

**EXPLANATORY MEMORANDUM TO**  
**THE INVASIVE ALIEN SPECIES (ENFORCEMENT AND PERMITTING) ORDER**  
**2019**

**2019 No. 527**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 EU Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (“the EU Regulation”), which came into force in January 2015, is designed to prevent, minimise or mitigate the adverse impact of the introduction and spread of invasive alien species (IAS) within the European Union.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 Except where indicated below, the Order extends and applies to the UK and its offshore marine area.
- 4.2 Part 6 does not extend to Scotland or Northern Ireland.
- 4.3 The remaining provisions (i.e. except for Part 6) only extend to Scotland and Northern Ireland in so far as—
- (a) they relate to controls on import into and export from the United Kingdom;
  - (b) they relate to the offshore marine area; or
  - (c) they apply in relation to the provisions mentioned in (a) and (b) above.

**5. European Convention on Human Rights**

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner, has made the following statement regarding Human Rights:

“In my view the provisions of the Invasive Alien Species (Enforcement and Permitting) Order 2019 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 The EU Regulation creates a list of species of Union concern whose adverse impacts are such that they require coordinated action across the EU. It applies strict restrictions on these species so they cannot be imported, kept, bred, transported, sold, used or exchanged, allowed to reproduce, or be grown, cultivated, or released into the environment. There are currently 49 species listed under the Regulation (See table at Annex A). The EU Regulation will be converted into UK law when we exit the EU. We have a legal obligation under the EU Regulation to introduce an enforcement regime for infringements of its provisions, and the Order contains an enforcement regime, licensing and permitting provisions to meet this obligation.
- 6.2 The EU Regulation places a duty on EU Member States to “lay down the provisions on penalties applicable to infringements of this Regulation” and to “take all the necessary measures to ensure that they are applied”. This associated domestic Order is required to comply with that duty by providing enforcement provisions, prescribing the offences and penalties and introducing permitting and licensing provisions. The Order also contains a number of consequential changes and provisions to resolve/remove overlaps between existing legislation and the controls set out in the EU Regulation.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Invasive species challenge the survival of our rarest species, and damage some of our most sensitive ecosystems. The impacts of invasive non-native species on our domestic and global biodiversity are severe and growing, and are estimated to cost the GB economy more than £1.7 billion per year. This cost is due to their effects across a wide range of industries and networks, from farming, to the building industry, and national waterways. They include threats to our natural ecosystems and crop pollinators from incursions of species such as the Asian Hornet, which is one of the 49 species listed under the EU Regulation.
- 7.2 The government is committed to a strong stance against invasive alien species. The 25 Year Environment Plan has a goal to enhance the biosecurity of the country, including tackling invasive species and ensuring strong biosecurity protection at our borders. It also sets an ambition to continue to lead internationally on biosecurity. This Order introduces criminal offences to enforce the restrictions contained in the EU Regulation so that necessary measures can be taken, in particular against repeat or extreme offenders whose actions could result in environmental damage. The UK was instrumental in developing the EU Regulation, and the Order is required in order to meet our obligation to ensure that the EU Regulation is effectively enforced.
- 7.3 Part 1 of this Order sets out introductory provisions concerning commencement, extent, application and interpretation. The coming into force date for this Order has been set to match the common commencement date of 1<sup>st</sup> October 2019. This date has been chosen to allow for public consultation on management measures. This is a requirement under the EU Regulation, and as such is required before licences pertaining to management measure actions can be offered under the Order.
- 7.4 Part 2 contains criminal offences, which include breach of the main restrictions in the EU Regulation, as well as ancillary offences, for example relating to false statements,

attempts to commit offences, and obstruction. It also contains provisions relating to offences by companies and partnerships.

