

2019 No. 159

EUROPEAN UNION

ENVIRONMENTAL PROTECTION

WILDLIFE

**The Invasive Alien Species (Enforcement and Permitting) Order
(Northern Ireland) 2019**

Made - - - - *15th August 2019*

Coming into operation - *1st December 2019*

The Department of Agriculture, Environment and Rural Affairs, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment, makes this Order in exercise of the powers conferred by that section of, and paragraph 1A of Schedule 2 to, that Act(c) and by Article 28(5) of the Wildlife (Northern Ireland) Order 1985(d). In accordance with Article 29(3) of that Order, the Department has consulted the Council for Nature Conservation and the Countryside(e) and has given to district councils and other persons affected an opportunity to submit objections or representations with respect to the subject-matter of this Order.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department that it is expedient for the references to the list of invasive alien species of European Union concern, adopted by the Commission in accordance with Regulation (EU) No. 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species(f), to be construed as references to that list as amended from time to time.

(a) S.I. 2008/301

(b) 1972 c. 68. Section 2(2) is amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7)

(c) Paragraph 1A is inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51). The relevant amendments are section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(d) 1985 No.171 (N.I.2), as amended by the Wildlife and Natural Environment Act (N.I.) 2011 (c. 15)

(e) The Council for Nature Conservation and the Countryside (CNCC) was established in 1989 under the provisions of the Nature Conservation and Amenity Lands (Amendment) (Northern Ireland) Order 1989. It replaced the existing Committee for Nature Conservation established under Article 5 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985

(f) O.J. No. L317, 4.11.2014, p.35

PART 1

INTRODUCTORY PROVISIONS

Citation

1.—(1) This Order may be cited as the Invasive Alien Species (Enforcement and Permitting) Order (Northern Ireland) 2019 and comes into operation on 1st December 2019.

(2) This Order applies to Northern Ireland only in so far as it does not deal with import and export controls and trade with any place outside the United Kingdom, within the meaning of paragraph 20 of Schedule 3 to the Northern Ireland Act 1998(a).

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(b) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“authorised person” means any person authorised, for the purposes of the enforcement of this Order, by the Department in writing;

“biodiversity” means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems;

“contained holding” means keeping an organism in closed facilities from which escape or spread is not possible;

“Department” means the Department of Agriculture, Environment and Rural Affairs;

“ecosystem services” means the direct and indirect contributions of ecosystems to human wellbeing;

“ex-situ conservation” means the conservation of components of biological diversity outside their natural habitat;

“invasive alien species” means any species of animal, plant, fungus or micro-organism included from time to time on the Union list;

“licence” means a licence granted in accordance with Article 29 (licences for activities relating to invasive alien species);

“owner”, in relation to any land, means any person (other than a mortgagee not in possession) who is the holder of or who is for the time being entitled to sell or otherwise dispose of the fee simple (including a fee farm grant) of the land or any person entitled to possession of the land by virtue of any estate in the land other than a mere licence;

“permit” means a permit issued in accordance with Article 28 (permits for activities relating to invasive alien species);

“premises” includes any place or land (including buildings) and, in particular, includes any place, plant, machinery, apparatus, vehicle, vessel, aircraft, boat, ship, hovercraft, trailer, container, tent or movable building or structure;

“Principal Regulation” means Regulation (EU) No. 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species;

“registered veterinary surgeon” means a person who is registered in the register of veterinary surgeons under section 2 of the Veterinary Surgeons Act 1966(c);

(a) 1998 c. 47
(b) 1954 c. 33 (N.I.)
(c) 1966 c. 36

“relevant organism” means a live animal, plant, fungus or micro-organism, and includes any part, gamete, seed, egg, or propagule that might grow, hatch or reproduce, as the case may be;

“research” means descriptive or experimental work, undertaken under regulated conditions, to obtain new scientific findings or to develop new products, including the initial phases of identification, characterisation and isolation of genetic features (other than those features which make a species invasive) of invasive alien species insofar as essential to enable the breeding of those features into non-invasive species;

“sample” means a sample of blood, tissue or other biological material;

“seize” includes “detain” and cognate words are to be construed accordingly;

“species” includes—

(a) any hybrid, variety or breed of a species that might survive and subsequently reproduce; and

(b) any subspecies or lower taxon of a species;

“specimen” means a specimen of any live invasive alien species, and includes any part, gamete, seed, egg, or propagule of such a species that might grow, hatch or reproduce, as the case may be;

“the Union list” means the list of invasive alien species of European Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of the Principal Regulation as amended from time to time; and

“vehicle” includes any aircraft, boat, hovercraft or vessel.

(3) Expressions used in this Order and in the Principal Regulation, unless otherwise defined, have the same meaning in this Order as they do in the Principal Regulation.

PART 2 OFFENCES

Keeping, breeding, transporting etc. of invasive alien species

3.—(1) Any person who contrary to Article 7 (restrictions) of the Principal Regulation intentionally—

- (a) keeps, including in a contained holding;
- (b) breeds, including in a contained holding;
- (c) transports to or from Northern Ireland to or from any place within Great Britain, or within Northern Ireland, except where such transportation is of species to facilities in the context of eradication;
- (d) places on the market;
- (e) uses or exchanges;
- (f) permits to reproduce, grows or cultivates, including in a contained holding; or
- (g) releases into the environment,

an invasive alien species commits an offence.

