

**Partial Business and Regulatory Impact Assessment (BRIA) for:  
The Conservation (Natural Habitats, &c.) (Miscellaneous Amendments)  
(Scotland) Regulations 2019**

**Purpose and Intended effect**

**Background**

Invasive alien species are species that are introduced accidentally or deliberately into a natural environment where they are not normally found, with serious negative consequences for their new environment. They represent a major threat, and cause damage, to native plants and animals in Scotland.

The EU Regulation 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (“the EU Regulation”) came into force on 1 January 2015. It currently applies restrictions on forty-nine invasive non-native species of concern in the European Union (“EU”).

The Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 (“the Regulations”) will put in place:

- new offences and criminal penalties for contravention of the restrictions under the EU Regulation for those restrictions and species which are not covered by the existing offences under the Wildlife and Countryside Act 1981 (“the 1981 Act”),
- arrangements for the licensing of certain restricted activities allowed under the circumstances specified in Articles 8, 9, 17, 19 and 31 of the EU Regulation,
- statutory defences for pet owners and businesses holding stocks of species of Union concern when those species were added to the Union list.

**Objective**

To make provision for new criminal offences for contravention of those restrictions under the EU Regulation which are not already covered by the 1981 Act, and to transpose the relevant defences and licensing requirements.

**Rationale for Government Intervention**

The Regulations makes it an offence for a person to contravene Articles 7(1)(b) to (h) of the EU Regulation relating to, for example, the breeding, transporting, using and permitting to reproduce, growing or cultivating invasive alien species of Union

concern (in so far as the activity is not already an offence under sections 14, 14ZC or 14A of the 1981 Act). An invasive alien species is a species, sub-species or lower taxon of animal, plant, fungus or micro-organism included on the list of invasive alien species of Union concern (“the EU list”), as amended from time to time. The Regulations inserts a new schedule 9B into the 1981 Act, which provides defences for pet owners and businesses holding stocks of invasive alien species of Union concern. Schedule 9B also sets out the purposes for which the relevant authority may grant licences, under section 16(4)(c) of the 1981 Act, for activities relating to species of Union concern, and the conditions that must apply to such licences.

Providing a common legal framework to combat invasive alien species across Europe is a key action under the EU 2020 Biodiversity Strategy.

Providing stronger controls on invasive alien species supports the National Outcomes: that we are protecting and enhancing our environment; and that we realise our full economic potential.

Invasive alien species are damaging to our environment, economy and health. They cost the Scottish economy more than £250 million a year as well as exerting a significant pressure on ecosystems and the natural services they provide. Preventing the establishment and spread of invasive alien species will avoid significant environmental and economic damage and management costs in the future.

## **Consultation**

Consultation on the EU Regulation has taken place at various stages since 2008. During the negotiation stages of the EU Regulation, Defra engaged with industry, and consulted with the European Commission. This enabled the UK Government to ensure that the EU Regulation was closely aligned with the approach to taken by the Great Britain Invasive Non-Native Species Strategy.

The requirements in the EU Regulation apply directly to Member States. Those requirements are mostly met by the existing powers to prohibit the keeping and sale of invasive species under the 1981 Act. The Regulations implement the requirements of the EU Regulation for a small number of species and activities that are not already covered by the 1981 Act. No public consultation was deemed necessary for implementing these additional requirements of the EU Regulation though the 1981 Act.

Scottish Natural Heritage were consulted and were in agreement with the approach taken. Regular discussions have also been held with policy officials from the UK Government and the other devolved administrations to coordinate the development of the Regulations and separate statutory instruments covering the rest of the United Kingdom.

## **Options**

### **Option 1: Do Nothing**

The Scottish Government must implement an EU obligation and it is not, therefore, a viable option not to implement the EU Regulation on invasive alien species.

Furthermore, the Scottish Government is committed to maintaining environmental standards now and after the UK exits the EU.

### **Option 2: Implement using the Wildlife and Countryside Act 1981**

The following requirements of the EU Regulation cannot be met by the existing powers under the 1981 Act:

- criminal offences and penalties relating to: breeding, transporting, using and permitting to reproduce, growing or cultivating invasive alien species of Union concern; keeping and sale of species of Union concern that are not considered invasive in Scotland; and release of microbes that may be listed in the future,
- statutory defences for pet owners and businesses holding stocks of species of Union concern under the circumstances specified in Articles 31 and 32 of the EU Regulation,
- arrangements for licensing certain restricted activities allowed under the circumstance specified in Articles 8, 9, 17, 19 and 31 of the EU Regulation.

