EXPLANATORY MEMORANDUM TO

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULE 9) (ENGLAND) ORDER 2021

2021 No. 236

1. Introduction

1.1 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 varies the Wildlife and Countryside Act 1981 in order to remove three species from Schedule 9 to that Act. The relevant species will be added to the enforcement regime provided by Schedule 2 to the Invasive Alien Species (Enforcement and Permitting) (England and Wales) Order 2019 ("the 2019 Order") by an amendment coming into force on 4 May 2021. This variation will prevent duplication between similar control measures in the Wildlife and Countryside Act 1981 and the 2019 Order to ensure that the relevant species are regulated by this single instrument when this instrument comes into force on 4 May 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As this instrument is subject to the negative procedure there are no matters relevant to Standing Orders Nos. 33P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is to England.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner, has made the following statement regarding Human Rights:

"In my view the provisions of the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 EU Regulation (1143/2014) ("the IAS Regulation"), on the prevention and management of the introduction and spread of invasive alien species, imposes control

measures on a number of animal and plant species in order to manage the adverse environmental impacts that they can cause.

6.2 The IAS Regulation provides the framework for a list of species of Union concern which are to be subject to control measures. An initial list of species of Union concern was set out in Commission Implementing Regulation (EU) 2016/1141. The list under the IAS Regulation has been updated twice, most recently by Commission Implementing Regulation (EU) 2019/1262.

6.3 The IAS Regulation and the implementing regulations are now retained EU law under the European Union (Withdrawal) Act 2018. For the purposes of retained regime, the list of species of Union concern has been renamed as 'the list of special concern' by regulation 6 of the Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) Regulations 2019 (SI 2019/1220).

6.4 The 2019 Order contains criminal offences for breach of the control measures flowing from the IAS Regulation. Schedule 2 to the 2019 Order lists the animal and plant species to which the offences will apply. The list of species in Schedule 2 was amended by the Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 (SI 2020/1388). This instrument implements the update to the list of Union concern provided by Commission Implementing Regulation (EU) 2019/1262 and will insert three species: New Zealand flatworm (*Arthurdendyus triangulatus*), Pumkinseed (*Lepomis gibbosus*) and Salvinia moss (*Salvinia molesta*, otherwise known S*alvinia adnata*) into the domestic law list of species of special concern. This instrument comes into force on 4 May 2021.

6.5 However, the relevant species are currently regulated under the control regime provided by section 14 and Schedule 9 to the Wildlife and Countryside Act 1981. This instrument removes those species from Schedule 9 in order to prevent regulatory duplication when this instrument comes into force on 4 May 2021.

7. Policy background

What is being done and why?

7.1 This instrument makes changes where provisions under the Wildlife and Countryside Act 1981 overlap with the controls set out in the 2019 Order.

7.2 This instrument removes the relevant species from Schedule 9 in order to prevent regulatory duplication when the amendment to Schedule 2 to the 2019 Order, made by the Animals, Aquatic Animal Health, Invasive Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020, comes into force on 4 May 2021.

7.3 This variation will make legislation more transparent and easier to use – benefitting the general public as well as enforcers – by bringing all the offences relating to the list of species of special concern into one instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 None is planned.

10. Consultation outcome

10.1 As this instrument is purely administrative in character and does not introduce any change in policy, it was considered that a full consultation was not necessary.

10.2 This instrument is incidental to the decision to establish a domestic control regime under the retained IAS Regulation by way of the 2019 Order. Accordingly, this instrument builds upon the consultation carried out in relation to the 2019 Order.

11. Guidance

11.1 Guidance is not required.

12. Impact

12.1 There is no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it is of an administrative character. This instrument makes small legislative amendments to prevent regulatory duplication. It does not implement any change in policy.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring this instrument is as already set out in Article 43 the 2019 Order, which includes a statutory review clause.

15. Contact

15.1 Sarah Webster at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 6887 or email: sarah.webster@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Richard Pullen, Deputy Director for National Biodiversity Policy and Ivory at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.