(2) Any person who releases or allows to escape into the wild any specimen which is of a species of animal which—

- (a) is of a kind not ordinarily resident in and is not a regular visitor to Northern Ireland in a wild state or is a hybrid of any animal of that kind; or
- (b) is included in Part 1 of the Schedule,

commits an offence.

(3) Any person who plants or otherwise causes to grow in the wild any specimen which is of a species of plant which is included in Part 2 of the Schedule or is a hybrid of any plant included in that Part, commits an offence.

(4) A person may not by reason of the same act be convicted of both—

- (a) an offence under paragraph (1); and
- (b) an offence under paragraph (2) or (3).

False statements

4.—(1) Any person who, for the purpose of obtaining the issue of a permit or the grant of a licence (whether for themselves or another), knowingly or recklessly—

- (a) makes a statement or representation which is false in a material particular; or
- (b) furnishes a document or information which is false in a material particular,

commits an offence.

(2) Any person who, for the purpose of the notice referred to in Article 12(2), makes a statement or representation which is false in a material particular commits an offence.

Misuse of permits or licences

5. Any person who knowingly falsifies or alters a permit or of a licence commits an offence.

Compliance with permits and licences

6. Any person who knowingly contravenes a condition or requirement of a permit or of a licence commits an offence.

Obstruction and deception

7.—(1) Any person who intentionally obstructs an authorised person acting in accordance with the powers conferred in Part 5 commits an offence.

(2) Any person who, without reasonable excuse, fails to give any assistance or information reasonably required by an authorised person acting in accordance with the powers conferred in Part 5 commits an offence.

(3) Any person who, with intent to deceive, pretends to be an authorised person commits an offence.

(4) Any person who furnishes to an authorised person any information knowing it to be false or misleading commits an offence.

Offences committed by bodies corporate, partnerships and unincorporated associations

8.—(1) For the purposes of this Order—

- (a) section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited”;
- (b) section 20(3) of that Act does not apply; and
- (c) where the affairs of a body corporate are managed by its members, section 20(2) of the Act applies in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

(2) Where any offence under this Order committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the partner's part,

the partner as well as the partnership commits the offence and is liable to be proceeded against and punished accordingly.

(3) For the purposes of paragraph (2), "partner" includes a person purporting to act as a partner.

(4) Where any offence under this Order committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association commits the offence and is liable to be proceeded against and punished accordingly.

(5) For the purpose of proceedings under paragraphs (2) or (4)—

- (a) rules of court relating to the service of documents have effect as if the partnership or association were a body corporate; and
- (b) the provisions of section 18 (procedure on charge) of the Criminal Justice Act (Northern Ireland) 1945^(a) and Article 166 (corporations) of, and Schedule 4 to, the Magistrates' Courts (Northern Ireland) Order 1981^(b) apply as they apply in relation to a body corporate.

(6) A fine imposed on a partnership or an unincorporated association on its conviction for an offence under this Part may be made payable out of the funds of the partnership or the association.

Proceedings for offences: venue and time limits

9.—(1) For the purposes of conferring jurisdiction in any proceedings for the prosecution of an offence under this Part, any such offence is deemed to have been committed in any place where the offender is found or to which the offender is first brought after the commission of the offence.

(2) Summary proceedings for such an offence may be commenced within the period of six months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.

(3) But, no such proceedings may be commenced more than two years after the commission of the offence.

(4) For the purposes of paragraph (2)—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence to justify the proceedings is conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

(a) 1945 c. 15 (N.I.)
(b) S.I. 1981/1675 (N.I.)

PART 3

Defences

Defences – permits and licences

10. Article 3 (keeping, breeding, transporting etc. of invasive alien species) does not apply to anything done under and in accordance with—

- (a) a permit; or
- (b) a licence.

Defences – enforcement activity

11. It is a defence to a charge of committing an offence under Article 3 in relation to a breach of the restrictions in Article 3(1)(a), (c) or (e) if the person accused is—

- (a) an authorised person; or
- (b) a person acting at the request, or on behalf, of an authorised person,

and is acting for a purpose connected with the enforcement of this Order.

Defences: due diligence

12.—(1) It is defence to a charge of committing an offence under Article 3(2) or (3) if the person charged (“P”) shows that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged is not, without leave of the court, entitled to rely on the defence unless, within a period ending seven clear days before the hearing, the person has served on the prosecutor a notice giving such relevant information as was then in the person’s possession.

(3) In paragraph (2), “relevant information” means information which identifies or assists in the identification of the other person.

Transitional provision for non-commercial owners: companion animals

13.—(1) It is a defence to a charge of committing an offence under Article 3(1)(a) or (c) to show that the specimen to which the alleged offence relates—

- (a) immediately before its inclusion on the Union list, was kept as a companion animal; and
- (b) the condition in paragraph (2) or the condition in paragraph (3) applies.

(2) The condition in this paragraph is that, at all material times—

- (a) the purpose in keeping the animal was to keep it as a companion animal; and
- (b) the animal was kept in contained holding and appropriate measures were in place to ensure that the animal could not reproduce or escape.

(3) The condition in this paragraph is that, at all material times—

- (a) the animal was kept for the purpose of transporting it to—
 - (i) a facility to which a relevant licence had been granted;
 - (ii) an establishment to which a relevant permit had been issued; or
 - (iii) a place where it was to be humanely dispatched; and

- (b) the animal was kept in contained holding and appropriate measures were in place to ensure that the animal could not reproduce or escape.