- 7.5 These criminal offences are intended to back up the civil penalties regime contained in Part 6 and Schedule 3 of the Order. These take account of the views of stakeholders who responded to our consultation. Criminal penalties will act as a major deterrent to potential offenders, and give regulators another option to enforce the most serious breaches.
- 7.6 Parts 3 and 4 contain defences and (criminal) penalties respectively. Penalties are set to be consistent with similar penalties contained in existing legislation relating to non-native species.
- 7.7 In England and Wales there are already laws of a similar nature and importance with regard to the sale and release of non-native species, namely those found in the Wildlife and Countryside Act 1981 (see sections 14 and 14ZA). The government considers that the prohibitions set out in the EU Regulation should be treated as seriously as these. The maximum penalty upon summary conviction is 6 months imprisonment, a fine (not exceeding the statutory maximum in Scotland or Northern Ireland) or both. The maximum penalty upon conviction on indictment carries is 2 years imprisonment, a fine (not exceeding the statutory maximum in Scotland or Northern Ireland) or both.
- 7.8 Part 5 contains enforcement powers available to the enforcement officers and designated customs officials who will enforce the Order. The Order contains stop and search powers, as well as powers of entry, examination, seizure and sampling.
- 7.9 The Order provides powers for an enforcement officer to enter premises without a warrant, on strict justification, where there are grounds for suspicion that a specimen is being kept on those premises. Entry without a warrant in this way must take place at a reasonable time. Entry to private dwellings is only permitted with a warrant from a justice of the peace (sheriff or summary sheriff in Scotland or lay magistrate in Northern Ireland). Notice must be given before entry, whether under warrant or not, unless one of the listed exceptions applies.
- 7.10 The Order also ensures that the EU Regulation is effectively enforced at the UK border. It makes provisions for live specimens of invasive species to be seized at the UK border by Border Force officials. There are arrangements in place for detained consignments to be passed to the Animal and Plant Health Agency who will arrange for specimens to be handled appropriately. Animals will not necessarily be euthanised, and arrangements may be made for their re-export or transfer to an appropriate facility, in discussion with their owners. The Order contains provisions on cost recovery by our regulatory bodies, including the Police, for costs involved with dealing with animals and plants seized under the Order.
- 7.11 Part 6 relates to civil sanctions, the detailed provisions for which are set out in Schedule 3. These are based on powers contained in Regulatory Enforcement and Sanctions Act 2008. Having civil sanctions available will allow for a proportionate response to minor breaches, with the added deterrent of criminal sanctions available as a last resort for habitual/gross breaches of the prohibitions. The Order puts in place both fixed and variable monetary penalties that can be used where a custodial sentence is inappropriate but where a serious breach has been committed, including by businesses. It also provides for compliance, restoration and stop notices as well as enforcement and third party undertakings. There are provisions which allow

regulators to recover their costs incurred when imposing civil sanctions, in order to facilitate effective action.

- 7.12 Part 7 and Part 8 contain permitting and licensing provisions respectively. Permits, which will be issued by the Animal and Plant Health Agency, and (in the case of aquatic animals) by the Centre for Environment and Aquaculture Science, provide for import, keeping and breeding (but not for sale or release) of specimens, for the purposes of research, ex-situ conservation or the production and use of products for the advancement of human health. Permits may also be granted in exceptional circumstances for reasons of compelling public interest, following the procedure set out in Article 9 of the EU Regulation. Specimens covered by a permit must be kept in contained holdings. Licences, which will be issued by Natural England and the Natural Resources Body for Wales, are available for some activities that would otherwise be prohibited by the EU Regulation, for example for activities undertaken for the purpose of the eradication of a newly-arrived species, or the population control or containment of a widely-spread species. The list of purposes for which such licences can be granted is limited, in order to meet the requirements of the EU Regulation.
- 7.13 Part 9 concerns related legislation, making changes where existing provisions overlap with the controls set out in the EU Regulation. Of particular note are the amendments, contained in Schedule 4, to the Wildlife and Countryside Act 1981 and the Wildlife and Countryside Act 1981 (Prohibition on Sale etc. of Invasive Non-native Plants (England) Order 2014 made under that Act. These amendments remove the Invasive Alien Species of Union concern from the ambit of the provisions relating to invasive non-native species in sections 14 and 14ZA of the 1981 Act. This is to make the legislation more transparent and easier to use – benefitting the general public as well as enforcers – by bringing all the offences relating to species of Union concern into one place.
- 7.14 Schedule 9A of the Wildlife and Countryside Act 1981, which relates to species control agreements and orders, has also been amended. This is to ensure that these tools can be used for all species of Union concern including widely-spread invasive species.
- 7.15 Part 10 sets out the arrangements for review. The first report on this must be published by March 2024 and will then take place at 5-yearly intervals.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This Order does not relate to withdrawal from the European Union. However, the Order contains known operability issues at the time of laying, including the need to ensure consistency with the parent EU Regulation which was corrected by The Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019. We plan to correct these by means of a separate operability SI.

