article 5.1(2), preamble and point g of the Environment and Planning Act [Omgevingswet], in conjunction with Articles 11.46, 11.47 and 11.54 of the Environmental Activities Decree [Besluit activiteiten leefomgeving], or a tailor-made provision as referred to in Article 11.31 in conjunction with Articles 11.93, 11.96 and 11.101 of the Environmental Activities Decree, it is permitted to keep animals of species referred to in those articles and complying with the Annex to the Policy Rule on Quality and Shelter of Animal Species [Beleidsregel kwaliteit en opvang diersoorten].
- e. Facilities where animals are kept on behalf of the Minister of Agriculture, Nature and Food Quality and which comply with the Annex to the Policy Rule on Quality and Shelter of Animal Species.
- f. Institutions with a licence as referred to in Articles 2 and 11 of the Animal Testing Act [Wet op de dierproeven].
- g. A person keeping animals for the purpose of transporting those animals to and from a Dutch sea or airport, for a maximum duration of 4 working days, or for as long as is necessary for the issuance of an official certificate pursuant to Article 87 of Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation).
- h. A person who intentionally catches and keeps animals in an emergency situation for the purpose of transporting those animals.

Article 3 Transitional law for keeping animals of non-designated species

1. A person who, at the time of entry into force of this Decree, is keeping animals of a species not designated in Article 1 shall be exempted from the prohibition referred to in Article 2.2(1) of the Animals Act on the keeping of the animals kept at that time, and where an animal is pregnant at that time, for the keeping of the relevant offspring of that animal.

2. The exemption referred to in paragraph 1 shall apply only to animals in respect of which the keeper has taken a measure to prevent reproduction.
3. Paragraphs 1 and 2 shall apply mutatis mutandis to the person who has taken over the keeping of an animal as referred to in paragraph 1.
4. The exemption referred to in paragraphs 1 or 3 shall not apply to animals in respect of which the keeper cannot demonstrate compliance with paragraphs 1 and 2.

Article 4 General exemption for keeping animals of non-designated species as livestock animals and for keeping animals for display

1. Keepers as referred to in Article 2.2(a) are also exempted from Article 2.3(1) of the Animals Act and Article 4.2(1) of the Animal Keepers Decree.
2. A person who, at the time of entry into force of this Decree, is keeping dromedaries (*Camelus dromedarius*) for the purpose of producing products derived from those animals shall be exempted from the prohibition referred to in Article 2.2(1) and the prohibition referred to in Article 2.3(1) of the Animals Act.

Article 5 Entry into force

This Decree shall enter into force from [date].

Article 6 Citation title

This decree shall be cited as the: Decree on the lists of pets and animals kept for hobby purposes.

This Decree shall be published in the Government Gazette [Staatscourant] together with its explanatory memorandum.

The Minister of Agriculture, Nature and Food Quality,

Objections

Do you disagree with this decision? An interested party may lodge an objection within six weeks of the date of this Decree.

Go to www.rvo.nl/bezwaar to submit your objection electronically. Select eBezwaar.

Would you rather submit your objection by post? Send your objection to Rijksdienst voor Ondernemend Nederland, Legal Affairs Department, PO Box 40219, 8004 DE Zwolle. In this, mention [the reference] [the attribute, the reference] and the date of the decision you object to.

You will find further important information on how to submit an objection electronically and by post at mijn.rvo.nl/bezwaar.

More Information

If you have any questions concerning your objection, please visit the website: my.rvo.nl. or call: 088 042 42 42 (local rate).

EXPLANATORY MEMORANDUM

1. Introduction

This Decree provides for the establishment of what is known as the list of pets and animals kept for hobby purposes, also known as the 'positive list'. Only animals of species included in this list may be kept in the Netherlands as pets or as livestock, or for any other purpose. The establishment of this list was announced by the previous Minister of Agriculture, Nature and Food Quality by letter of 6 July 2022 to the House of Representatives (Parliamentary Papers II 2021/22, 28286, No 1260). Furthermore, this Decree provides for some general exceptions to the ban on keeping animals of species not included in the list of pets and animals kept for hobby purposes, in the form of exemptions.