(4) In this Article—

“relevant licence” means a licence under—

- (a) article 29(2)(d);
- (b) article 36(2)(d) of the Invasive Alien Species (Enforcement and Permitting) Order 2019(a); or
- (c) any provision in legislation which applies in relation to Scotland and which enables licences to be granted for the keeping of an animal by a facility until the end of its natural life in accordance with Article 31(4) (transitional provisions for non-commercial owners) of the Principal Regulation.

“relevant permit” means a permit under—

- (a) article 28 (permits for activities relating to invasive alien species);
- (b) article 35 of the Invasive Alien Species (Enforcement and Permitting) Order 2019; or
- (c) any provision in legislation which applies in relation to Scotland and which enables permits to be issued in accordance with Article 8 (permits) or 9 (authorisations) of the Principal Regulation.

Transitional provision for non-commercial owners: commercial stocks

14. It is a defence to a charge of committing an offence under Article 3(1)(a) or (c) to show that the specimen to which the alleged offence relates—

- (a) was received from a keeper of commercial stocks in accordance with Article 15(3)(d); and
- (b) at all material times, was kept in contained holding and appropriate measures were in place to ensure that the specimen could not reproduce or escape.

Transitional provisions for commercial stocks

15.—(1) It is a defence to a charge of committing an offence to which this Article applies for a keeper of a commercial stock of specimens to show that—

- (a) the specimens were acquired before their inclusion on the Union list; and
- (b) the activity constituting the offence—
 - (i) was carried out for one of the purposes listed in paragraph (3); and
 - (ii) was not carried out after the end of the relevant period following the inclusion of the species to which the specimen in question belongs on the Union list.

(2) This Article applies to an offence under Article 3(1)(a), (c), (d) or (e).

(3) The purposes are—

- (a) sale or transfer to a research or ex situ conservation establishment which holds a relevant permit, provided that the conditions in paragraph (4) apply;
- (b) medicinal activities pursuant to a relevant permit, provided that the conditions in paragraph (4) apply;
- (c) humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms) of the specimen to exhaust the keeper’s stock; or

(a) S.I. 2019/527

- (d) sale or transfer to a non-commercial user, provided that the conditions in paragraph (4) apply.
- (4) The conditions are that, at all material times—
 - (a) the specimen was kept and transported in contained holding; and
 - (b) appropriate measures were in place to ensure that the specimen could not reproduce or escape.
- (5) For the purposes of paragraph (1)(b)(ii), the relevant period is—
 - (a) in relation to an activity carried out for a purpose mentioned in paragraph (3)(a) to (c), two years;
 - (b) in relation to an activity carried out for a purpose mentioned in paragraph (3)(d), one year.
- (6) In this Article, “relevant permit” means—
 - (a) for the purposes of paragraph (3)(a), a permit under—
 - (i) article 28(1)(a);
 - (ii) article 35(1)(a) of the Invasive Alien Species (Enforcement and Permitting) Order 2019; or
 - (iii) any provision in legislation which applies in relation to Scotland and which enables permits to be issued for research or ex situ conservation in accordance with Article 8 of the Principal Regulation; and
 - (b) for the purposes of paragraph (3)(b), a permit under—
 - (i) article 28(1)(b);
 - (ii) article 35(1)(b) of the Invasive Alien Species (Enforcement and Permitting) Order 2019; or
 - (iii) any provision in legislation which applies in relation to Scotland and which enables permits to be issued for scientific production and subsequent medicinal use in accordance with Article 8 of the Principal Regulation.

PART 4

PENALTIES

Penalties

- 16.—**(1) A person guilty of an offence under this Order is liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale, or to a term of imprisonment not exceeding three months, or to both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (2) A permit or licence in relation to which an offence under Article 4 (false statements) or 5 (misuse of permits or licences) has been committed is void—
- (a) in the case of an offence under Article 4, as from the time when it was granted; and
 - (b) in the case of an offence under Article 5, as from the time when the falsification or alteration was made.
- (3) The court by which any person is convicted of an offence under this Order may order that the person convicted may not, for a period of up to five years—
- (a) be issued with any permit or issued with a permit for a particular activity; or
 - (b) be granted any licence or granted a licence for a particular purpose.

PART 5

ENFORCEMENT

General

17. This Order is enforced by the Department and authorised persons.

Powers of entry

18.—(1) Where an authorised person has reasonable grounds to suspect a specimen is being kept at premises, other than premises used wholly or mainly as a private dwelling, that authorised person may, at a reasonable time and on giving reasonable notice to the owner (and, where a different person, the occupier), enter, search and inspect those premises for the purpose of—

- (a) ascertaining whether an offence under this Order is being or has been committed;
- (b) verifying information supplied by a person for the purpose of obtaining a permit or a licence;
- (c) ascertaining whether a condition of a permit or a licence is being or has been complied with; or
- (d) carrying out works under Article 22 (enforcement notices).

(2) The requirement to give notice does not apply—

- (a) where reasonable efforts to agree an appointment have failed;
- (b) where the authorised person reasonably believes that giving notice would defeat the object of the entry;
- (c) where the authorised person has reasonable grounds for suspecting that an offence under this Order is being or has been committed; or
- (d) in an emergency and/or where, in the opinion of the Department, there is an imminent risk of adverse effects or an imminent threat to biodiversity, ecosystem services, human health and/or the economy.

