



Before you complete this form, please read the Justice Impact Test Guidance, and ensure that the content has been discussed with your analytical, finance and legal departments. It is available at: <https://www.gov.uk/government/publications/justice-impact-test>

Please answer as many questions as possible on this form before you contact the Ministry of Justice (MoJ). If exact figures are not yet known, please provide your best estimates along with any evidence and assumptions you have based these on. When submitting this form, allow at least 8 weeks from the time it is reviewed by the JIT team for clearance. If there are considered to be no impacts arising from your proposals, MoJ will agree this with you and no further correspondence will be required. However, if MoJ identifies a potential impact, you will be contacted to discuss and agree an estimate of costs including funding arrangements for the additional costs. In both cases, the outcome must be included in the Impact Assessment accompanying your final proposals.

Please be aware that your department will be required to meet any costs incurred by the MoJ as a result of any changes/additional work that is created by the introduction of this proposal.

Please forward the completed questionnaire, with any Impact Assessment, to MoJ's Group Finance Team at: justiceimpact@justice.gov.uk.

1. Your contact details

1.1. Name

Becca Blewett

1.2. Department / office / business area

Defra

1.3. Telephone number

02087 204 070

1.4. Email address

Rebecca.blewett@defra.gov.uk

1.5. By when would you like a response?

20th June 2022

1.6. Date of submission

25th April 2022

1.7. Please provide contact details of your lead analyst for the cost appraisal, and the Ministry of Justice policy/operational lead if known. Please also provide relevant contact details from your Finance department, who will be responsible for arranging a budget transfer should any costs be identified.

Lead analyst:
Nic Feltes
nic.feltes@defra.gov.uk

Finance Department
Stacey Freeman
Stacey.freeman@defra.gov.uk

2. General information

2.1. Is this policy:

3. Policy change not related to EU Exit

2.2. When do you intend to go to Cabinet Committee for clearance?

Not needed

2.3. Has the creation or amendment of criminal offences and penalties been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences> and <https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>.

Yes

2.4. In brief, what is your proposal? (no more than half a page please)

To fulfil international obligations under the Convention on the Conservation of European Wildlife and Natural Habitats, we will be adding the Eurasian Beaver to Schedule 2 to the Conservation of Habitats and Species Regulations 2017. We are also removing beavers from Schedule 9, Part 1B 'Animals no longer normally present' of the Wildlife and Countryside Act 1981 and moving them to Schedule 9, Part 1A 'Native Animals' of the Wildlife and Countryside Act 1981. Adding beaver to Schedule 2 of the Conservation of Habitats and Species Regulations 2017 will make it an offence under reg. 43 to deliberately capture, kill, disturb or injure beavers, or to damage or destroy their breeding sites or resting places, without a licence from Natural England. Breaches to licensing conditions will be treated as an offences under reg.60. False statements made in order to obtain a licence will be treated as an offence under reg. 59.

2.5. Please specify the/any relevant legislation/Bill

Conservation of Habitats and Species Regulations 2017 (Habs Regs) & Wildlife and Countryside Act, 1981 (WCA)

2.6. Please advise when the changes are expected to be introduced, and when MoJ is likely to be impacted.

The changes are expected to be introduced on the 1st October 2022.

2.7. If introducing a new/amended offence, sanction or penalty, which of the following groups will the proposal affect? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

Individuals

2.8. Which geographical area/s will this proposal affect? (Tick all that apply). Please note that, with the exception of tribunals, MoJ administers the justice system in England and Wales only. Please contact the Scotland Office or Northern Ireland Office if you anticipate your proposal will have an impact on courts or prisons in those jurisdictions.

