



Department
for Environment
Food & Rural Affairs



Llywodraeth Cymru
Welsh Government

Government response and summary of responses:

Consultation on Tackling Invasive Non-native Species

A new enforcement regime

3 July 2018

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Contents

| | |
|--|----|
| Introduction | 4 |
| Government response to consultation | 5 |
| The use of existing regulatory frameworks | 6 |
| The proposed civil penalties regime | 6 |
| The proposed criminal enforcement regimes | 6 |
| The level at which penalties should be set | 7 |
| Further comments | 7 |
| Next steps | 8 |
| Annex A: Summary of responses | 8 |
| Table 1: Breakdown of consultation responses by area | 8 |
| Table 2: Breakdown of consultation responses by sector | 8 |
| Annex B: List of organisations who responded | 13 |

Introduction

The EU Invasive Alien Species Regulation ((EU) 1143/2014)¹ (“the EU Regulation”) currently applies restrictions on 49 invasive non-native species of most concern in Europe. A joint Defra and Welsh Government consultation, which closed on 3 April 2018, set out proposals for enforcing those restrictions through the use of civil and criminal penalties.

The consultation sought views on proposed penalties in respect of restrictions outlined at Article 7 of the EU Regulation which prohibit the intentional:

- (a) importing;
- (b) keeping;
- (c) breeding;
- (d) transporting;
- (e) selling;
- (f) using or exchanging;
- (g) permitting to reproduce, grow or cultivate or
- (h) releasing into the environment

of any live specimens of the species on the Union list.

It also sought views on penalties in respect of permits which allow derogations from the above restrictions. Proposed penalties related to:

- Making a false statement to obtain a permit;
- Falsifying or altering a permit; or using a specimen otherwise than in accordance with a permit;
- Knowingly contravening a condition or requirement of a permit;
- Intentionally obstructing an authorised enforcement officer;
- Impersonating an enforcement officer, with intent to deceive;
- Attempting to commit any of the offences above;

A requirement of the EU Regulation is that the penalties must be effective, proportionate and dissuasive and may include, for example, fines, seizure of the species and immediate suspension or withdrawal of a permit.

We asked for stakeholder responses to the following questions:

- Q1. Where a species of Union concern is already subject to control through an existing framework, do you consider that it should continue to be managed under that framework for restrictions that are covered by the Regulation?

¹ Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species

- Q2. Are you content with the proposed civil penalties regime including the levels for fixed monetary penalties and standards of proof? What, if any, changes would you propose? Please explain your reasons.
- Q3. Do you consider that breaches of these restrictions merit the creation of new criminal offences or should we rely on civil penalties and existing criminal offences? Please explain the reasons for your answer.
- Q4. Do you consider that breaches relating to the permitting scheme merit the creation of new criminal offences or should we rely solely on civil penalties? Please explain the reasons for your answer.
- Q5. If new criminal offences are created, do you think that the penalties should be set at the same level as those for offences under section 14 or 14ZA of the Wildlife and Countryside Act 1981? Please explain the reasons for your answer.
- Q6. Do you have any further views on the proposals?

128 responses were received from a wide range of interests. 42 of those from individuals clearly representing organisations and 86 from individuals presenting their own views. A list of the organisations who responded is attached at Annex B. Wildlife and Countryside Link's response was supported by 10 further organisations who requested the response be treated as one from each of the named organisations.

A number of concerns were raised by stakeholders over clarity of the requirements of the EU Regulation. An [FAQ for UK stakeholders](#) has been produced. This document will be updated and subsequently be kept under review, to address common concerns referred to in the consultation responses.

A full summary of the consultation responses is included in Annex A of this document and a list of organisations who responded is included in Annex B.

Government response to consultation

Defra and the Welsh Government have considered the consultation responses and are grateful to those who responded.

The views provided by respondents to the consultation covered the 4 main aspects of the proposal:

- The use of existing regulatory frameworks.
- The proposed civil penalties regime.
- The proposed criminal enforcement regimes.
- The levels at which penalties should be set.

