

16 June 2017

From: [REDACTED] (Defra)
Sent: 16 June 2017 12:08
To: [REDACTED] (Defra); [REDACTED] (DEFRA)
Cc: [REDACTED] (Defra); [REDACTED] (Defra)
Subject: RE: 170607 Jolly - raccoons

[REDACTED]

I think this draft accurately reflects our conversation yesterday.

Thanks

[REDACTED]
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[REDACTED] | Senior Policy Adviser | Invasive Non-native Species Team | Department for Environment, Food and Rural Affairs | Direct line: [REDACTED] | Email: [REDACTED] | Address: 2nd Floor, Horizon House, Deanery Road, Bristol BS1 5AH.

15 June 2017

From: [REDACTED] (Defra)
Sent: 15 June 2017 17:49
To: [REDACTED] (DEFRA); [REDACTED] (Defra)
Cc: [REDACTED] (Defra); [REDACTED] (Defra)
Subject: RE: 170607 Jolly - raccoons

Hi all,

I promised to send a further draft round. Comments by lunchtime on Tuesday, please.

Dear Mr Jolly,

Thank you for your e-mail dated 23rd May 2017 and the additional information. I have considered this carefully. Now that you have given us further evidence that you acquired the two raccoons before the EU IAS regulation No. 1143/2014 came into force, you can continue to keep the animals until the end of their natural life.

You must, however, ensure that your raccoons are kept in a secure enclosure and not allowed to escape. If you do transport them, you must keep them securely under your control during transit and ensure that they do not escape. You must also take appropriate measures to stop them breeding.

There is no case for a permit under Article 9, as we concur with the European Commission's view that you have not demonstrated an "exceptional case, for reasons of compelling public interest, including those of social or economic nature" as required by Article 9(1) of the Regulation. This is not something about which you have provided any further evidence. There is no right of appeal against a refusal of an application for a derogation under Article 9 of the EU IAS Regulation No.1143/2014.

You will be aware that under the terms of the EU IAS Regulation No.1143/2014, you may not intentionally acquire, exchange, transport, or keep, any further raccoons.

Further information about the EU IAS Regulation No 1143/2014 can be found on the website of the GB non-native species secretariat which can be found here: <http://www.nonnativespecies.org/index.cfm?sectionid=7>. This also contains answers to frequently asked questions which may be of assistance.

You may wish to consider taking your own legal advice on these points. Ultimately it is only the courts that definitely interpret the law.

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8 June 2017

From: ██████████ (Defra)
Sent: 08 June 2017 19:13
To: ██████████ (DEFRA); ██████████ (Defra)
Cc: ██████████ (Defra)
Subject: RE: 170607 Jolly - raccoons

Thank you ██████████. Craig just thought Charles should be aware in the light of the FOI request on the same subject.

I do just slightly wonder if we should be prompting Mr Jolly to make another request. His original application did not make an exceptional case and neither did his further evidence, even though we had cited this as the main weakness. Do you picture him coming back and making a case for there being compelling public interest, at which point we would then apply formally through the C'ion process? I am not sure that we should encourage this, as, from what the C'ion have said, this would be a wasted effort.

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7 June 2017

From: [REDACTED] (Defra)
Sent: 07 June 2017 12:37
To: [REDACTED] (Defra); [REDACTED] (DEFRA)
Cc: [REDACTED] (Defra); Allen, Charles (Defra)
Subject: RE: Jolly - raccoons

Dear all,

[REDACTED] has advised that we should be slightly more cautious in our advice, as it is not for us to provide legal advice on something that could be challenged in the courts. Accordingly, I have amended the draft, and I am also copying Charles in, to be aware.

Charles – I am happy to send you the background e-mails on this case, and discuss it over the phone, if that would help.

Dear Mr Jolly,

We have now had a chance to consider your application further. Now that you have given us further evidence that you acquired the two raccoons before the regulation came into force, I am pleased to be able to inform you that you can continue to keep the animals until the end of their natural life.

There is no case for a permit under Article 9, as we concur with the European Commission's view that you have not demonstrated an "exceptional case, for reasons of compelling public interest, including those of social or economic nature" as required by Article 9(1) of the Regulation. This is not something about which you have provided any further evidence.

However, you may wish to consider whether your case is analogous to that of encounter animals, where our policy is that owners may show them, provided they are kept and transported in a secure holding and shown in a secure environment from which they cannot escape, spread, breed or be removed. To be consistent with this, you should ensure that the female raccoon (Tucker) is sterilised, to prevent her from breeding, should she escape. You may wish to consider taking your own legal advice on these points, as the case would ultimately be for the courts to decide, should there be any challenge.

You will be aware that under the terms of the EU IAS Regulation, you may not acquire any further raccoons.

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From: [REDACTED] (Defra)
Sent: 07 June 2017 10:14
To: [REDACTED] (Defra); [REDACTED] (DEFRA)
Cc: [REDACTED] (Defra)
Subject: RE: Jolly - raccoons

Suggested change to be consistent with the wording in the FAQ:

“Consistent with our policy on zoos and encounter animals, you may also show them, provided they are kept and transported in a secure holding and shown in a secure environment from which they cannot escape, spread, breed or be removed. The female raccoon (Tucker) should also be sterilised, to prevent her from breeding, should she escape. You will be aware that under the terms of the EU IAS Regulation, you may not acquire any further raccoons.”