<https://www.legislation.gov.uk/ukdsi/2019/9780111176269/contents>

## **9. Consolidation**

- 9.1 None is planned.

## **10. Consultation outcome**

- 10.1 Between 9 January and 3 April 2018, Defra undertook a public consultation via Citizen Space. 128 responses were received from a wide range of interests. 42 of those were from individuals clearly representing organisations and 86 from individuals presenting their own views. Wildlife and Countryside Link's response was supported by 10 further organisations who requested the response be treated as one from each of the named organisations. 60% of respondents felt that new criminal sanctions were merited to enforce the permitting scheme.
- 10.2 The proposed civil penalties regime was well received with a two thirds majority content with the proposal. Half of those who were not content believed that penalties should be higher. In addition to this, 82% of all respondents agreed with proposed civil fines or would like higher fines.
- 10.3 Regarding the level at which criminal penalties should be set, 66% of respondents supported new penalties being in line with, or higher than, existing penalties contained in the Wildlife and Countryside Act 1981.
- 10.4 As the majority of the prohibitions contained in the Order apply to England and Wales, we have worked closely with Welsh colleagues in preparing it. Scotland and Northern Ireland are putting in place their own equivalent regulations enforcing the EU Invasive Alien Species Regulation. We liaise closely with devolved colleagues through a regular series of meetings. Policy colleagues have not raised any particular concerns.

## **11. Guidance**

- 11.1 Guidance to the general public and to enforcement bodies will be in the form of Frequently Asked Questions and will be made publicly available at the time of laying.

## **12. Impact**

- 12.1 Businesses which trade in plants and animals will be affected as they will need to make themselves aware of the scope of the new penalty regime. Included in this group are a handful of organisations who would seek to trade in the restricted species, but expect to be granted a permit to do so.
- 12.2 A full impact assessment has not been produced as the measure is below the  $\pm$ £5m equivalent annual net direct cost to business (EANDCB) threshold.
- 12.3 Defra has conducted a proportionate analysis of the additional cost that will be imposed on business, charities or voluntary bodies. The overall net present cost to businesses of these regulations is around £0.75m over 10 years, almost entirely made up of familiarisation costs. The equivalent annual net direct cost to business (EANDCB) is estimated to be £0.1m.
- 12.4 There is no significant impact on the public sector.
- 12.5 As laid out under the EU Regulation, we will be consulting on the details of management measures once the Order has been laid.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 Action to mitigate the impact on small businesses, given their level of presence in the affected sectors, is not compatible with achieving a large part of the intended benefits of the measure. Further to this, there is no provision in the EU Regulation which would allow us to exempt small businesses from its application.

**14. Monitoring & review**

14.1 A statutory review clause is included in the Order.

**15. Contact**

15.1 Finn Eaton at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 9268 or email: [finn.eaton@defra.gov.uk](mailto:finn.eaton@defra.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Richard Pullen, Deputy Director for Wildlife and Ivory at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