(3) Paragraph (4) applies where—

- (a) on an application made by an authorised person, a lay magistrate is satisfied—
 - (i) that there are reasonable grounds to suspect that an offence under this Order is being or has been committed and that evidence of the offence may be found on any premises;
 - or
 - (ii) there is a need to ascertain whether a condition of a permit or of a licence is being or has been complied with; and
- (b) one of the conditions specified in paragraph (5) applies.

(4) Where this paragraph applies the lay magistrate may issue a warrant authorising an authorised person to enter, if necessary by reasonable force, search and inspect premises, and such a warrant may authorise persons to accompany the authorised person who is executing it.

(5) The conditions referred to in paragraph (3)(b) are that—

- (a) entry to the premises has been refused, or is likely to be refused, and notice of the intention to apply for a warrant has been given to the owner (and, where a different person, the occupier); or
- (b) one of the grounds specified in paragraph (6) justifying the absence of such notice applies.

(6) The grounds justifying absence of notice are—

- (a) asking for admission to the premises, or giving such notice, would interfere with the purpose or effectiveness of the entry;
 - (b) entry is required urgently and/or there is an imminent risk of adverse effects to biodiversity, ecosystem services, human health and/or the economy; or
 - (c) the premises are unoccupied or the owner (or, where a different person, the occupier) is temporarily absent.
- (7) An authorised person entering any premises which are unoccupied or from which the owner (or, where a different person, the occupier) is temporarily absent must—
- (a) where entry is by virtue of paragraph (4), leave a copy of the warrant in a prominent place on the premises; and
 - (b) leave the premises as effectively secured against unauthorised entry as they were before entry.
- (8) An authorised person who enters premises by virtue of this Article may—
- (a) examine, photograph or mark any part of the premises or any object on the premises;
 - (b) open any bundle, container, package, packing case or item of personal luggage, or require the owner or any person in charge of the same to open it in the manner specified by the authorised person;
 - (c) make copies of any documents or records (in whatever form they may be held); and
 - (d) require any person to—
 - (i) produce any document or record that is in that person’s possession or control; and
 - (ii) render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.
- (9) An authorised person who is, by virtue of paragraph (1) or (4), lawfully on premises may—
- (a) be accompanied by such other persons; and
 - (b) bring onto the premises such equipment, vehicles or materials,
- as the authorised person considers necessary.
- (10) Any person accompanying an authorised person under paragraph (9)(a) may—
- (a) remain on the premises and from time to time re-enter the premises without the authorised person;
 - (b) bring onto the premises any equipment or vehicle that the person considers necessary; and
 - (c) carry out work on the premises in the manner directed by an authorised person.
- (11) Where, on application for a warrant under paragraph (3), the condition specified in paragraph (5)(b) applies, the application may be made without notice.
- (12) A warrant granted under this Article continues in force for three months.
- (13) An authorised person must, if requested to do so, by the owner (and, where a different person, the occupier) of the premises, produce evidence of their authority before entering premises by virtue of paragraph (1) or (4).

Power to enter and search vehicles

19.—(1) If an authorised person has reasonable grounds to suspect that there is relevant evidence in a vehicle, other than a vehicle used wholly or mainly as a private dwelling, the authorised officer may, at any time—

- (a) stop and detain the vehicle for the purposes of entering and searching it; and
- (b) enter the vehicle and search it for that evidence.

(2) Where—

- (a) an authorised person has stopped a vehicle under this Article; and

- (b) the authorised person considers that it would be impractical to search the vehicle in the place where it has stopped,

the authorised person may require the vehicle to be taken to such a place as the authorised officer directs to enable the vehicle to be searched.

(3) An authorised person may require—

- (a) any person travelling in a vehicle; or
- (b) the registered keeper of a vehicle,

to afford such facilities and assistance with respect to matters under that person's control as the authorised person considers would facilitate the exercise of any power conferred by this Article.

(4) The powers conferred by this Article may be exercised in any place to which the authorised person has access (whether or not it is a place to which the public has access).

(5) In this Article, "relevant evidence" means evidence that an offence under this Order has been committed.

Examining relevant organisms and taking samples

20.—(1) An authorised person may, for the purpose of ascertaining whether an offence under this Order is being or has been committed—

- (a) require that any relevant organism in the possession of any person is made available for examination by the authorised person;
- (b) in order to determine the identity or ancestry of any relevant organism, require the taking of a sample of that relevant organism, provided that—
 - (i) where the sample is to be taken from a live animal—
 - (aa) it is taken by a registered veterinary surgeon; and
 - (bb) the taking of the sample will not cause any avoidable pain, distress or suffering; and
 - (ii) where the sample is to be taken from a live plant or fungus, the taking of the sample will not cause lasting harm to the plant or fungus.

(2) An authorised person may destroy or otherwise dispose of any sample taken under this Article where the sample is no longer required.

Power of seizure

21.—(1) An authorised person exercising the powers conferred in this Part may seize anything where they have reasonable grounds for believing that—

- (a) seizure is necessary for the purpose of determining whether an offence under this Order is being or has been committed;
- (b) it is a specimen which has been unlawfully transported or is being unlawfully kept in contravention of this Order;
- (c) seizure is necessary for the conservation of evidence; or
- (d) seizure is necessarily incidental to seizure of a thing pursuant to sub-paragraph (a), (b) or (c).

(2) If, in the opinion of the authorised person, it is not for the time being practicable for the authorised person to seize and remove any item from premises, the authorised person may require any person on the premises to secure that the item is not removed or otherwise interfered with until such time as the authorised person may seize and remove it.