The use of existing regulatory frameworks

Of those who directly responded to Q1 approximately 60% felt that species covered by the Regulation should continue to be controlled through current measures where they already exist. The majority of those who did not consider the existing controls should be used, felt that a new over-arching regime would improve understanding, consistency of approach and enforcement. A number of respondents commented that further analysis of the existing regulatory frameworks needed to be undertaken.

Based on this response it is the government's view that, where possible, existing regulatory frameworks should be used. Where current UK legislation already covers restrictions in the Regulation then, they should be utilised where it makes sense to do so. The governments however acknowledge that there may be a need to amend current legalisation, or to implement a new framework to improve the consistency of enforcement.

The proposed civil penalties regime

Of those who directly responded to Q2 approximately two thirds were content with the proposed civil penalties regime whilst approximately one third indicated they were not. Of those who were not content half commented that higher penalties or stronger (criminal) sanctions are required. The most common observation of those who supported the proposals suggested a need for guidance for either enforcement officers or those who are likely to be impacted by the sanctions to help consistency and understanding. A number of respondents commented that where serious and sustained illegal activities occur, the use of criminal sanctions in the first instance should always be considered as routine. Respondents supported a range of options within the civil penalties regime to reflect the seriousness and frequency of the breach before proceeding to criminal proceedings.

Overall, approximately 82% of respondents agreed to the proposed regime, or wanted fines to be higher. The governments intend to implement the proposed civil penalty scheme. We will however further explore the possibility of larger fines for persistent offenders, or for cases where the environment has been heavily impacted. We shall also look into developing guidance for enforcement officers, so that a more consistent approach to IAS regulation in England and Wales can be developed.

The proposed criminal enforcement regimes

This aspect of the consultation was split over Q3 and Q4. Of the 110 respondents who directly replied to Q3 views were split approximately 50:50 between those supporting new criminal sanctions and those supporting new civil sanctions and current criminal measures where they already exist. In response to Q4, 60% of respondents felt that new criminal sanctions were merited to enforce the permitting scheme.

It should be noted that many large stakeholder groups were highly in favour of the creation of new criminal sanctions. We have given further consideration to the views of respondents that represented larger groups, or who presented direct evidence to back up their responses. The

governments will therefore look into the feasibility of creating new criminal offences to enforce the Regulation, which will exist alongside the proposed civil sanctions regime. This would allow for a flexible approach to enforcement, with only severe/persistent breaches being dealt with by use of criminal proceedings.

Responses from Q1 however indicate that, where possible, any new offences should focus on restrictions that are not already covered under existing legislation. Additionally, we will look to develop detailed guidance for enforcement bodies and the public, in order to prevent any new legislation unduly punishing unintentional/minor breaches.

The level at which penalties should be set

Finally, in response to Q5, approximately 66% of respondents felt that any new penalties should be in line with or higher than penalties already set in the Wildlife and Countryside act 1981(as amended).

The governments wants to highlight the serious risk that INNS pose to the environment, as well as the economic burden they place on the UK. Therefore we will take the responses to this consultation into account, and will further review the level of penalties before drafting enforcement legislation.

Further comments

We would like to thank the respondents for their input into this consultation. A number of groups made a significant effort to make their views on the consultation known. Bee keeping associations were one such group. We would like to assure beekeepers that this enforcement regime is in no way designed to hamper efforts in protecting bee populations from invasive pests such as the Asian Hornet (*Vespa velutina*). The governments would like to acknowledge the ongoing vigilance of the beekeeping community against this threat, and we believe that a new enforcement regime will help to further protect the UK's pollinators from the threat of invasive species.

Comment was made on the use of the words 'intent' and 'permit to grow' within the Regulation. We would like to highlight that the Regulation is designed to protect the environment, and not to punish landowners or private individuals without due cause. The proposed enforcement regime has been designed to be in keeping with the spirit of the Regulation, and therefore we will be engaging with enforcement bodies to design clear guidelines as to when enforcement steps need to be taken.

We strongly believes that enforcement action should be proportionate to the seriousness of the offence, the intention behind the offence, the risk posed, and the severity of any associated economic or environmental impact. The responses to this consultation have further helped to develop our understanding of future action that is required. This understanding has lead us to developing a number of further steps that will allow us to address points raised from the consultation.