## Annex A: List of species of Union concern

### Plants

Common name	Scientific name	Entry into force
Eastern baccharis	<i>Baccharis halimifolia</i>	3 August 2016
Fanwort	<i>Cabomba caroliniana</i>	3 August 2016
Water hyacinth	<i>Eichhornia crassipes</i>	3 August 2016
Persian hogweed	<i>Heracleum persicum</i>	3 August 2016
Sosnowsky's hogweed	<i>Heracleum sosnowskyi</i>	3 August 2016
Floating pennywort	<i>Hydrocotyle ranunculoides</i>	3 August 2016
Curly waterweed	<i>Lagarosiphon major</i>	3 August 2016
Water-primrose	<i>Ludwigia grandiflora</i>	3 August 2016
Floating primrose-willow	<i>Ludwigia peploides</i>	3 August 2016
American skunk cabbage	<i>Lysichiton americanus</i>	3 August 2016
Parrot's feather	<i>Myriophyllum aquaticum</i>	3 August 2016
Whitetop weed	<i>Parthenium hysterophorus</i>	3 August 2016
Asiatic tearthumb	<i>Persicaria perfoliata</i>	3 August 2016
Kudzu vine	<i>Pueraria lobata</i>	3 August 2016
Alligator weed	<i>Alternanthera philoxeroides</i>	2 August 2017
Common milkweed	<i>Asclepias syriaca</i>	2 August 2017
Nuttall's waterweed	<i>Elodea nuttallii</i>	2 August 2017
Chilean rhubarb	<i>Gunnera tinctoria</i>	2 August 2017
Giant hogweed	<i>Heracleum mantegazzianum</i>	2 August 2017
Himalayan balsam	<i>Impatiens glandulifera</i>	2 August 2017
Japanese stiltgrass	<i>Microstegium vimineum</i>	2 August 2017
Broadleaf watermilfoil	<i>Myriophyllum heterophyllum</i>	2 August 2017
Crimson fountaingrass	<i>Pennisetum setaceum</i>	2 August 2017

## Animals

Common name	Scientific name	Entry into force
Pallas' squirrel	<i>Callosciurus erythraeus</i>	3 August 2016
Indian house crow	<i>Corvus splendens</i>	3 August 2016
Chinese mitten crab	<i>Eriocheir sinensis</i>	3 August 2016
Small Asian mongoose	<i>Herpestes javanicus</i>	3 August 2016
American bullfrog	<i>Lithobates catesbeianus</i>	3 August 2016
Muntjac deer	<i>Muntiacus reevesi</i>	3 August 2016
Coypu	<i>Myocastor coypus</i>	3 August 2016
Coati	<i>Nasua nasua</i>	3 August 2016
Spiny-cheek crayfish	<i>Orconectes limosus</i>	3 August 2016
Virile crayfish	<i>Orconectes virilis</i>	3 August 2016
Ruddy duck	<i>Oxyura jamaicensis</i>	3 August 2016
Signal crayfish	<i>Pacifastacus leniusculus</i>	3 August 2016
Amur sleeper	<i>Percottus glenii</i>	3 August 2016
Red swamp crayfish	<i>Procambarus clarkii</i>	3 August 2016
Marbled crayfish	<i>Procambarus fallax</i> f. <i>virginalis</i>	3 August 2016
Raccoon	<i>Procyon lotor</i>	3 August 2016
Stone moroko	<i>Pseudorasbora parva</i>	3 August 2016
Grey squirrel	<i>Sciurus carolinensis</i>	3 August 2016
Fox squirrel	<i>Sciurus niger</i>	3 August 2016
Siberian chipmunk	<i>Tamias sibiricus</i>	3 August 2016
Sacred ibis	<i>Threskiornis aethiopicus</i>	3 August 2016
All subspecies <sup>1</sup>	<i>Trachemys scripta</i>	3 August 2016
Asian hornet	<i>Vespa velutina</i> <i>nigrithorax</i>	3 August 2016
Egyptian goose	<i>Alopochen aegyptiacus</i>	2 August 2017

<sup>1</sup> This includes all subspecies of *Trachemys scripta* e.g. yellow-bellied slider, red-eared slider, Cumberland slider, slider and common slider

Muskrat	<i>Ondatra zibethicus</i>	2 August 2017
Racoon dog	<i>Nyctereutes procyonoides</i>	2 February 2019