

Explanatory Memorandum to The Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019

This Explanatory Memorandum has been prepared by Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

3 September 2019

PART 1

1. Description

This Order amends the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527) to change the date on which that Order comes into force, from 1 October 2019 to 1 December 2019.

It also makes a consequential amendment to article 43 of the Order (review: England), to change the date by which the first report under that article needs to be made, from 1 October 2024 to 1 December 2024. Article 43 does not apply to Wales.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument is being made on a composite basis with the Secretary of State for DEFRA as it amends the Invasive Alien Species (Enforcement and Permitting) Order 2019 which was made on a composite basis. That Order also amended England and Wales legislation (section 22 of the Wildlife and Countryside Act 1981 (“the WCA 1981”). The policy approach to controlling invasive alien species in Wales and England is aligned as invasive alien species do not recognise borders. A composite SI, which applies simultaneously throughout Wales and England, will assist with a consistent enforcement approach, and accessibility and understanding for members of the public and others.

As this Order will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. The instrument is not amending earlier bi-lingual legislation.

3. Legislative background

The Order is made using the powers designated to the Welsh Ministers under section 2(2) of the European Communities Act 1972 (“the ECA 1972”). The Welsh Ministers may rely on their power under section 2(2) of the ECA 1972, by way of their designation for those purposes, in relation to the prevention and remedy of environmental damage. This Order and the Order it amends implement the substantive requirements of EU Regulation No 1143/2014 (on the prevention and management of the introduction and spread of invasive alien species) in relation to Wales. The amendment Order also refers to powers under section 22(5) of the Wildlife and Countryside Act 1981 (“WCA 1981”) which are relied upon in the original Order.

The Order is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. This is deemed the appropriate procedure because section 2(2) of the ECA 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers to make the required provisions is limited due to the need to give effect to the provisions of the EU

Regulation. Moreover, the exercise of powers under section 22(5) of the WCA 1981 is subject to annulment by the motion of the Assembly (negative procedure).

4. Purpose and intended effect of the legislation

This Order amends the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527) to change the date on which that Order comes into force, from 1 October 2019 to 1 December 2019.

It also makes a consequential amendment to article 43 of the Order (review: England), to change the date by which the first report under that article needs to be made, from 1 October 2024 to 1 December 2024. Article 43 does not apply to Wales.

This Order and the Order it amends implement the substantive requirements of EU Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species in relation to Wales. EU Regulation 1143/2014 is designed to prevent, minimise or mitigate the adverse impact of the introduction and spread of invasive non-native species (INNS) within the European Union.

The Invasive Alien Species (Enforcement and Permitting) Order 2019 lays down the penalties applicable to infringements of EU Regulation No 1143/2014 as required by that Regulation. It was made on the 7 March 2019 with a coming in to force date of 1 October 2019.

The coming in to force date is being changed from 1 October 2019 to 1 December 2019 to allow for a longer period of consultation on joint Wales and England proposals for management measures for a number of widely spread invasive alien species, to ensure that there is adequate time for consultation responses received to be properly analysed, and to allow sufficient time for a related licensing scheme to be put in place. Welsh Ministers are obliged to put in place these management measures, and consult on their preparation, under Regulation (EU) No 1143/2014.

5. Consultation

This Order which changes the coming in to force date of the Invasive Alien Species (Enforcement and Permitting) Order 2019 from 1 October 2019 to 1 December 2019 was not subject to public consultation. Key stakeholders have been advised of this Order and the change it will make to the coming in to force date and no concerns have been raised.

A public consultation was undertaken jointly by Defra and Welsh Government between 9 January and 3 April 2018. The consultation sought views on proposed penalties in respect of restrictions outlined at Article 7 of EU Regulation No 1143/2014 which prohibit the intentional: (a) importing; (b) keeping; (c) breeding; (d) transporting; (e) selling; (f) using or exchanging; (g) permitting to reproduce, grow or cultivate or (h) releasing into the environment

of any live specimens of invasive alien species on the Union list. The consultation responses were used to help formulate the Invasive Alien Species (Enforcement and Permitting) Order 2019.

A summary of the consultation responses is available at:
<https://www.gov.uk/government/consultations/invasive-non-native-species-regulations-enforcement>

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order as no, or no significant, impact on the private, voluntary or public sector is foreseen by amending the coming in to force date of the Invasive Alien Species (Enforcement and Permitting) Order 2019 by two months. It is not considered that the change to the coming in to force date will have an adverse impact on the Welsh Ministers statutory duties under sections 77-79 of the Government of Wales Act 2006 or on Welsh Ministers statutory partners under sections 72-75.

An impact assessment was undertaken for the Invasive Alien Species (Enforcement and Permitting) Order 2019 and that is provided within the Explanatory Memorandum for that Order.