



BERMUDA

INVASIVE ALIEN SPECIES REGULATIONS 2022

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The Minister responsible for the environment, in exercise of the power conferred by section 28 of the Invasive Alien Species Act 2021, makes the following Regulations:

Citation

- 1 These Regulations may be cited as the Invasive Alien Species Regulations 2022.

Interpretation

- 2 In these Regulations—
“Act” means the Invasive Alien Species Act 2021;

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“application fee” means the application fee prescribed under the Government Fees Regulations 1976;

“application form” means the application form provided by the Department;

“Department” has the meaning given in the Act;

“dispose of an invasive species” has the meaning given in the Act;

“invasive species” has the meaning given in the Act.

Applying for a permit

3 (1) An application for a permit to import—

- (a) a restricted “category A” invasive species;
- (b) a restricted “category B” invasive species,

must be made to the Director on the application form.

(2) The application must be accompanied with—

- (a) the documents requested in the application form;
- (b) a bio-security risk assessment prepared by an approved agent; and
- (c) the application fee.

(3) If requested by the Director in writing, the applicant must provide such other documents or information that would assist the Director in determining the application.

Applying for a licence

4 (1) An application for a licence to reproduce, cultivate, propagate, sell, supply or give to another a restricted “category A” invasive species must be made to the Director on the application form.

(2) The application must be accompanied with—

- (a) the documents requested in the application form;
- (b) a bio-security risk assessment prepared by an approved agent; and
- (c) the application fee.

(3) If requested by the Director in writing, the applicant must provide such other documents or information for the purpose of assisting the Director in determining the application.

Applying for determination of other non-native species

5 (1) An application for the determination of a non-native species that is not listed in Schedule 1, Schedule 2 or Schedule 3 to the principal Act must be made to the Director on the application form.

(2) The application must be accompanied with—

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- (a) the documents requested in the application form;
- (b) the application fee.

(3) The applicant must provide such other documents and information requested by the Director, including a bio-security risk assessment, that would assist the Director in determining the application.

(4) Where the Director determines that the non-native species is a restricted invasive species, the person may apply under regulation 3 for a permit to import the species.

Consideration of applications by Director

6 (1) The Director shall have regard to the following matters when considering an application for a permit or a licence made under regulation 3 or 4—

- (a) the knowledge of the applicant as to the husbandry of the species;
- (b) the purpose for which the species is to be imported or licensed;
- (c) the place where the species will be kept;
- (d) the applicant's bio-security protocols for preventing the escape of the species;
- (e) the applicant's response plan in the event of escape of the species;
- (f) any requirements that may be needed to control or contain the species, and whether the applicant will be able to meet those requirements; and
- (g) any other matters which the Director considers appropriate having regard to the ability and expertise of the applicant in relation to the species.

(2) The Director may, when attaching conditions to a permit or a licence, have regard to the matters set out under paragraph (1) as he considers appropriate.

(3) Where an application is granted, the Director shall issue a permit or a licence; and where an application is denied he shall issue a written notice which shall—

- (a) state the reason for the decision; and
- (b) inform the applicant that he may apply in accordance with section 26 of the Act for the decision to be reviewed by the Minister.

Applying to vary or remove a condition of a permit or licence

7 (1) A permit or licence holder may make a request to the Director in writing for a condition of the permit or licence to be varied or removed.

(2) If requested by the Director in writing, the permit or licence holder must provide such documents or information that would assist the Director in determining the request.

(3) Where the Director grants a request, the permit or licence holder shall return the permit or licence to the Director as soon as practicable, and the Director shall issue a new permit or licence which sets out the date of issue and the conditions of the permit or licence as of that date.

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Director may vary, attach or remove condition of a permit or licence

8 (1) The Director may, at any time vary, attach or remove a condition of a permit or a licence that has been issued under regulation 6(3).

(2) Where the Director proposes to vary, attach or remove a condition, he must inform the permit or licence holder by notice in writing, and the notice must—

- (a) state that he proposes to vary, attach or remove a condition;
- (b) specify the condition he proposes to attach, vary or remove;
- (c) give reasons for proposing to do so;
- (d) state the date on which the proposed attachment, variation or removal is intended to take effect;
- (e) inform the permit or licence holder that he may make representation to the Director in writing within the time specified in the notice; and
- (f) include any other information which the Director considers appropriate.

(3) The Director shall take into consideration any representations made under paragraph (2)(e) and shall notify the permit or licence holder of his decision in writing.

(4) Where the Director decides to act in accordance with paragraph (1), the notice must specify the condition to be attached, varied or removed, give reasons for the decision, state the date on which the attachment, variation or removal is to take effect, and inform the permit or licence holder that he may apply in accordance with section 26 of the Act for the decision to be reviewed by the Minister.

(5) Where the Director attaches, varies or removes a condition, the permit or licence holder shall return his permit or licence to the Director as soon as practicable, and the Director shall issue a new permit or licence which sets out the date of issue and the conditions of the permit or licence as of that date.

Director may revoke permit or licence

9 (1) The Director may revoke a permit or a licence where the permit or licence holder—

- (a) has contravened the Act;
- (b) has failed to comply with a condition attached to the permit or licence; or
- (c) has, in the case of a licence holder, failed to file an annual return in accordance with regulation 13.

(2) Where the Director proposes to revoke a permit or licence, he shall notify the permit or licence holder in writing and the notice shall—

- (a) set out details regarding the contravention or failure;
- (b) direct the permit or licence holder in the manner and period within which he must comply with the Act or the condition, or file the annual return, in the case of a licence holder;

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- (c) state that the permit or licence holder may make representation to the Director in writing prior to the date specified in the notice;
- (d) state that the permit or licence may be revoked if the permit or licence holder fails to comply with the direction within the period specified in the direction given under subparagraph (b);
- (e) include any other information which the Director considers appropriate.

