

**Regulatory & Natural Resources
Policy Division**

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Date: 23rd March 2016

Dear Stakeholder,

Implementation of Regulation (EU) 1143/2014 on Invasive Alien Species in Northern Ireland

The purpose of this consultation is to seek views on the proposed penalties which the Department is required to put in place to assist implement the above EU Regulation. The Regulation relates to the prevention and management of the introduction and spread of invasive alien species.¹

Background

Regulation (EU) 1143/2014 ('the EU Regulation') came into operation on 1 January 2015. The aim of this new regime is to prevent or manage the introduction, or spread, of invasive alien species across the European Union.

A core provision of the EU Regulation is a list of invasive alien species of Union concern ('the Union list'), which are species whose adverse impact is such that they require concerted action at an EU level. The initial list of 37 species (**Annex 1**), to which the Regulation will apply, was adopted on 4 December 2015. We are now awaiting the European Commission publishing that list in an Official Journal, so that 20 days later it will come into force. This is expected in the next 1-2 months.

The proposed penalties

The EU Regulation requires Member States to lay down provisions setting out the penalties for offences committed contrary to the restrictions set out in that Regulation. A requirement of the EU Regulation is that the penalties must be

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1143&from=EN>

effective, proportionate and dissuasive. The restrictions outlined at Article 7 of the EU Regulation make it an offence for any person to intentionally:

- (a) import,
- (b) keep,
- (c) breed,
- (d) transport,
- (e) sell,
- (f) use or exchange,
- (g) permit to reproduce, grow or cultivate, or
- (h) release into the environment,

any species on the Union list.

Establishments may apply for a permit to allow them to derogate from these restrictions. However, permits may only be issued for the purposes of research, ex-situ conservation and scientific production of medical products or, in exceptional cases, for reasons of compelling public interest, which may include social or economic reasons.

Further information about these restrictions and what they might mean for you can be found on the Great Britain non-native species secretariat's website at:

<http://www.nonnativespecies.org/home/index.cfm>

The level of penalties will be defined using section 2(2) of the European Communities Act 1972². The maximum penalties available, in Northern Ireland, using these powers are:

- on summary conviction: 3 months imprisonment and/or a level 5 fine on the standard scale (currently £5,000).
- on indictment: maximum 2 years imprisonment and/or a fine.

The penalties introduced will be a technical amendment with no policy change and fulfils the Department's obligation to implement the requirements of the EU Regulation.

How to Respond

Any comments on the proposed approach to the penalties should reach us by **Wednesday 18 May 2016**.

Responses can be sent either by post or e-mail to:

Alan Hamilton
Regulatory and Natural Resources Policy Division
Goodwood House
44/58 May Street
Town Parks
Belfast
BT1 4NN

² <http://www.legislation.gov.uk/ukpga/1972/68/data.pdf>

Telephone: (028) 9025 4736

E-mail: Invasive.Alienspecies@doeni.gov.uk

To help our considerations please indicate in your response your name, your interest, the organisation that you represent (if applicable) and your contact details.

A copy of this document can be accessed on the Department's website at:

<https://www.doeni.gov.uk/consultations>

This document may be available in alternative formats. Please contact us to discuss your requirements.

PARTIAL REGULATORY IMPACT ASSESSMENT

A Regulatory Impact Assessment (RIA) must accompany proposals for new legislation. The RIA is a document describing an issue which has given rise to a need for regulation and assesses any potential costs to business arising from the proposals. A partial RIA is included at **Annex 2**.

EQUALITY ASSESSMENT

Section 75 of the Northern Ireland Act 1998 places a duty on public authorities to have due regard to promote quality of opportunity. The Department has completed an initial Equality Impact Assessment screening exercise in order to ascertain if the proposed penalties will have an impact on the Section 75 groups and has concluded that no adverse differential impact is likely. Therefore, the Department does not consider a full Equality Impact Assessment to be necessary.