The Regulations are a EU obligation and therefore this is the recommend option.

### **Sectors and groups affected**

The EU Regulation on invasive alien species covers invasive organisms which have the potential to have negative impacts across a broad range of Scotland's ecosystems. Many of these invasive species have the potential to impact negatively on economic and recreational interests, and some also have the potential to impact on human and animal health. The sectors most affected by the prohibition on keeping and sale of invasive species are likely to be the ornamental plant and exotic pet trades. Zoos and botanic gardens may be marginally affected as well. For widely spread species, the EU Regulation does not impose any additional obligations on land owners and occupiers who have animals or plants on the EU list on their land.

## **Benefits of Implementation using the Wildlife and Countryside Act 1981**

Implementing the EU Regulation on invasive alien species using the Wildlife and Countryside Act 1981 will have several benefits, including providing:

- a single framework for the regulation of invasive non-native species in Scotland, which should aid understanding, consistency of approach and enforcement,
- a penalty regime which is consistent with the level of environmental damage that invasive species can cause,
- greater confidence for environmental NGOs, land owners and managers, and the public regarding the Scottish Government's commitment to preventing the establishment and spread of invasive non-native species.

## **Costs**

Implementation of the EU Regulation is in alignment with the Scottish Government's ambitions for protecting the environment and its aspirations for increasing sustainable economic growth.

The costs to business resulting from the Regulations should be minimal. The EU-wide ban on the sale of invasive alien species on the EU list has been widely communicated by trade organisations. In most cases, commercial owners have already had two years in which to sell their stock or dispose of it in an approved manner.

The Royal Horticultural Society's plant finder lists over 72,000 species and cultivars of ornamental plants available in the UK<sup>1</sup>. Of these species, only three are affected by the Regulations that have been widely traded in Scotland. This is estimated to be only a very small portion of the total sales. For all of the ornamental plants listed so far, less invasive alternatives are available.

Before the EU-wide ban for sale came into force there was a small trade in red-eared, yellow-bellied and Cumberland sliders as pets. Transitional arrangements under the EU Regulation allow existing owners to keep companion animals for the rest of the animals' natural life. Amur sleeper, Small Asian mongoose and South American coati have not been widely traded in Scotland. There are existing licensing arrangements in place for zoos which keep listed species.

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<sup>1</sup> Cubey, J., Armitage, J., Edwards, D., Konyves, K., Lancaster, N., Marshall, R., Durrant, L. (Eds) (2018) *RHS Plantfinder 2018: 72,000 plants and where to find them*. The Royal Horticultural Society, London.

There may be an additional cost to the Government associated with extending the existing inspection and enforcement regime to support the EU Regulation. Proposals for this regime will be developed in consultation with the relevant bodies with responsibilities relating to invasive alien species in Scotland. It is anticipated that, since the majority of listed species are not widely kept or sold, most inspections will be carried out alongside existing inspection regimes.

### **Legal aid impact test**

It is not anticipated that the statutory instrument will have any effect on individuals' rights of access to justice through the legal aid fund, or result in a significant increase in prosecutions for non-native species offences.

### **Enforcement, sanctions and monitoring**

#### **Reporting**

Member States are required to report on the implementation of the EU Regulation by 01 June 2019 and every six years thereafter.

#### **Implementation and delivery plan**

The Scottish Government is working with the UK Government and the other devolved administrations on the implementation of the EU Regulation at a UK-level. Delivery and implementation will be monitored by the Great Britain Non-Native Species Programme Board, on which Scotland is represented by Scottish Government and Scottish Natural Heritage.

#### **Summary and recommendation**

The principles of Government regulating the keeping and sale of invasive non-native species in Scotland are well established. There are expected to be no significant costs associated with making the Regulations, and doing so will realise substantial benefits to the environment and society by preventing the introduction and spread of damaging invasive species.

#### **Declaration and publication**

I have read the partial Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Roseanna Cunningham,

Cabinet Secretary for Environment, Climate Change and Land Reform

Date: 10 October 2019