EXPLANATORY MEMORANDUM TO

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (PROHIBITION ON SALE ETC. OF INVASIVE NON-NATIVE PLANTS) (ENGLAND) ORDER 2014

2014 No. 538

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 To prohibit the sale, in England, of five highly invasive non-native aquatic plants.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The principal regulatory provisions that deal with non-native species are contained in Sections 14 – 14ZB of the Wildlife and Countryside Act, 1981 ("WCA"). Section 14 prohibits the introduction into the wild of any animal of a kind which is not ordinarily resident in, and is not a regular visitor to, GB in a wild state, or any species of animal or plant listed in Schedule 9. Additional provisions under section 14ZA of the WCA were introduced in 2006 and provide a power to ban the sale of any live animals or plants to which section 14 of the WCA applies.

4.2 The Secretary of State's powers to vary the schedules are set out in section 22 of the Act.

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 The majority of non-native species in GB are benign or have positive impacts. However, a small minority of invasive non-native species have the potential to negatively

impact on native biodiversity through, for example, competition, predation or the spread of disease. Additionally, invasive non-native species also have the potential to have significant environmental and economic impacts. A recent report, *The Economic Cost of Invasive Non-native Species to Great Britain (CABI, 2009),* concluded that Invasive non-native species cost the British economy at least £1.7 billion per annum. This is likely to be significantly less than the full economic cost since many indirect costs resulting from INNS, such as the damage to ecosystem services and loss of biodiversity, cannot be readily quantified.

7.2 Banning sale of species will not prevent the spread of species where they are already established, but it can contribute to the prevention of the establishment of the species in new areas to where they could not spread by natural means. Species are introduced into the wild in a number of ways, which can be accidental or deliberate such as through misguided efforts to dispose of species sensitively (e.g. transferring them to public waterways when they over grow the site they were purchased for). Therefore whilst banning sales alone will not prevent the natural spread of existing populations of the proposed species, it will close the main pathway for new specimens to enter un-invaded habitats in the wild, thus avoiding the associated environmental, financial and social impacts. The proposed ban on sale of the specific high risk species in this impact assessment needs to be seen in the context of the wider regulatory and non-regulatory invasive non-native species policy described below.

8. Consultation outcome

8.1 Together with the Welsh Assembly Government, between November 2007 and January 2008 the Government held a joint public consultation on a) proposals to amend Schedule 9 of the WCA and b) proposals to ban certain species from sale. Scotland held a separate consultation. Changes to Schedule 9 of the Act in England and Wales came into force in April 2010 when 71 amendments were made via the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England and Wales) Order 2010. The amendments in the Order were widely supported by conservation and industry bodies.

8.2 To address industry concerns, a decision on the species proposed (by the statutory conservation agencies) for a ban on sale, was deferred until risk assessments for the species concerned had been carried out by independent experts. On reviewing the evidence Ministers concluded that 5 aquatic plant species warranted sales bans due to their significant negative impacts on biodiversity and the economy. Those species are:

- Floating water primrose
- Floating pennywort
- Parrot's feather
- Australian swamp stone-crop
- Water fern

9. Guidance

9.1 The Department will continue to work with key stakeholders such as the Ornamental and Aquatic Trades Association, the Horticultural Trades Association and the Royal Horticultural Society to ensure growers and retailers are informed of the sales prohibitions

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be in the region of £63 million over the next five years. This includes avoided management costs and indirect impacts on businesses that would have occurred should sale and consequent spread by humans (intentional and/or accidental) be allowed to continue.

10.2 The impact on the public sector is expected to be negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website. *or* An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, 1 year was provided between announcing the decision to make the regulation and the regulation coming into force. This was to allow businesses adequate time for the trade to sell any remaining stock and to give business time to source alternatives

12. Monitoring & review

12.1 The outcome will be subject to internal review after 2 years and the legislation may be amended accordingly.

13. Contact

13.1 Simon Mackown at the Department for Environment, Food and Rural Affairs, Tel: 0117 372 3612 or email: simon.mackown@defra.gsi.gov.uk can answer any queries regarding the instrument.