(3) Where—

- (a) any item which an authorised person wishes to seize is in a container; and

- (b) the authorised person reasonably considers that it would facilitate the seizure of the item if it remained in the container for that purpose,

any power to seize the item conferred by this Article includes power to seize the container.

(4) The authorised person must make reasonable efforts to give a written receipt for anything that is seized to each of the following persons—

- (a) in the case of an item seized from a person, the person from whom the item was seized;
- (b) in the case of an item seized from premises, any person who appears to the authorised person to be the occupier of the premises, or otherwise in charge of the premises; or
- (c) in any other case, or where the authorised person believes that the item may belong to any person not falling within sub-paragraph (a) or (b), to the person to whom the authorised person believes the item belongs.

(5) Where an item is seized from premises and it is not reasonably practicable to give written notice to the person referred to in paragraph (4), the authorised person must leave a copy of the receipt in a prominent place in or on the premises.

(6) Any relevant organism seized by an authorised person (unless the authorised person is satisfied that it is not a specimen)—

- (a) must be held and transported in a contained holding;
- (b) may be transferred to another authorised person or to an establishment or facility which may lawfully keep it by virtue of a permit or a licence (as the case may be); and
- (c) may, where the authorised person is satisfied it is a specimen, be humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro-organisms) as the authorised person sees fit.

(7) The court which convicts a person of an offence under this Order must order the offender to reimburse the Department any costs incurred in connection with keeping a relevant specimen by the person to whom it was entrusted following its seizure by an authorised officer under paragraph (1).

(8) Where an order is made under paragraph (7) and the amount specified in the order is not paid within the period specified in the order, the unpaid amount is recoverable summarily as a civil debt.

(9) In paragraph (7), “relevant specimen” means the specimen in relation to which the offence was committed.

Enforcement notices

22.—(1) Where it appears to the Department that an invasive alien species is present on any premises contrary to Article 17 (rapid eradication at an early stage of invasion) of the Principal Regulation, the Department may serve an enforcement notice on the occupier, requiring that person to carry out such of the following works or operations as may be specified in the notice, that is to say—

- (a) steps to remove and dispose of any invasive alien species, in a manner and within the period specified in the notice; and
- (b) steps to ensure that the ecosystem is, so far as reasonably possible, restored to its condition before the invasive alien species was caused or permitted to be on the premises.

(2) An enforcement notice must—

- (a) state the name of the person on whom it is served and the matters constituting the contravention;
- (b) state the premises to which it relates;
- (c) specify the species to which it relates;
- (d) specify the steps which the person served with the notice is required to take to remedy the contravention;

- (e) specify how the steps are to be carried out;
 - (f) state the date by which those steps must be carried out; and
 - (g) inform the person on whom it is served of the right of appeal under Article 25 (appeals).
- (3) If an enforcement notice is not complied with, the Department may—
- (a) take such steps as it considers reasonably necessary (including the removal and disposal of the invasive alien species) to—
 - (i) ensure compliance with the requirements of the notice;
 - (ii) remedy the consequences of the failure to carry them out; and
 - (iii) recover any expenses reasonably incurred in so doing from the person who was served with the notice.
- (4) An enforcement notice does not take effect until 28 days after it is served.
- (5) The Department may remove and dispose of any invasive alien species without serving an enforcement notice—
- (a) where, in the opinion of the Department, there is an imminent risk of adverse effects or an imminent threat to biodiversity, ecosystem services, human health and/or the economy; and
 - (b) at the cost of the owner and, as the case may be, the occupier who caused or permitted, whether knowingly or otherwise, the invasive alien species to be present on the premises.
- (6) Except where Article 25(3) applies, any person served with an enforcement notice commits an offence if the enforcement notice is not complied with.

Supplementary power in relation to the owner of premises

23.—(1) Where the Department is satisfied that the grounds in paragraphs (2), (3) or (4) are met, it may serve an enforcement notice on the owner of any premises under Article 22(1).

(2) The grounds in this paragraph are that it appears to the Department that an invasive alien species is present on the premises contrary to Article 17 (rapid eradication at an early stage of invasion) of the Principal Regulation and—

- (a) there is no occupier of the premises; or
- (b) the occupier cannot be found without the Department incurring unreasonable expense.

(3) The grounds in this paragraph are that—

- (a) the Department has served an enforcement notice under Article 22(1);
- (b) the occupier of the premises is not the same person as the owner of the premises; and
- (c) the occupier has failed to comply with the enforcement notice.

(4) The grounds in this paragraph are that—

- (a) the Department has served an enforcement notice under Article 22(1);
- (b) the occupier of the premises is not the same person as the owner of the premises; and
- (c) the occupier having appealed against the notice under Article 25 (appeals), the final decision of the magistrates' court pursuant to Article 25(4) was to quash, in whole or in part, the enforcement notice.

(5) Article 22(2) to (6) applies in relation to enforcement notices served pursuant to this Article on the owner of the premises as it applies to enforcement notices served under Article 22(1) on the occupier of the premises.

Recovery of expenses of enforcement notices

24.—(1) This Article applies where the occupier or, where a different person, the owner, or both commits an offence under Article 22(6).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the Department for any expenditure which the Department has incurred under Article 22 (enforcement notices).

Appeals

25.—(1) Any person served with an enforcement notice under Article 22(1) may, at any time before the notice takes effect pursuant to Article 22(4), appeal against it to a magistrates' court.

(2) The procedure on appeal is by way of complaint and the Magistrates' Courts (Northern Ireland) Order 1981 applies to the proceedings.

