

SL(5)440 – The Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019

Background and Purpose

This Order amends the Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019 (the 2019 Order) to change the date on which the 2019 Order comes into force, from 1 October 2019 to 1 December 2019.

This Order also makes a consequential amendment to article 43 of the 2019 Order (Review: England) to change the date by which the first report under article 43 must be made, from 1 October 2024 to 1 December 2024. Article 43 does not apply to Wales.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh

- This Order has been made as a composite instrument, meaning the Order has been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. As a result, the Order has been made in English only.
- The Explanatory Memorandum states that the Order needed to be made on a composite basis as it amends the 2019 Order, which was made on a composite basis. The Explanatory Memorandum restates that the 2019 Order was made on a composite basis to “assist with a consistent enforcement approach, and accessibility and understanding for members of the public and others”. Legal Advisers accept there are good reasons to make this Order on a composite basis, but we note the effect that has (i.e. there is no Welsh language version).

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

- This Order is made under section 2(2) of the European Communities Act 1972 (the 1972 Act). The 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply to this Order. The negative procedure has been chosen on the basis that the required provisions are required to give effect to the provisions of an EU Regulation. Additionally, the enabling power under section 22(5) of the Wildlife and Countryside Act 1981 requires the instrument to follow the negative procedure.
- The Legal Advisers accept that the choice of negative procedure is appropriate given these reasons.



Implications arising from exiting the European Union

This Order and the 2019 Order implement EU obligations in relation to the prevention and management of the introduction and spread of invasive alien species, and therefore the 2019 Order will form part of retained EU law after exit day.

Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee

17 September 2019