2. Background

Article 2.2(1) of the Animals Act prohibits the keeping of animals of species or categories that have not been designated by the Minister of Agriculture, Nature and Food Quality. The designated animal species and animal categories together form the list of pets and animals kept for hobby purposes.

Paragraph 2 of that article provides that the criteria on the basis of which the Minister designates the animal species or categories shall be laid down by a general administrative order. These criteria are laid down in Article 1.4(1) of the Animal Keepers Decree. Article 1.4(2) of the Animal Keepers Decree further provides that the ban on keeping animals of non-designated species is limited to mammals.

Because the law prohibits the keeping of animals of certain (unlisted) species, there is a restriction on trade in animals of these species. The establishment of a list of authorised animal species is therefore seen as a restriction on the free movement of goods. The free movement of goods is one of the fundamental principles of the Treaty on the Functioning of the European Union (Article 28). The Court of Justice of the European Union has ruled that the protection of human and animal health and life is a legitimate aim for restricting the free movement of goods.¹ In order for that restriction to be lawful, it is necessary that the restriction be proportionate. Proportionality requires, inter alia, that the selection of animal species for inclusion in the list and in its amendments be based on objective and non-discriminatory criteria.

3. Designation of animal species

An assessment framework has been established for the selection of species that can be included in the list. This framework was developed by the Scientific Advisory Committee on the Positive List [Wetenschappelijke adviescommissie positieflijst], which consists of independent scientists.

The assessment framework was sent to the House of Representatives by the then Minister of Agriculture, Nature and Food Quality in 2020 (Parliamentary Papers II 2019/2020, 28286, No 1085).

The assessment framework is based on risk factors for animal welfare and danger to humans. The risk factors are clustered into the following categories: human injury, human health (zoonoses), food intake of the animal, use of space/safety of the animal, thermoregulation of the animal and social behaviour of the animal.

¹ See judgment of the Court of Justice of the EU in Case C 219/07, *Nationale Raad van Dierenkwekers en Liefhebbers VZW and Andibel VZW v Belgische Staat*.

Scientific sources were used in the assessment of the animal species. This means that the list has a solid scientific basis. The characteristics and needs of the animal are the starting point, and not the keeper's ability to deal with them.

For the assessment of mammal species, the Committee of Experts on the Domestic and Hobby Animal List [Adviescollege huis- en hobbydierenlijst] was established. This Committee of Experts consists of independent scientists. The Committee has assessed more than 300 mammal species using the assessment framework. In doing so, it has divided the assessed animal species into six risk classes, risk classes A to F. The classification into risk classes reflects the complexity of husbandry, and forms the scientific basis for whether or not to place animal species on the domestic and hobby animal list. The higher the risk class (F is the highest, A the lowest), the higher the complexity of husbandry in terms of risk factors to be taken into account by the keeper.

The Committee recommended² including animals in risk classes A, B and C in the list. Risk class C means that the keeper must take into account two of the five risk categories. The Committee considers this to be acceptable. In addition, the Committee recommended that animal species that are domesticated should be placed on the list, partly because people have more experience in keeping these animals, there are more facilities for keeping them, and animals have been genetically altered in such a way that they are adapted to living alongside humans. The above applies to 29 animal species.

There are some mammal species for which insufficient scientific information has been found to arrive at a judgment. These species fall at least in risk class D, and are therefore not eligible to be placed on the list. The only exception to this is the Asian garden dormouse. This species falls at least in risk class C. As it has not been scientifically established that this species falls into the higher risk classes D to F, it is also included in the list. If sufficient scientific information is available in the future, the species can be fully assessed. This also applies to all animal species; new scientific insights make the list a dynamic document.

Based on this opinion, I have decided to place the 29 species proposed by the Committee of Experts as well as the Asian garden dormouse on the domestic and hobby animal list. Article 1 of this Decree provides for the designation of species.

4. Exceptions

From the moment the list enters into force, it shall be prohibited to keep species of mammals that are not on the list.

However, there are cases where it is necessary, by the nature of the matter, to keep animals of species other than authorised species, temporarily or otherwise. An exemption from the prohibition is provided for in these cases (Article 2).