- England
- Wales
- Scotland
- Northern Ireland
- Other (Please Specify)

England

2.9. Which of the following are you creating/amending? (Tick all that apply)

- Fixed Penalties
- Civil Sanctions
- Civil Orders
- Criminal Penalty
- Criminal Offences
- Other (Please Specify)

Criminal Offences

3. Criminal Offences, Penalties and Sanctions

3.1. If you are creating/amending criminal offences, for each offence please select the mode of trial:

Offence 1: <i>Breach of NE licence conditions under reg. 60 of the Habs Regs</i>	Offence 2: <i>Deliberate offence against reg. 43 of the Habs Regs.</i>	Offence 3: <i>False Statements made to obtain licence (reg. 59)</i>
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- | | | |
|---|---|---|
| <input type="checkbox"/> Licence conditions laid out by Natural England are breached

<input type="checkbox"/> Triable either way
<input type="checkbox"/> | <input type="checkbox"/> Reg. 43 is breached. The offender does not have a licence to manage beaver.

<input type="checkbox"/> Triable either way
<input type="checkbox"/> | <input type="checkbox"/> False statements are made in order to obtain a licence to manage beaver, including falsifying evidence required for licence applications to indicate serious impact of beaver, where this impact is not present.

<input type="checkbox"/> |
|---|---|---|

Triable either way

If licence conditions cannot be resolved or if illegal killing, capture, disturbance or injury to beavers and damage or destruction to their breeding or resting places are found to have occurred, under reg. 60 & 43 of the Habs Regs, the maximum associated sentence is an unlimited fine and/or a 6-month custodial term. This is also the maximum associated sentence for any offences committed under reg. 59 of the Habs Regs.

3.2. For each offence, what is the anticipated number of cases per year? Please provide details of any evidence or assumptions on which estimates are based or proxy offences.

Anticipated less than one case per year. This aligns with the number of convictions seen for otter, also an aquatic European Protected Species. |

3.3. For any either way offences, what proportion of offenders do you expect to be committed for trial in the Crown Court?

We expect the proportion of offenders to be committed for trial in the Crown Court to be low. The licensing authority, Natural England, will issue warning letters and take the licence away where licences are breached. If licences are breached, Natural England will carry out more checks on the licence holder and their operations as opposed to committing them for trial in the Crown Court. |
In comparison with otters, another European Protected Species, there have been 2 convictions since August 2019. We expect beaver cases to be of a similar frequency.

3.4. Please state the maximum associated fine and/or custodial penalties for each offence. In the case of offences with a maximum penalty of a custodial term please indicate and justify the likelihood of receiving a custodial term upon conviction and provide details of any proxy or current offences and/or penalties on which your proposals are based. \

For offences committed under reg. 59, 60 and 43 of the Habs Regs, the maximum associated fine is unlimited and the maximum custodial term is 6 months. It is highly unlikely that receiving a custodial term upon conviction will arise, Natural England, the licensing authority will work with offenders to resolve any breaches before custodial terms are enforced. As the enforcement authority, the police will be involved if those that breach licence conditions, or act without a licence, do not comply. |

Prosecution and Enforcement

3.5. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please state who will do so.

Yes |

3.6. Will the proposal require enforcement mechanisms for criminal penalties? If yes, who do you expect to enforce these?

Yes. Enforcement mechanisms will be required for criminal penalties where offences which deliberately capture, kill, disturb or injure beavers, or to damage or destroy their breeding sites or resting places, without a licence from Natural England occur (offence under reg. 43). These will be enforced by the police.

If offenders are in breach of any licence conditions (reg. 60), Natural England will initially work with them to resolve any issues, however if these conditions continue to be breached, the police will enforce these penalties also.

Any offences related to false statements made in order to obtain a licence (reg. 59) will be enforced by the police.

3.7. Have you consulted with the relevant enforcement and prosecuting agencies, in relation to the need for and construction of the new offence?

Natural England have been consulted. Whilst we have discussed the protection with the National Wildlife Crime Unit, they have not been formally consulted

3.8. Please outline the enforcement process?

Natural England will issue licences for beaver management to those who apply. As part of the condition of the licence, Natural England will request an annual report as well as information every time action is taken under the licence. If it is found that applicants are not complying with the licence, Natural England will intervene and work with the licence holders to resolve these offences. If licence conditions are breached, but the breach is deemed to not be the fault of the applicant, their licence would remain. However, if following Natural England's intervention, they do not comply in resolving any issues, police involvement will be enforced.

The police are the enforcement authority where an offence does not concern a breach of licensing conditions.