Thanks

[REDACTED]

acte [REDACTED] | Senior Policy Adviser | Invasive Non-native Species Team | Department for Environment, Food and Rural Affairs | Direct line: [REDACTED] | Email: [REDACTED] | Address: 2nd Floor, Horizon House, Deanery Road, Bristol BS1 5AH.

6 June 2017

From: [REDACTED] (Defra)
Sent: 06 June 2017 16:33
To: [REDACTED] (DEFRA); [REDACTED] (Defra)
Cc: [REDACTED] R (Defra)
Subject: RE: Jolly - raccoons

Hi [REDACTED],

Thanks for a helpful chat this afternoon. I agreed to draft an e-mail to Mr Jolly, and I would be grateful for any comments on my attempt below, ideally by lunchtime on Thursday, please.

Dear Mr Jolly,

We have now had a chance to consider your application further. Now that you have given us further evidence that you acquired the two raccoons before the regulation came into force, I am pleased to be able to inform you that you can continue to keep the animals until the end of their natural life.

Consistent with our policy on zoos and encounter animals, you may also show them, provided they are in a contained environment. The female raccoon (Tucker) should also be sterilised, to prevent her from breeding, should she escape. You will be aware that under the terms of the EU IAS Regulation, you may not acquire any further raccoons.

Yours sincerely,

[REDACTED]

██████████, **Head of Protected and Invasive Non-Native Species Team** | Department for Environment, Food and Rural Affairs | Direct line: ██████████ | Email: ██████████
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22 May 2017

From: ██████████ (Defra)
Sent: 22 May 2017 16:07
To: ██████████ (Defra); ██████████ (DEFRA); ██████████ (DEFRA); ██████████ (DEFRA)
Subject: RE: Article 9 Application: Procyon lotor (American raccoons)

Hi ██████████,

Sorry if I spoke out of turn! If the decision were reviewed, I think it would be fair to say that I took it, in the knowledge that the C'ion would turn it down if formally submitted. The implication of their e-mail was that we should have spotted that there was no *"exceptional case, for reasons of compelling public interest, including those of social or economic nature"* in order to justify its activities, as required by Article 9(1) of the Regulation. Our own reservation about it was around Mr Jolly's failure to confirm that there would be continuous surveillance, which is arguably easier to address.

I made the observation about the possibility of an infringement of the Regulation in the knowledge that we had no powers to take action. Given that the Commission had offered a practical solution to this possible infringement, I thought it better to seek confirmation that the raccoons had been passed to Mr Jolly for safe-keeping, so that we could confirm this position to the commission, rather than implying to them that an infringement had occurred which we had no powers to curb.

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19 May 2017

From: ██████████ (Defra)
Sent: 19 May 2017 13:20
To: ██████████ (Defra); ██████████ (DEFRA); ██████████ (DEFRA); ██████████ (DEFRA)
Subject: RE: Article 9 Application: Procyon lotor (American raccoons)

Hi ██████████

Thank you for picking this up in my absence.

Unfortunately, I went on leave before I had opportunity to consider the Cion advice in full. My apologies but I should have told you that I was planning to discuss this further with ██████████/APHA next week before we responded to Mr Jolly because I wasn't clear how we would be proceeding, namely:

- (i) Do we agree with the Cion advice that MS's can decide not to forward applications under Article 9? I think so, but wanted legal confirmation;
- (ii) If we do agree, do we have the necessary powers to do this on an administrative basis – presumably yes if we are determining Article 8 applications at present. We may need to factor something into the implementing regulation to cover this;
- (iii) Should we be issuing a formal decision letter to the applicant rejecting the application giving grounds in full and explaining what redress, if any, may be available?
- (iv) It is also not clear who is actually making the decision – the email relies on the Cion's reasoning, but the decision seems to be ours only. Whilst we may be at liberty to consider the Cion's strong steer (although that could be prejudicial?), do we not need to draw our own conclusions on the evidence?

The other issue is that the email also refers to the possibility that an offence may have been committed (although we have no powers to take action). Does the email now fall within the scope of the outstanding Born Free FOI – and, if so, can that paragraph be released unredacted to Born Free? I've asked [REDACTED] to check.

Thanks

[REDACTED]
acte

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From: [REDACTED] (Defra)
Sent: 18 May 2017 11:18
To: [REDACTED] (APHA); [REDACTED] (APHA)
Cc: [REDACTED] (Defra); [REDACTED] (DEFRA); [REDACTED] (DEFRA); [REDACTED] (DEFRA)
Subject: FW: Article 9 application - Jolly's Circus - Procyon lotor (American raccoons)

Dear all,

Apologies, I am only just getting to grips with this case. Please see the advice below that we received from the Commission on this last week. Essentially, they have explained that it would be for Defra to submit the application, but the C'ion regard the application as inadmissible, because it does not demonstrate an *"exceptional case, for reasons of compelling public interest, including those of social or economic nature"* in order to justify its activities, as required by Article 9(1) of the Regulation.

Under the circumstances, I suggest that there is little point in Defra submitting the application, only to receive this news formally from the C'ion. So I am planning to go back to Mr Jolly and explain this. If he comes back with a demonstration of why this is an exceptional case, and ticks the box about continuous surveillance, then I suppose we could reconsider, but I do not propose suggesting this to him.

[REDACTED]
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