RURAL PROOFING

Rural proofing is a process to ensure that all relevant Government policies are carefully and objectively examined to assess whether or not they have a different impact in rural areas from that elsewhere, because of the particular circumstances of rural areas; and where necessary, what policy adjustments might be made to reflect rural needs and in particular to ensure that, as far as possible, public services are accessible on a fair basis to the rural economy. Rural communities will benefit from the additional protection afforded to native species and their habitats. It is considered that there are no negative impacts on rural productivity or the provision of services to the rural community as a result of these proposals.

HUMAN RIGHTS 1998

The Human Rights Act 1998 implements the European Convention on Human Rights. The 1998 Act makes it unlawful for any public authority to act in a way that is incompatible with these rights.

The Department considers that the proposals detailed in this consultation paper are compatible with the Human Rights Act 1998.

Freedom of Information Act 2000 – confidentiality of consultation responses

The Department may wish to publish responses to this consultation. It will certainly publish a summary of responses following completion of the consultation exercise. In addition, your response may be disclosed on request as the Department is only able to refuse disclosure in very particular circumstances. Therefore, you are advised to read the information in **Annex 3** before sending a response to this consultation. It provides guidance on the legal position of any information given by you.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Ken Bradley". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Ken Bradley

THE INITIAL LIST OF INVASIVE ALIEN SPECIES OF UNION CONCERN

Plants	Animals
American Skunk cabbage Asiatic tearthumb or Mile - a - minute Curley waterweed Eastern baccharis Floating pennywort Floating primrose Green cabomba or Fanwort Kudzu vine Parrot's feather Persian hogweed Sosnowsky's hogweed Water hyacinth Water primrose Whitetop weed	Amur sleeper Asian hornet Small Indian mongoose Fox squirrel Chinese mitten crab Coypu Eastern crayfish Grey squirrel Indian house crow Marbled crayfish Muntjac deer North American bullfrog Pallas's squirrel Raccoon Red eared slider Red swamp crayfish Ruddy duck Sacred ibis Siberian chipmunk Signal crayfish South American coati Topmouth gudgeon Virile (northern) crayfish

Partial Regulatory Impact Assessment (RIA)

Proposal

1. This partial Impact Assessment forms part of the consultation on the proposed penalties and sanctions for breaches of the provisions of Regulation (EU) 1143/2014.

Purpose and intended effect

2. Regulation (EU) 1143/2014 ('the EU Regulation') on the prevention and management of the introduction and spread of invasive alien species came into operation on 1 January 2015 and establishes a more consistent approach to tackling invasive alien species across Europe. It addresses the problems of invasive alien species in a comprehensive manner so as to protect native biodiversity and ecosystem services, as well as to minimise and mitigate the human health and economic impacts that these species can have.
3. The core provision of the EU Regulation is a list of invasive alien species of Union concern ('the Union list') which the European Commission developed using risk assessments and scientific evidence. These are species whose potential adverse impacts across the European Union are such that concerted action across Europe is required.
4. The aim of the proposal is to develop penalties and sanctions for breaches of the provisions of the EU Regulation. The EU Regulation will apply to the species on the Union list. For example, species on the Union list cannot be intentionally imported, placed on the market; released into the environment; kept, including in a contained holding; used or exchanged; permitted to reproduce, grow or cultivate; bred or transported.
5. The proposed penalties and sanctions are for breaches of the provisions of Regulation (EU) 1143/2014.
6. At present, in Northern Ireland, one of the primary pieces of legislation which regulates the introduction of invasive alien species is the Wildlife (Northern Ireland) Order 1985. This was reviewed and amended in 2011 as part of the Wildlife and Natural Environment Act (Northern Ireland) 2011 and new plant and animal species were added to the Schedule 9 lists of species that are illegal to plant or release into the wild.

7. The purpose of this consultation is linked to the Department's obligation to implement the requirements of the EU Regulation.

Options considered

Option 1 – Do nothing

Option 2 – Introduce penalties and sanctions to implement the requirements of Article 30 of the EU Regulation.