An exemption is provided for keeping European fallow deer (*Dama dama*) and red deer (*Cervus elaphus*) (point a). Deer parks mainly keep these deer species. There is a long history of keeping deer in deer parks in the Netherlands. Due to the social value of deer parks, in combination with the large scale of deer keeping, an exemption is provided for the keeping of these animals.

² Adviescollege huis- en hobbydierenlijst, 'Zoogdieren beoordeeld: Het biologisch fundament voor de Huis- en Hobbydierenlijst zoogdieren', Annex to Parliamentary Papers II 2021/22, 28286, No 1260).

There is also an exemption for veterinary practices (point b), zoos (point c), wildlife shelters with an environmental permit or tailor-made provision for flora and fauna activities pursuant to the Environment and Planning Act and the Environmental Activities Decree, which comply with the requirements set out in the Annex to the Policy Rule on Quality and Shelter of Animal Species (point d), and facilities where animals are kept on behalf of the Minister of Agriculture, Nature and Food Quality and which comply with the Annex to the Policy Rule on Quality and Shelter of Animal Species (point e).

It should be noted that for shelters for animals of non-wild species which could still be kept until the entry into force of this Decree, but no longer after entry into force, it is possible to apply for an exemption under the Animals Act from the ban on keeping animals of mammal species that are not on the list. In this way, they can accommodate animals that have been confiscated, for example, and are not covered by the transitional law. This exemption shall be subject to the conditions set out in the Annex to the Policy Rule on Quality and Shelter of Animal Species.

An exemption is also provided for laboratory animal centres and the breeders working for them, who hold an establishment licence as referred to in Articles 2 and 11a of the Animal Testing Act (point f) and for traders and transporters of animals of species that are not allowed to be kept in the Netherlands (point g). They may transport these animals to and from a Dutch port or airport. For this purpose, they may also keep the animals in the Netherlands for a maximum of four working days, or for as long as is necessary for the issuance of an official certificate pursuant to Article 87 of Regulation (EU) 2017/625, in order to, for example, merge or divide different groups with different origins or destinations. Failure to allow this would be considered an unauthorised barrier to trade or a measure of equivalent effect. These cases were also exempted from the previous positive list (Annex 2, table A, points c to g of the Animal Keepers Regulation, old). These exemptions have been continued, without any change in substance.

In addition, an exemption is provided for people transporting animals in an emergency situation. This may include transporting an injured animal to a shelter (point h).

Furthermore, an exemption provides for transitional rights for people who, at the time of entry into force of the list, have an animal of a species that is not on the list (Article 3). They may keep that animal until the animal dies. This also applies to the young an animal is pregnant with at the time of entry into force of the list. Even if these animals are transferred to another keeper, they are still allowed to keep them until they die. However, it is required that the keeper, and thereafter any successors, be able to make a case that the animals were kept before the list entered into force, or that they are offspring whose dam was pregnant at that time. Examples of supporting documents are a chip, proof of purchase, an old veterinarian bill or an animal passport. Examples of supporting documents that are not sufficient are a witness statement from family, friends or neighbours, or a photo without a date.

Furthermore, the condition for the exemption requires that the animals concerned do not reproduce. 'Reproduction' means the entire process of caring for offspring, including pregnancy. It is up to the keeper to see which measures are most appropriate. Considerations include, for example, contraception, keeping male and female animals separate, sterilisation and castration (chemical or otherwise).

The establishment of the list of pets and animals kept for hobby purposes also affects the so-called livestock animal list. Article 2.3(1) of the Animals Act prohibits the keeping of animals whose species have not been designated for livestock purposes by general administrative order. Article 2.1 of the Animal Keepers Decree, in conjunction with Annex 2 to that Decree, designates the relevant animal species. For mammals, the livestock animal list is considered to be a subset of the list of pets and animals kept for hobby purposes. Where a species is not included in the list of pets and animals kept for hobby purposes, animals of that species should not be kept, including for livestock purposes. For animal species that were previously included in the livestock list but are not included in the new list of pets and animals kept for hobby purposes, this means that animals of those species may also no longer be kept as livestock animals. Specifically, this concerns fallow deer, red deer and, on the basis of an exemption, dromedaries.