4. Civil Justice, Courts and Tribunals

Estimating the change to caseload of the Courts and Tribunals Service

- 4.1. Do you expect there to be a change in Court or Tribunals process or an increase/decrease in applications/cases to HM Courts and Tribunals Service through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system, explain any changes in process and outline the evidence and sources that support these estimates.

Please specify the relevant Tribunals:

First tier Tribunal:

General Regulatory Chamber

The number of offences and cases to the HM Courts and Tribunals Service will be small, less than 1 per year. Beavers are at an early stage of reintroduction England and the population is very small as such human-beaver conflicts are unlikely and therefore it is not expected that there will be any cases referred to HM Courts and Tribunals service for several years after the amendment to the Habitats Regulations come into force.

- 4.2. Please confirm if the courts would be under any duty to inform any regulatory authorities of any convictions made under this offence.

No

Yes (please provide details)

No

- 4.3. If you are creating a new civil sanction which court or tribunal, in your opinion, should manage it?

n/a

Appeal Rights

- 4.4. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service)?

Our proposal does not create a new right of appeal or expand an existing jurisdiction in the United Tribunals system or route to judicial review.

4.5. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Ministry of Justice?

No

Alternative Dispute Resolution

4.6. Has the use of alternative dispute resolution (ADR) procedures (including mediation) been considered? If not, why not?

Not needed, this is not a new law and alternate dispute measures are already in place with Natural England regarding licensing. If licences are not issued and an offence occurs, ADR procedures will not be needed also.

Enforcement

4.7. Will the proposal require enforcement mechanisms for civil debts/civil sanctions? If yes, who do you expect to enforce these?

No

Civil and Tribunal Procedure Rules

4.8. Do you anticipate that Civil Procedure rules, Magistrate Court rules, Crown Court rules and/or Tribunal procedural rules will have to be amended? Have you agreed the date of implementation with the MoJ?

No

5. Legal Aid

5.1. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

No

5.2. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

n/a

6. Prisons and Offender Management Services

Impact on HM Prison Services

- 6.1. Will the proposals result in an increase in the number of offenders being committed to custody (including on remand) or probation (and community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and its source.

The likelihood of this is highly unlikely as custodial sentences are rarely handed down for wildlife crime offences. However, if this does occur, the estimated number of offenders being given a custodial sentence is significantly less than 1 per year. This is based on the number of offences committed against similar species (otter) already listed as European Protected Species on the Habs Regs. Also listed as a European Protected Species, we expect beaver custodial sentences to be similar to otter convictions. Since August 2019, there have been 2 convictions regarding otter, 1 of which included 2 months imprisonment as part of the sentence.

- 6.2. Does the proposal create or edit an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison/probation service? If so, please provide details, including the expected impact on HM Prison and Probation Services.

No

7. Summary

7.1. Volumes (please lengthen if necessary):

Who will be affected by this proposal in MoJ? (details from information provided above)	Volumes (please provide numeric estimates or ranges)	Type (e.g., tribunal hearing, criminal prosecution, etc.)
Civil Penalties	Not Applicable	Not Applicable
	[]	[]
	[]	[]
HM Courts & Tribunals Services	1	Criminal prosecution
	[]	[]
	[]	[]
Legal Aid	Not Applicable	Not Applicable

Who will be affected by this proposal in MoJ? (details from information provided above)	Volumes (please provide numeric estimates or ranges)	Type (e.g., tribunal hearing, criminal prosecution, etc.)
	[]	[]
	[]	[]

7.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	Likely number sentenced to immediate custody	Likely average custodial sentence length (ACSL in months) given	Annual prison places at steady state**
Deliberately capturing, killing, disturbing or injuring beavers, or damaging or destroying their breeding sites or resting places, without a licence from Natural England.	3-month custodial sentence	1	3	1
[]	[]	[]	[]	[]

* Annual prison places may be calculated by multiplying the expected number of custodial sentences per year (n) by the ACSL served in years (x); for most offences, an offender will only serve half their sentence prior to release on license, the key exceptions being offenders under extended sentencing provisions or on indeterminate sentences, such as life.

$$\text{Prison places} = nx$$