

**EXPLANATORY MEMORANDUM TO**  
**THE PROHIBITION OF KEEPING OR RELEASE OF LIVE FISH (SPECIFIED SPECIES) (ENGLAND) (AMENDMENT) ORDER 2014**

**2014 No. 3342**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 This instrument narrows the scope of the Prohibition of Keeping or Release of Live Fish (Specified Species) (England) Order 2014 (“the principal Order”) so that the prohibition on keeping certain fish no longer applies to keeping those fish in “inland waters” (as defined in the Water Resources Act 1991). It also narrows the scope of the principal Order so that the prohibition only applies to freshwater fish and not sea fish. The principal Order, as amended by this instrument, will continue to provide protection against potentially invasive non-native fish species, which are capable of surviving in colder English waters, whilst kept or released into tanks, small ponds and aquaria.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 This instrument is made under the Import of Live Fish Act 1980. The instrument amends the Prohibition of Keeping or Release of Live Fish (Specified Species) (England) Order 2014.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**
  - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
  - 7.1 Non-native fish species pose a significant threat to native species through predation and competition. They have potential impacts on biodiversity of habitats, ecosystems and commercial and recreational fishery waters. A recent

report estimated the current cost of all invasive non-native species to the British economy at approximately £1.7 billion per year. Freshwater businesses such as angling sites can also suffer if they have to be closed down in order for an eradication programme to take place.

- 7.2 The risks from the release and keeping of non-native fish species are currently managed by requirements for licencing under the Import of Live Fish (England and Wales) Act 1980 (ILFA) and the Prohibition of Keeping or Release of Live Fish (Specified Species) (England) Order 2014. The formal permission of the Environment Agency is also required for the introduction of all fish into inland waters under the Salmon and Freshwater Fisheries Act 1975 (referred to as ‘Section 30 consents). However, the section 30 consent scheme is not satisfactory and a new permitting scheme will be introduced by the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015 (“the Regulations”). The Regulations will come into force on the same day as this instrument, and will apply to “inland waters” in place of the principal Order. Regulation 17, a transitional provision, would provide that licences under the principal Order that are in force immediately before the Regulations are made will be taken to be permits under the Regulations.
- 7.3 The principal Order would be amended by this instrument to remove inland waters such as lakes, river and still ponds over 0.4 hectares from its scope. This legislation will still continue to apply to keeping and release in all other waters that are not inland waters. This includes, but is not limited to, smaller ornamental ponds (less than 0.4 hectares), aquaria, tanks and similar facilities, zoos and laboratories. This legislation will apply to the ornamental trade, hobbyists, garden centres, ornamental display ponds in public areas and research and conservation facilities.
- 7.4 We are also making a minor technical change to make it clear that the legislation applies to freshwater fish only; an omission from the principal Order. [To avoid any possible misunderstandings until the text could be amended, marine species were placed on a temporary general licence to safeguard current trade and avoid potential difficulties for the affected sector. This has had no impact on industry.]
- 7.5 In addition, we are making minor amendments to the list of fish that appear in the Schedule in order to correct the common names of some of the fish.
- 7.6 This is a specific measure that applies to very specialist sectors. We do not anticipate any controversy with introducing this instrument and the instrument is not politically sensitive.

## **8. Consultation outcome**

- 8.1 The amendment to the principal Order which this instrument would make is consequential upon the coming into force of the Regulations. Formal public consultation on the Regulations took place between 16 December 2009 and 10

March 2010. Fishery owners were consulted, including those who would be affected by the change to the principal Order, i.e. those who keep or release ornamental non-native fish in inland waters and who would therefore have to obtain a permit under the Regulations instead of a licence under the principal Order.

- 8.2 Defra has actively engaged with stakeholders, including the ornamental fish trade, since the consultation in 2010. They are aware of the proposed changes and in practice very few, if any, stakeholders will be affected by the change as most ornamental non-native fish are already released and kept in aquaria, tanks etc.
- 8.3 A total of 21 responses were received during the consultation on the new permitting scheme that would be imposed by the Regulations. The responses were from:
- one angling club
  - two salmon and trout associations
  - three fishery aquaculture/supplier organisations
  - one fisheries managers organisations
  - four Regional Fisheries, Ecology and Recreational Advisory Committees;
  - one borough council (fisheries manager)
  - two environment groups
  - one individual; and
  - six government environmental organisations ( Environment Agency, Centre for Environment, Fisheries and Aquaculture Science (two), Natural England, Fish Health Inspectorate, Countryside Council for Wales, and Scottish Natural heritage).
- 8.4 The majority of respondents (17 -77%) agreed that the proposed risk based permit scheme should be introduced. The three people who objected are involved in the supply trade and argued that the current regulation of movements was adequate, and that the new scheme presents benefits only to the Environment Agency. They also suggested that difficulties in complying with the new scheme will inevitably lead to an increase in illegal trade. All those who responded to the consultation had queries about the detail of the scheme. Some respondents made suggestions for substantial amendments to the scheme (for example, the inclusion of fish farms and garden ponds), and most asked for clarification about practical details (such as how the Environment Agency would distinguish between high risk and low risk fish movements).
- 8.5 The Government response was published in April 2010 at the following address: <http://webarchive.nationalarchives.gov.uk/20100505154859/http://www.defra.gov.uk/corporate/consult/fish-movements/fish-movements-gov-response.pdf>  
Whilst recognising the concerns expressed, we still consider that the current scheme is overly bureaucratic and inflexible. For example, all fish movements, whether high or low risk, require consents and if, for whatever reason, the

movement does not happen on the specified day or time a new consent must be sought.

8.6 The key benefit of the new scheme is to reduce burdens on industry which is supported by the analysis in the regulatory impact assessment. In response to the concerns raised, the Environment Agency has provided more guidance to industry on what the permit scheme will contain. To further reduce the burden on industry, the Environment Agency plan to issue permits for the start of the scheme.

## **9. Guidance**

9.1 The CEFAS Fish Health Inspectorate (FHI) will provide notification of the changes to any current ILFA licence holders affected by the change and will amend its guidance accordingly.

## **10. Impact**

10.1 There is no impact on the businesses that remain within the amended scope of the principal Order. An impact assessment was produced to support the introduction of the new live fish movement scheme which shows a saving for industry. This Impact Assessment has been attached to the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015 and will be published alongside the corresponding Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business. The new live fish movements permitting scheme reduces burdens on all businesses; there are no costs associated with those sectors within scope of the amended principal Order.

## **12. Monitoring & review**

12.1 Defra will undertake regular reviews of the legislation at a maximum of five-year intervals from the date the instrument comes into force.

## **13. Contact**

Emma Boyd at the Department for Environment, Food and Rural Affairs Tel: 020 7238 3149 or email: [emma.boyd@defra.gsi.gov.uk](mailto:emma.boyd@defra.gsi.gov.uk) can answer any queries regarding the instrument.