For businesses where deer of one or both species or dromedaries are kept for the purpose of producing animal products, exemption from the prohibitions laid down in Article 2.3(1) of the Animals Act is provided for. For deer of the aforementioned species, this follows from the aforementioned total exemption from the ban on keeping animals. The exemption continues to allow fallow deer and red deer to be kept as livestock animals (Article 4(1)). For the keeping of dromedaries as a livestock animal, this means that only the existing business concerned which had previously been granted an exemption can continue (Article 4(2)). Since the exemption for the keeping of dromedaries on the livestock animal list applies only to existing cases, the exemption applies until the business is terminated. If the business is transferred, the exemption shall continue to apply because it is still the same existing business.

In order to avoid any misunderstandings, for the sake of security for the keepers of fallow deer and red deer, Article 4(1) also provides for an exemption from the ban on keeping these animals in a zoo without a licence. In particular, deer parks, where the animals walk outside and are visible to everyone and as it were on display, could be classed as zoos (Article 4.2(1) of the Animal Keepers Decree). However, it is not necessary for the keepers of these animals to have a zoo licence.

5. Regulatory burden, implementation and enforcement

This Decree affects the regulatory burden on citizens. An exemption provides for transitional rights for people who, at the time of entry into force of the list, have an animal of a species that is not on the list (Article 3). However, it is required that the keeper, and thereafter any successors, be able to make a convincing case that the animals were kept before the list entered into force, or that they are offspring whose dam was pregnant at that time. Compliance with this burden of proof is not expected to entail any costs for keepers because they are free to choose the means by which they demonstrate this and make use of data already at their disposal. However, there may be costs associated with preventing the animals concerned from reproducing. These include contraception, keeping male and female animals separate, sterilisation and castration (chemical or otherwise). The costs of these measures vary widely and according to animal species. For example, the castration of a small rodent can cost around EUR 100 and sterilisation of a larger animal costs between EUR 300 and 650. The Advisory Board on Regulatory Burden (ATR) decided not to issue a formal opinion on the List of pets and animals kept for hobby purposes. The impact on regulatory burden is not substantial.

The Netherlands Food and Consumer Product Safety Authority (NVWA), the Netherlands Enterprise Agency (RVO), the National Animal Welfare Inspectorate (LID), the police and the Public Prosecutor's Office (OM) were asked to review the feasibility and enforceability of the amendments. The results of the review included the exemptions from the ban on keeping animals of species not designated in this Decree. Following comments in the review, an exemption has been added for the transport of sick or injured animals. The exemption for shelters has also been adapted, so that shelters that take in animals that are currently allowed to be kept but not on the domestic and hobby animal list are eligible for an exemption so that they can continue to take in these animals, even if the animals are not covered by the transitional law.

6. Notification

The establishment of the list of pets and animals kept for hobby purposes, in conjunction with the legal ban on keeping animals of species not included in that list, restricts the free movement of goods within the European Union. For this reason, a draft of this Decree has been notified to the European Commission as a technical regulation in order to comply with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (OJ L 241). In the view of the Netherlands, this restriction is justified in light of the case-law of the Court of Justice of the European Union cited above. This is because the restriction is imposed due to it being necessary in the interests of protecting human and animal health and human life, and because it is proportionate to the aim pursued. A less far-reaching regulation, such as allowing the keeping of animals of those species under the application of husbandry rules, would not be an alternative, since it is not possible to determine in advance whether a keeper complies or is able to comply with the husbandry rules to be established. In that regard, it should be noted that the selection of species for inclusion in the list is based on objective and non-discriminatory criteria (see section 3) to determine whether a species is suitable to be kept by humans.

As regards proportionality, it is noted that the Decree provides for a number of exceptions to the ban on keeping animals of species that are not on the list. Thus, for the purpose of transporting animals abroad, an exemption from the ban on keeping animals is granted (Article 2(g)) with a transitional exemption for existing cases (Articles 3 and 4). The keeping of animals of species not included in the list is also permitted in exceptional situations where the importance of keeping these animals outweighs the importance of protecting human and animal health and human life, such as emergencies involving animals in need.

7. Entry into force

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