

SL(5)393 – The Invasive Alien Species (Enforcement and Permitting) Order 2019

Background and Purpose

This Order introduces permitting and licensing provisions needed to comply with the requirements of EU Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (“the EU Regulation”). It also provides enforcement provisions and prescribes offences and penalties.

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.

The EU Regulation will be converted into UK law when the UK leaves the EU.

Procedure

Negative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:-

1. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh

- This Order has been made as a composite instrument, meaning the Order has been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. As a result, the Order has been made in English only.
- The Explanatory Memorandum states that the Order needed to be made on a composite basis in order to “assist with a consistent enforcement approach, and accessibility and understanding for members of the public and others”. Legal Advisers accept there are good reasons to make this Order on a composite basis, but we note the effect that has (i.e. there is no Welsh language version).

2. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

- The ‘Minister’s Declaration’ section of the Explanatory Memorandum incorrectly refers to this Order as the Invasive Alien Species (Enforcement and Permitting) (*Wales*) Order 2019 (*emphasis added*).

3. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.



- Article 32(1)(a) refers to “the costs of storing a relevant organism detained under article 27(2)” (*emphasis added*). Sub-paragraph (2) of Article 27 provides the maximum period a relevant organism may be detained for, it does not provide a designated customs official with the power to seize.
- It appears that the power allowing a designated customs official to seize a relevant organism is actually contained in sub-paragraph (1) of Article 27 (rather than sub-paragraph (2)). Legal Advisers would welcome clarification on this point.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

- This Order directly transposes the requirements of EU Regulation No 1143/2014, which places a duty on Member States to “lay down the provisions on penalties applicable to infringements of the EU Regulation” and to “take all the necessary measures to ensure that they are applied”. The Explanatory Memorandum highlights that at the time of laying, the Order contains known operability issues, 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).
- The Explanatory Memorandum states that it is planned that these operability issues will be corrected by means of a separate operability instrument.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

18 March 2019