Next steps

- We will update the FAQ document to address common concerns referred to in the consultation responses. Specifically those regarding matters pertaining to intent, and the care of companion/rescue animals once this enforcement regime comes into force.
- We will carry out further analysis of the existing regulatory frameworks to assess whether new or existing frameworks would be the most effective, efficient and transparent means of enforcement.
- We shall develop new sanctions to cover the restrictions laid out in the Regulation.
- We shall further review the levels of penalty applicable to breaches of these restrictions.
- We will ask the regulators to produce guidance to provide clarity on offences which may be taken through the civil route and those which may affect criminal proceedings and describe when the burden of proof is satisfied.
- We will review ways in which we can work more closely with key stakeholder groups such as, trade bodies, major landowners, and conservation groups. Further input from these groups will benefit our approach to enforcement. It will also aid in developing our strategy towards increasing public awareness of the new enforcement regime.

Annex A: Summary of responses

Table 1: Breakdown of consultation responses by area

| Area | Number of responses |
|-------------------|---------------------|
| England | 87 |
| Wales | 18 |
| England and Wales | 7 |
| No area indicated | 16 |

Table 2: Breakdown of consultation responses by sector

| Interest (Organisation or individual) | Number of responses |
|---------------------------------------|---------------------|
| Advisors / Regulators | 3 |

| | |
|--|----|
| Animal Welfare | 11 |
| Beekeepers | 17 |
| Conservation | 15 |
| Fishing interests (commercial and recreational) | 6 |
| Keepers (hobby and trade) | 15 |
| Land owners / managers | 4 |
| Other | 3 |
| Specific issues about invasive plants and horticulture | 10 |
| Ports | 3 |
| Rail | 1 |
| Tourism and recreation (water) | 7 |
| Research | 1 |
| No specific area of interest specified | 24 |
| Water companies and individuals with an interest in the water industry | 8 |

Q1. Where a species of Union concern is already subject to control through an existing framework, do you consider that it should continue to be managed under that framework for restrictions that are covered by the Regulation?

103 respondents responded directly to this question. 25 People either gave no reply or gave a response which did not relate to the question being asked.

61 respondents felt that where a species of union concern is managed under an existing framework it should continue to be managed under that framework for restrictions covered by

the Regulation. 43 respondents felt species should not continue to be managed under existing regimes. Of these 43 respondents, nearly half (20) of the responses came from those representing organisations. Of the 61 respondents who felt existing control measures should remain just over one quarter (16) of the responses came from those representing organisations.

Of those not wanting existing measures to continue the majority (81%) felt this was because clarity and consistency could be improved or enforcement could be improved through a new over-arching framework.

Of those who felt existing measures should continue to be used the just over half (32) were of the view the existing controls were sufficient or would be sufficient if enforced properly. A further 7 respondents felt the controls were sufficient for now but could be improved in the future. 11 were concerned changes to the controls could have negative consequences such as an impact on business, an increase in penalties, result in a loss of familiarity with the legislation or affect specific species such as rehabilitation of grey squirrel.

We welcome the approach outlined with regards to civil penalties. It is important for regulators to be able to distinguish between those who flagrantly disregard the law and those who are general approach is good. The use of advice, guidance and warning letters by a regulator should be part of their approach to addressing the risk posed by non-native invasive species. However, this use must be proportionate to the seriousness or the risk. We believe that enforcement should be used immediately where breach of the Regulation can lead to serious economic or environmental impact.

Q2. Are you content with the proposed civil penalties regime including the levels for fixed monetary penalties and standards of proof? What, if any, changes would you propose? Please explain your reasons.

104 respondents responded directly to this question. 24 people did not provide a response to question 2.

67 respondents indicated they were content with the proposed civil penalties regimes. 36 indicated they were not content with the proposals. One organisation had mixed views. Of the 67 respondents who were content just over a third (25) of the responses came from those representing organisations. Of the 36 respondents who were not content with the proposals just under a third (11) of the responses came from those representing organisations.