(3) Where an appeal is made under paragraph (1), the notice shall not have effect pending the final decision of the magistrates' court or the withdrawal of the appeal.

(4) On an appeal the court may either quash or affirm the notice and, if the court affirms the notice, it may do so either in its original form or with such modifications as the court thinks fit.

(5) Paragraph (3) does not apply where the notice includes a statement that, in the opinion of the Department, there is an imminent risk of adverse effects or an imminent threat to biodiversity, ecosystem services, human health and/or the economy.

Information sharing

26.—(1) The Department and any authorised person may exchange information for the purposes of this Order, and may divulge information to any other enforcement authority in the UK for the purposes of this Order or the equivalent legislation applicable in the UK.

(2) Disclosure of information which is authorised by this Article does not breach—

- (a) an obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

(3) But nothing in this Article authorises the disclosure of information where doing so breaches—

- (a) the Data Protection Act 2018(a); or
- (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC(b).

(4) This Article does not limit the circumstances in which information may be exchanged apart from this Article.

Forfeiture

27.—(1) The court by which any person is convicted of an offence under this Order—

- (a) must order the forfeiture of any specimen or other thing in respect of which the offence was committed; and
- (b) may order the forfeiture of any vehicle, equipment or other thing which was used to commit the offence.

(a) 1998 c. 29.

(b) OJ No. L119, 4.5.2016, p.1.

- (2) A specimen forfeited under this Article must be—
- (i) humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro-organisms); or
 - (ii) transferred to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

PART 6

PERMITS

Permits for activities relating to invasive alien species

28.—(1) The Department may issue to an establishment a permit which authorises it to carry out any prohibited action in relation to a specimen where it is carried out in the course of one or more of the following activities—

- (a) research on, or ex-situ conservation of, an invasive alien species;
- (b) scientific production, and subsequent medicinal use, where the use of products derived from an invasive alien species is necessary for the advancement of human health; or
- (c) in exceptional circumstances, such other activities as are justified by reasons of compelling public interest, including those of a social or economic nature, in accordance with Article 9 (authorisations) of the Principal Regulation.

(2) A permit may only be issued under paragraph (1) where the activity to be authorised is to be carried out in accordance with the conditions specified in paragraphs 2 and 3 of Article 8 (permits) of the Principal Regulation.

(3) A permit may not be issued under paragraph (1)(a) or (b) to authorise—

- (a) placing on the market; or
- (b) release into the environment.

(4) An application for a permit must be accompanied by sufficient evidence to enable the Department to ascertain whether the requirement in paragraph (2) is met.

(5) The permit may be subject to such other conditions as the Department considers appropriate, including but not limited to any conditions required to ensure that the requirement in paragraph (2) is met.

(6) The Department may revoke or suspend a permit at any time if—

- (a) an adverse impact on biodiversity or related ecosystem services results, or in the opinion of the Department is likely to result, from—
 - (i) any failure to comply with a condition of a permit; or
 - (ii) any unforeseen event; or
- (b) the specimen to which the permit relates has—
 - (i) in the case of an animal species, escaped from contained holding;
 - (ii) in the case of a specimen of a species of plant, fungus or micro-organism, spread beyond contained holding.

(7) For the purposes of paragraph (6)(b)(ii), “spread beyond contained holding” means that a specimen deriving from the specimen to which the permit relates is outside the contained holding.

(8) A decision to revoke or suspend a permit under paragraph 6(a) must be justifiable—

- (a) on scientific grounds; or

(b) where scientific information is insufficient, by the application of the precautionary principle^(a).

(9) The Department must make available the relevant permit information in respect of any permit issued under this Article—

(a) by publishing it on the internet; and

(b) by providing it to any person who asks for it in writing^(b).

(10) For the purposes of paragraph (9), “relevant permit information” means—

(a) the scientific and common names of the invasive alien species to which the permit relates;

(b) the number or the volume of specimens concerned;

(c) the purpose for which the permit has been issued; and

(d) the codes of Combined Nomenclature as provided by Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff^(c).

(11) Authorised persons must undertake such inspections as they consider appropriate of establishments to which a permit issued under paragraph (1) relates in order to ensure that the conditions of that permit are being complied with.

(12) For the purposes of Article 8(2)(b) of the Principal Regulation (permitting activities to be carried out by qualified personnel), “qualified personnel” means employees of the establishment to which a permit has been issued who have been trained in the activity allowed by the permit.

(13) In this Article, “prohibited action” means any action specified in Article 3(1).

PART 7

LICENCES

Licences for activities relating to invasive alien species

29.—(1) Subject to the provisions of this Article, the Department may grant a licence for the purposes specified in paragraph (2).

(2) The purposes are—

(a) implementation of an eradication measure pursuant to Article 17 (rapid eradication at an early stage of invasion) of the Principal Regulation;

(b) implementation of a management measure pursuant to Article 19 (management measures) of the Principal Regulation;

(c) the commercial use, on a temporary basis, of an invasive alien species as part of a management measure pursuant to Article 19(2) (commercial use of invasive alien species which are already established) of the Principal Regulation; or

(d) the keeping of an animal by a facility (including any necessary ancillary activities such as transportation) until the end of its natural life in accordance with Article 31(4) (transitional provisions for non-commercial owners) of the Principal Regulation.

(3) A licence under this Article may only be granted to such persons as are named in the licence.