Cost and Benefits

Sectors and groups affected

8. A small number of sectors in Northern Ireland are likely to be affected by the species on the Union list following the transitional period. The following business sectors, which will be made aware of the new regime, could be affected in Northern Ireland:

- Pet keepers/breeders/importers and other hobbyists
- Horticulture
- Professional keepers, botanical or zoological gardens, plant or animal collections/collectors
- Research, scientific, academic

Benefits

Option 1- do nothing

9. The EU Regulation is binding in its entirety and directly applicable to Member States. The UK Government is therefore obliged to implement it. Consequently, this is not a realistic option.

Option 2 – Introduce penalties and sanctions to implement the requirements of Article 30 of the EU Regulation.

10. The proposed penalties will enable enforcement action to be taken against those who contravene the provisions of the EU Regulation.

11. Intervention would also avoid the risk of expensive infractions for not implementing adequately the EU legislation.
12. The proposal seeks to impose measures in relation to the initial list of 37 species (14 plants and 23 animals). A full impact assessment is being carried out on a UK basis by DEFRA and the devolved administrations. Once finalised, it will be made publically available.
13. It is recognised that invasive alien species can have serious impacts in sectors such as forestry, agriculture, tourism and recreational activities. These sectors should therefore benefit from the introduction of coordinated measures to tackle such species. However, other sectors such as pet traders and the horticultural sector benefit from trading in invasive species and could be impacted by the new legislation. The new regime imposes restrictions on the keeping, breeding, sale, transporting and release of listed plants and animals, although it is generally recognised, that for most purposes, there is a choice of substitute species.
14. Therefore, this is the preferred option. Introducing penalties and sanctions to comply with the requirements of the EU Regulation will avoid EU infraction fines.

Costs

15. Option 1 – do nothing.
This option would preserve the status quo and therefore there would be no additional costs. However, there would be the risk of serious and costly infractions if the European Commission considered that the Department had not suitably implemented the EU Regulation into Northern Ireland law.
16. Option 2 – Introduce penalties and sanctions to implement the requirements of Article 30 of the EU Regulation.
17. The impact of the EU Regulation and the Union list on Northern Ireland businesses is deemed to be relatively minor. It is envisaged that species relevant to Northern Ireland on the Union list are both limited in numbers and to the extent they are traded or bred. Therefore, any impact on businesses following the transitional period is likely to be marginal.

Enforcement and sanctions

18. The Department will continue to work closely with relevant representative bodies to promote full compliance and operation of best practice. In terms of

enforcement, the Department in liaison with the PSNI will take appropriate action when breaches of the EU Regulation occur.

19. The enforcement regime will create a number of offences for non compliance, and would be subject to fines (maximum £5000) and/or imprisonment; or seizure of goods.

Recommendation

20. Option 2 is the recommended option as it is the only option which ensures compliance with the EU Regulation. It provides a practical and robust mechanism for dealing with invasive alien species of Union concern and fulfils our obligations on this issue.

CONFIDENTIALITY OF CONSULTATIONS

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

Should you require further information about the confidentiality of responses, please contact:

Information Commissioner's Office – Northern Ireland
3rd Floor
14 Cromac Place
Belfast BT7 2JB

Telephone number: 028 9027 8757 / 0303 123 1114

or see their website at:

<https://ico.org.uk/about-the-ico/who-we-are/northern-ireland-office/>

List of Recipients

The following is not an exhaustive list, but is indicative of the types of organisations this document was sent to. We welcome views from all interested parties.

Executive Ministers and Junior Ministers
Northern Ireland Party Leaders
MPs and MEPs
The Speaker of the Assembly
The Clerk of the Environment Committee
MLAs
The Assembly Business Office
The Assembly Bill Office
NI Assembly Library
Office of the First and Deputy First Minister
North/South Ministerial Council
Northern Ireland Office
Section 75 Consultees
Legal Deposit Libraries
Departmental Library
Other External Agencies
District Councils
Government Departments
Other Statutory Agencies & Bodies
Education
Health and Social Services
Transport
Environment Groups
Universities
Farming Organisations
Fishing Industry/Groups
Trade and Industry Groups