Just under a half (31) of the 67 who were content with the proposals under Q2 made no further comments in relation to this question. 13 commented that guidance should be drafted for either enforcement officers or those who are likely to be impacted by the sanctions to help consistency and understanding. A further 15 respondents commented higher, criminal sanctions are needed in addition to the proposed civil sanctions. A small number of comments (7) were made relating to; proper resourcing of regulators, better inspection at points of entry (imports), higher penalties for selling and keeping and exemptions concerning rehabilitating injured invasive species.

Of those who were not content with the proposals half commented that higher penalties or stronger (criminal) sanctions are required. A further 4 felt there should be no discount for early payment. Just under a quarter of the 36 respondents felt that the proposals are too strict. A small number of comments (8) were made relating to; existing measures not being enforced properly, concerns over the standards of proof, regulators should be able to recover costs and that the proposals were too little too late for widespread invasive non-native species.

Q3. Do you consider that breaches of these restrictions merit the creation of new criminal offences or should we rely on civil penalties and existing criminal offences? Please explain the reasons for your answer.

110 respondents responded directly to this question. 49 respondents felt that breaches of the restrictions set out by the Regulation merited the creation of new criminal offences. 52 respondents felt that there was no merit in creating new criminal offences to enforce the restrictions set out in the EU Regulation but instead rely on new civil sanctions and current criminal measures where they exist.

Of the 52 respondents who opposed the creation of new criminal sanctions, 13 of the responses came from those representing organisations. Of the 47 respondents who felt new criminal offences should be created, 27 came from organisations. 13 respondents overall stated that they felt that there was need for further review of both the proposed, and current legislation in place.

Of those respondents who felt that there was a need for new criminal sanctions, 81% felt that stronger criminal sanctions were needed. A number of different reasons for the need for stronger sanctions were raised. One of the main points being that criminal sanctions are available for other biosecurity legislation and it would be inconsistent for new Invasive non-native species control to be treated differently and would not correctly highlight the serious risks that INNS pose to the environment. Others commented that a stronger deterrent is needed, as preventing the cost of the spread of invasive species is far more cost effective than trying to eradicate them once established. Some respondents also felt, in cases of serious and/or organised illegal activity, or where reoffending has occurred, it would be appropriate that regulators have the option of resorting to criminal sanctions.

Respondents in this group felt that civil sanctions were not enough of a deterrent to stop organised/persistent offenders. It was highlighted that in other areas of wildlife legislation, the creation of criminal sanctions has proved a major deterrent to restricted actions. However, some respondents within this group also acknowledged that there would also still need to be a range of civil sanctions in place, so that unintentional breaches could be dealt with without the need for criminal investigation.

Of those respondents who felt that there was no need for new criminal sanctions, 69% felt this was because current legislation (Customs and Excise Management Act 1979 & Wildlife and Countryside Act 1981) was sufficient. Respondents also noted that they felt that the creation of criminal sanctions would result in unintentional breaches being unduly punished. These respondents highlighted a perceived lack of enforcement action towards wildlife legislation, and

did not believe that additional offences would serve much purpose without suitable enforcement.

Q4. Do you consider that breaches relating to the permitting scheme merit the creation of new criminal offences or should we rely solely on civil penalties? Please explain the reasons for your answer.

86 respondents responded directly to this question. 52 respondents felt that breaches relating to the permitting scheme merited the creation of new criminal offences. 32 respondents felt that there was no merit in creating new criminal offences for breaches relating to the permitting scheme. 2 respondents indicated they were undecided in their thoughts on the question.

Out of the 32 respondents that did not feel that new criminal offences were warranted, 5 responses came from those representing organisations. From the 52 respondents who felt that criminal sanctions were merited, 23 responses were from those speaking on behalf of organisations. Within those 23, 4 organisations who had previously said in question three that criminal sanctions were not warranted, but believed that breaches of the permitting scheme did require criminal enforcement options.

Out of all responses to question four 47% of responses called for a need for stronger criminal sanctions. 26% of responses believed that a civil penalty scheme would be a sufficient form of enforcement. Additionally 22% of responses highlighted that an enforcement scheme based solely on civil penalties, in their opinion, was not going to act as a suitable deterrent.

