

Tackling Invasive Non-Native Species in the UK Overseas Territories

SUMMARY OF PROPOSALS FOR A BIOSECURITY BILL

Introduction

1. This project contemplates harmonised biosecurity laws being enacted in each of the UK Overseas Territories that does not already have them. A biosecurity law aims to protect the territory from the establishment or spread of non-native species (pests, weeds and diseases) that would harm the environment, the economy and public health.
2. A biosecurity law needs to control not only imports and exports but also the internal movement of animals and plants and their products. It deals not only with knowingly harmful activity but also with innocent importation and movement of articles. It needs to apply to all individuals and organisations, including government and military entities. It must give powers to inspect every type of container, and every type of conveyance and all premises in the territory.
3. The resulting legislation will inevitably be complex, however small the territory, but it can be clear, and this Summary aims to show the main features of such a law. An annotated ‘generic’ draft Biosecurity Bill has been produced and is available for reference by all OTs.¹ It can be adapted to the needs of different territories. There are also full Explanatory Notes setting out the background and the legislative scheme, a Legal Checklist, and sample subsidiary instruments.

The ‘generic’ Biosecurity Bill

2. The aim of the legislation is to remove or reduce the **biosecurity threat** to the territory presented by invasive species, pests and diseases. This is stated in the proposed Bill as a **biosecurity function of the Government** (Clause Pre5).
3. The legislation targets animals and plants and their products because (i) the animal or plant may themselves be pests or weeds, and (ii) they may carry harmful pests and diseases. It does this by **designating ‘regulated articles’**, and giving power to control their entry to, exit from and movement within the territory (Clause Pre2 Interpretation).
4. There may be regulated articles the importation of which should be **prohibited** outright so as to avoid a biosecurity threat, and the proposed Bill gives this power (Clauses BBC1, 2 and 2A). Other regulated articles will be subject to controls as described below.
5. To control the entry of regulated articles, the legislation needs to designate **points of entry to the territory**. They might well be existing immigration or customs points of entry. They can be named in the legislation, or designated by a subsidiary instrument. There might be only one in a small territory (Clause BBC3).
6. There need to be controls over the movement of vessels and aircraft that have entered the port or airport. They must go to **designated holding areas** for clearance (Clause BBC4)

¹ <http://www.nonnativespecies.org/index.cfm?pageid=639>

and might be required to go to **port quarantine** (Clause VA3). **Quarantine** might also be appropriate for a container or article after it has been landed (Part BQ).

7. The legislation needs to impose **environmental obligations** on masters of vessels and captain of aircraft that relate to biosecurity (Clause VA8). It needs to provide for passengers and crew members (Clause VA9).

8. Once landing clearance has been granted there needs to be **power to inspect** every consignment of regulated articles (Clause BIP1). **Import clearance** will be granted only if the articles do not require biosecurity measures to be imposed, or have complied with them (Clause BIP3). The measures that are needed can be stated as **specifications** which apply to particular regulated articles (clause BIP4), or as **conditions of a licence** (clause BIP6). The specifications can be stated as import health standards. They are not legislative but need to be given due publicity (Clause MP8).

9. The legislation needs to provide for **exemptions** (clause BIP9) and for passengers and goods in **transit** (clause BIP10).

10. The legislation needs to prevent pests and diseases and species known to be harmfully invasive in other countries from leaving the territory. To do this it needs to **designate points of departure** (Clause BBC3) and to **control the export** of regulated articles (Part BEP). This includes the issue of certificates under the SPS Agreement of the WTO.

11. The legislation needs to set out clearly the **powers of relevant officials**, so as to avoid arguments about whether the power has been properly exercised, as they include powers to detain and destroy animals and plants and their products (Part PBO).

12. The legislation should include powers to **survey** all land in the territory and to **control the movement** of animals and plants and their products within the territory, so as to avoid pests and diseases and invasive species occurring (Part BIC). There also needs to be some **emergency provision** in the event of e.g. an outbreak of foot and mouth disease (Clause BIC8A).

13. The legislation needs to impose an obligation on everyone to **notify** the relevant authority of the incursion of an invasive species or of a pest or disease (Clause BIC10).

14. The proposed Bill includes a Part [BE] conferring wide **emergency powers** to deal with a biosecurity threat. Some territories will consider that their existing emergency powers for disaster management or under the prerogative of the Governor or equivalent official are sufficient.

15. The legislation needs to include provisions about the **person or authority** that has overall responsibility for biosecurity and will issue the specifications and/or licences under which regulated articles can enter or leave the territory (Part DB or equivalent). It should require a **biosecurity register** to be kept, recording all action taken under the legislation, for evidence in court proceedings and as a record for future enforcement officials (Clause DB6).

16. A complete legislative scheme would include administrative provisions (outsourcing, compliance agreements, approved premises, adequate facilities, etc.) to supplement the main

provisions. However, they could be achieved by administrative means if preferred (Part Adm.).

17. Other provisions that could be omitted relate to clearance agents (clause BBC6), and destruction of feral animals (clause BIC9).

18. The legislation needs to create **offences** for contravention of its provisions, and to provide for **penalties**, preferably including fixed penalties for people who might leave the jurisdiction (Part OP). The level of penalties should be set quite high to deter offenders.

19. The legislation needs to enable the Governor or equivalent authority to make **regulations**, and provide for the **repeal** of existing laws that overlap with the legislation, with any necessary savings (Part MP). It should state that the legislation **is in addition** to other laws relating to the importation of goods and the control of animals and plants (Clause Pre6).

20. It is hoped this Summary is helpful, but for a fuller explanation of the provisions of the generic draft Bill, please refer to the annotations against each clause in the text, and to the Explanatory Notes published on the Non-native Species Secretariat website.

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