(4) A licence under this Article must specify—

(a) the invasive alien species to which the licence relates;

(a) The precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the European Union. It aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk. See the Communication from the Commission on the precautionary principle (COM/2000/0001/Final).

(b) Requests in writing can be made to the Centre for International Trade, Animal and Plant Health Agency, Horizon House, Deanery Road, Bristol, BS1 5AH.

(c) O.J. No. 1256. 7. 9. 1987. Vol.30.

- (b) where the Department considers it appropriate, the number or volume of specimens to which the licence relates;
 - (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
 - (i) the methods, means and arrangements by which the action authorised by the licence may be taken;
 - (ii) the area or areas within which the action authorised by the licence may be taken;
 - (iii) when or over what period the action authorised by the licence may be taken; and
 - (iv) any other conditions that the Department considers are appropriate.
- (5) The Department must not grant a licence under this Article, unless satisfied—
- (a) in relation to a licence for a purpose mentioned in paragraph (2)(a), that the licence is subject to such conditions as are, in the opinion of the Department, necessary to meet the aim of ensuring that the eradication plan to which the licence relates will be effective in achieving the complete and permanent removal of the population of the invasive alien species concerned;
 - (b) in relation to a licence for a purpose mentioned in paragraph (2)(c), that there is strict justification and that all appropriate controls are in place to avoid any further spread of the invasive alien species concerned;
 - (c) in relation to a licence under paragraph (2)(d), that all appropriate controls are in place to ensure that reproduction or escape of the animal to which the licence relates is not possible.
- (6) A licence may be modified, suspended, or revoked at any time by the Department but is otherwise valid for the period stated in the licence.

PART 8

MISCELLANEOUS

The Destructive Imported Animals Act (Northern Ireland) 1933

30.—(1) A person may not by reason of the same act be convicted of both—

- (a) an offence under this Order; and
- (b) an offence under the Destructive Imported Animals Act (Northern Ireland) 1933 (“the 1933 Act”)(a).

(2) In so far as any act authorised by a permit or a licence under this Order would otherwise be an offence under section 6 of the 1933 Act (provisions as to offences) unless authorised by a 1933 Act licence, the permit or licence has effect for the purposes of that Act as if it were a 1933 Act licence, authorising that act to the extent authorised by the permit or licence and (so far as relevant to the offence in question) subject to the conditions to which it is subject, including (in the case of a permit) the conditions specified in paragraphs 2 and 3 of Article 8 (permits) of the Principal Regulation.

(3) In so far as any act authorised by a 1933 Act licence would otherwise be an offence under this Order unless authorised by a permit issued under Article 28(1)(a) or (b), and could have been authorised by such a permit, the 1933 Act licence has effect for the purposes of this Order as if it were a permit under this Order, authorising that act to the extent authorised by the 1933 Act licence, and (so far as relevant to the offence in question) subject to the conditions to which the 1933 Act licence is subject and the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation.

(a) 1933 c. 5 (N.I.).

(4) In so far as any act authorised by a 1933 Act licence would otherwise be an offence under this Order unless authorised by a licence, and could have been authorised by such a licence, the 1933 Act licence has effect for the purposes of this Order as if it were a licence under this Order, authorising that act to the extent authorised by the 1933 Act licence, and (so far as relevant to the offence in question) subject to the conditions to which the 1933 Act licence is subject.

(5) In this Article, “1933 Act licence” means a licence granted under section 3 (grant and revocation of licences) of the 1933 Act, or a special licence granted under section 7 (saving in respect of animals kept for exhibition, etc.) of that Act.

Fisheries Act (Northern Ireland) 1966

31.—(1) A person may not by reason of the same act or omission be convicted of both—

- (a) an offence under this Order; and
- (b) an offence under the Fisheries Act (Northern Ireland) 1966 (“the 1966 Act”)(a).

(2) In so far as any act authorised by a licence or a permit under this Order would otherwise be an offence under section 11(5) (fish culture licences) or 13(2) (prohibition of introduction of fish of certain kinds) of the 1966 Act unless authorised by a 1966 Act licence or permit, the licence or permit has effect for the purposes of that Act as if it were a 1966 Act licence or permit, authorising that act to the extent authorised by the licence or permit and (so far as relevant to the offence in question) subject to the conditions to which it is subject, including (in the case of a permit) the conditions specified in paragraphs 2 and 3 of Article 8 (permits) of the Principal Regulation.

(3) In so far as any act authorised by a 1966 Act licence or permit would otherwise be an offence under this Order unless authorised by a permit issued under Article 28(1)(a) or (b), and could have been authorised by such a permit, the 1966 Act licence or permit has effect for the purposes of this Order as if it were a permit under this Order, authorising that act to the extent authorised by the 1966 Act licence or permit, and (so far as relevant to the offence in question) subject to the conditions to which the 1966 Act licence or permit is subject and the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation.

(4) In so far as any act authorised by a 1966 Act licence or permit would otherwise be an offence under this Order unless authorised by a licence, and could have been authorised by such a licence, the 1966 Act licence or permit has effect for the purposes of this Order as if it were a licence under this Order, authorising that act to the extent authorised by the 1966 Act licence or permit, and (so far as relevant to the offence in question) subject to the conditions to which the 1966 Act licence or permit is subject.

(5) In this Article, “1966 Act licence or permit” means a licence granted under section 11(1) or a permit issued under section 13(3) or 14(1) (exemptions for artificial propagation and scientific purposes) of the 1966 Act.

Amendments to the Wildlife (Northern Ireland) Order 1985

32.—(1) The Wildlife (Northern Ireland) Order 1985(b) is amended as follows.