Respondents to this question brought up a number of further points. The need for public education regarding any scheme implemented was raised, as respondents did not believe that public knowledge regarding INNS was widespread, and were concerned people would fall foul of any enforcement regime due to lack of education. Furthermore some respondents, including those in favour of criminal sanctions, made it clear that they would not want there to be criminal proceedings taken against unintentional breaches, and any enforcement regime should also include a range of civil penalties backed up by criminal sanctions that could be used against the worst offenders.

Q5. If new criminal offences are created, do you think that the penalties should be set at the same level as those for offences under section 14 or 14ZA of the Wildlife and Countryside Act 1981? Please explain the reasons for your answer.

86 respondents responded directly to this question. From these responses, 41 respondents expressed a belief that penalties should be set at the same level, 33 stated that penalties should be set at a different level, and 12 respondents stated that there was no need for any new criminal offences so associated levels of penalty were a moot point. It should be noted that a large subset of responses did not give a reason as to why they held their opinion just that they felt strongly in a particular direction in response to this question.

Out of the respondents that said that penalties should be different to those offences under section 14 and 14ZA of the Wildlife and Countryside Act 1981, 2 stated that they felt the penalties for any new offences should be lower, 16 believed they should be higher, and 12 respondents stated that penalties should be variable to allow for the severity of the breach to be accounted for.

Of those who felt that any new penalties should be the same as those under 14 and 14ZA of the Wildlife and Countryside Act 1981, the majority of respondents stated that they believed that these penalties were already set at a level that was appropriate. Some within this group pointed out a need for equivalence across similar offences, and that setting all penalties at the same level was the most appropriate approach.

Within those who felt that the penalties should be different to those under 14 and 14ZA of the Wildlife and Countryside Act 1981, the majority stated that penalties should either be higher, or have the ability to be variable, as this would highlight the risk that INNS pose to the environment. This group also stated that penalties should be proportional to the breach itself, and a small part of this group highlighted that penalties should pose a significant deterrent to intentional breaches.

The majority of respondents who felt that there was no need for new offences stated that civil penalties were more appropriate than criminal penalties in regards to enforcing the regulation.

In addition, concerns were raised across all groups in regards to the enforcement of both new and existing enforcement options. Some respondents felt that, no matter which option was selected, without proper enforcement any regime would not be successful and therefore wanted to highlight this issue through the consultation.

Q6. Do you have any further views on the proposals?

102 respondents responded to this question. This was a generalised question designed to capture any additional information. Responses were wide ranging, and covered a number of topics and viewpoints. Some raised further points not covered in the scope of previous questions, and some further reiterated statements made in previous questions. A number of responses made points that, although acknowledged, are outside the scope of this consultation. We have covered some of the major themes under 'further comments' and 'next steps' on pages 7 and 8 of this document.

Annex B: List of organisations who responded

Aluminium Federation

Anglian Water

Bee Farmers Association

Catchment Partnerships - Dorset

Centre for Agriculture and Biosciences International (CABI)

Centre for Environment, Fisheries & Aquaculture Science (CEFAS)

Country Land and Business Association (CLA)

Countryside Alliance

Farmers Union of Wales

Ffestiniog Railway Medical Service

Game & Wildlife Conservation Trust (GWCT)

Harwich Haven Authority

Isle of Wight Catchment Partnership

National Farmers Union and National Farmers Union Cymru

Natural Resources Wales

Network Rail

North Wales Wildlife Trust

North Western Inshore Fisheries and Conservation Authority (NWIFCA)

Ornamental Aquatic Trade Association (OATA)

Peel Ports

Pupils 2 Parliament

Somerset Beekeepers' Association

South West Water

The Canal & River Trust

The Wildlife Trusts

Torbay Bee Keepers Association and Asian Hornet Action

UK Major Ports Group

Urban Squirrels

United Utilities

Wessex Water

Wildlife and Countryside Link

Yorkshire Water

Wildlife and Countryside Link were also responding on behalf of:

A Rocha UK

Amphibian and Reptile Conservation

Angling Trust

Buglife

Plantlife

Rivers Trust

RSPB

RSPCA

Salmon and Trout Conservation

Woodland Trust