(2) In Article 15 (introduction of new species etc.), after paragraph (9) add—

“(10) Paragraph (1)(a) does not apply to species included on the list of invasive alien species of European Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread in invasive alien species as amended from time to time.”.

(3) In Schedule 9 (animals and plants to which Article 15 applies)—

- (a) in Part 1 (animals which are established in the wild), omit the following entries—

(a) 1966 c. 17 (N.I.)

(b) 1985 No.171 (N.I.2), as amended by the Wildlife and Natural Environment Act (N.I) 2011 (c. 15)

<i>Common name</i>	<i>Scientific name</i>
Crayfish, Signal	<i>Pacifastacus leniusculus</i>
Crayfish, Spiny-cheek	<i>Orconectes limosus</i>
Crayfish, Marbled	<i>Procambarus</i> sp.
Deer, Muntjac	<i>Muntiacus reevesi</i>
Duck, Ruddy	<i>Oxyura jamaicensis</i>
Squirrel, Grey	<i>Sciurus carolinensis</i> ;

(b) in Part 2 (plants), omit the following entries —

<i>Common name</i>	<i>Scientific name</i>
Balsam, Himalayan	<i>Impatiens glandulifera</i>
Cabbage, Skunk	<i>Lysichiton americanum</i>
Fanwort	<i>Cabomba caroliniana</i>
Hogweed, Giant	<i>Heracleum mantegazzianum</i>
Mile-A-Minute Weed	<i>Polygonum perfoliatum</i>
Parrot's Feather	<i>Myriophyllum aquaticum</i>
Pennywort, Floating	<i>Hydrocotyle ranunculoides</i>
Rhubarb, Giant	<i>Gunnera tinctoria</i>
Salvinia, Giant	<i>Salvinia molesta</i>
Water Primrose	<i>Ludwigia</i>
Waterweed, Curly	<i>Lagarosiphon major</i> ;

(c) in Part 2 (plants), for the entry in respect of “Waterweeds (all species) Elodea (all species)” substitute—

“Waterweeds (except Nuttall’s Waterweed)	All species of the genus <i>Elodea</i> , except <i>Elodea nuttallii</i> ”.
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Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 15th August 2019.



Dave Foster
A senior officer of the
Department of Agriculture, Environment and Rural Affairs

SCHEDULE

Article 3

Animals and plants to which Article 3(2) and (3) applies

PART 1

Animals to which the offence in Article 3(2) applies

<i>Common Name⁽¹⁾</i>	<i>Scientific name</i>
Crayfish, Signal	<i>Pacifastacus leniusculus</i>
Crayfish, Spiny-cheek	<i>Orconectes limosus</i>
Crayfish, Marbled	<i>Procambarus</i> sp.
Deer, Muntjac	<i>Muntiacus reevesi</i>
Duck, Ruddy	<i>Oxyura jamaicensis</i>
Squirrel, Grey	<i>Sciurus carolinensis</i>

⁽¹⁾ The common name or names given in the first column are included by way of guidance only; in the event of any dispute or proceedings, the common name or names will not be taken into account.

PART 2

Plants to which the offence in Article 3(3) applies

<i>Common Name⁽¹⁾</i>	<i>Scientific name</i>
Balsam, Himalayan	<i>Impatiens glandulifera</i>
Cabbage, Skunk	<i>Lysichiton americanum</i>
Fanwort	<i>Cabomba caroliniana</i>
Hogweed, Giant	<i>Heracleum mantegazzianum</i>
Mile-A-Minute Weed	<i>Polygonum perfoliatum</i>
Parrot's Feather	<i>Myriophyllum aquaticum</i>
Pennywort, Floating	<i>Hydrocotyle ranunculoides</i>
Rhubarb, Giant	<i>Gunnera tinctoria</i>
Salvinia, Giant	<i>Salvinia molesta</i>
Water Primrose	<i>Ludwigia</i>
Waterweed, Curly	<i>Lagarosiphon major</i>
Waterweed, Nuttall's	<i>Elodea nuttallii</i>

⁽¹⁾ The common name or names given in the first column are included by way of guidance only; in the event of any dispute or proceedings, the common name or names will not be taken into account.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to Regulation (EU) No. 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species therein (OJ L31/35, 4.11.2014) (“the Principal Regulation”) and of Commission Implementation Regulation (EU) No. 2016/1141 (OJ L189/4, 14.7.2016) adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No. 1143/2014.

This Order provide for criminal offences relating to breach of requirements of the Principal Regulation.

Part 2 of the Order contains criminal offences. Parts 3 and 4 contain defences to those offences and penalties respectively. Part 5 sets out the enforcement provisions. In particular Articles 22 to 24 provide for enforcement notices which allow the Department to serve on the occupier or, where a different person, the owner, or both who has caused or permitted, whether knowingly or otherwise, a species on the Union list to be present on their premises. This Order will be enforced by the Department and authorised persons.

Part 6, provides for the issue of permits (Article 28) in accordance with Articles 8 and 9 of the Principal Regulation. Part 7 contains licencing provisions, which may be issued for a number of different activities, provided specific conditions are met (Article 29).

Part 8 contains provisions ensuring that the Order works alongside related legislation and avoids duplication of controls between similar regimes where possible. Article 32 makes amendments to Parts 1 and 2 of Schedule 9 to the Wildlife (Northern Ireland) Order 1985.

An impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sectors is foreseen.

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