(3) Where—

- (a) the permit or licence holder fails to comply with a direction given under paragraph (2)(b); and
- (b) the Director has taken into consideration any representations made by the permit or licence holder under paragraph (2)(c),

the Director may revoke the permit or licence and notify the permit or licence holder of his decision in writing.

(4) A notice given under paragraph (3) must—

- (a) state the reasons for the Director's decision;
- (b) specify the date on which the revocation will take effect;
- (c) give such direction in relation to the invasive species, which may include a direction that the species be disposed of;
- (d) inform the permit or licence holder that he may apply in accordance with section 26 of the Act for the decision of the Director to be reviewed by the Minister; and
- (e) include any other information which the Director considers appropriate.

(5) Where a permit or licence has been revoked the permit or licence holder must, as soon as practicable, return the permit or licence to the Director.

Applying to be licensed as an approved agent

10 (1) An application to be licensed as an approved agent must be made on the application form, and must be accompanied with the documents specified in the application form, and any other information requested by the Director in writing.

(2) The Director shall licence the applicant as an approved agent if the Director is satisfied that the applicant—

- (a) has knowledge of the Act, Regulations, and any guidance notes issued by the Director;
- (b) has a Graduate Degree level qualification in science-based research, including research relating to botany, animal science, marine biology, or ecology;

- (c) has demonstrated experience in bio-diversity matters and science-based research, including research relating to botany, animal science, marine biology or ecology;
 - (d) has experience in conducting risk assessments;
 - (e) is a fit and proper person.
- (3) An application to renew a licence shall be made in accordance with paragraph (1).
- (4) Where an application is granted, the Director shall issue a licence; and where an application is denied he shall issue a written notice stating—
- (a) the reason for the decision; and
 - (b) that the person may apply in accordance with section 26 of the Act for the decision to be reviewed by the Minister.

Bio-security risk assessments

11 (1) The Director may require a bio-security risk assessment to include any or all of the following information, and any other additional information requested by the Director in writing—

- (a) information regarding the relevant species, including—
 - (i) the taxonomy of the species, including its class, order, family, genus and species, if known, scientific synonyms and common names of the species;
 - (ii) the original environment of the species, including climate, extent of geographic range and trends;
 - (iii) persistent attributes of the species, including reproductive potential, mode of reproduction, dispersal mechanism and undesirable traits;
 - (iv) invasive tendencies of the species elsewhere, and of any close taxonomic relatives in Bermuda and elsewhere;
 - (v) the history, if any, of domestic propagation or cultivation of the species, introductions and the extent of naturalisation in Bermuda and elsewhere;
 - (vi) nutritional or dietary requirements of the species and, where applicable, whether it has a specialist or generalist diet;
 - (vii) the ability of the species to create significant change in an ecosystem;
 - (viii) the potential to hybridise with other species and to produce fertile hybrids;
- (b) information regarding the activity in respect of which the permit or licence is being sought, including—
 - (i) the nature of the activity;

- (ii) the reason for the activity;
 - (iii) the location where the activity is to be carried out;
 - (iv) the number, and where applicable, the gender of the specimens of the species involved;
 - (v) the intended destination of the species, if the species is to be translocated;
- (c) information regarding the receiving environment, including—
- (i) climate match;
 - (ii) habitat;
 - (iii) disturbance regimes;
 - (iv) the presence of natural enemies, predators and competitors;
 - (v) the presence of potentially reproductive compatible species.
- (2) The bio-security risk assessment must identify—
- (a) the probability that the species will naturalise in Bermuda;
 - (b) the possible impact of the species on Bermuda's environment;
 - (c) the risks of the specimen serving as a vector through which specimens of other invasive species may be introduced;
 - (d) the risks of the method by which a specimen is to be introduced or the restricted activity carried out serving as a pathway through which specimens of other invasive species may be introduced;
 - (e) any measures proposed in order to manage the risks referred to in paragraph (c) or (d).
- (3) The bio-security risk assessment must consider—
- (a) the likelihood of the risks being realised;
 - (b) the severity of the risks and consequences of the realisation of the risk for other species, habitats and ecosystems;
 - (c) the potential costs associated with the control of the species to minimise harm to the bio-diversity;
 - (d) options for minimising the potential risks.
- (4) The bio-security risk assessment must include—
- (a) details and qualifications of the approved agent carrying out the bio-security risk assessment; and
 - (b) the source material and references.

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(5) The applicant must, with respect to an application, provide the approved agent with access to all information at his disposal, whether or not such information is favourable to the applicant.

Record keeping

12 A permit or licence holder shall retain the following records for a period of six years—

- (a) the physical location of all specimens of the invasive species;
- (b) the total number of specimens of the invasive species acquired under a permit or licence;
- (c) the number of deaths of invasive species acquired under a permit or a licence;
- (d) information concerning the sale or transfer of an invasive species, including the dates, names and contact information of buyers of the species;
- (e) the method and location of disposal of any invasive species;
- (f) incidents of note, including escapes, captures, theft, or losses due to storms;
- (g) the number of specimens bred or propagated.

Annual returns

13 A person who has been issued a licence under regulation 6(3) shall file an annual return with the Director in the form provided by the Department within the time specified in the form.

Exemptions

14 These Regulations apply in respect of an application made for an exemption under section 21 of the Act, except that no application fee is required where the applicant for an exemption is a Department of the Government or the Bermuda Aquarium Museum and Zoo.

Made this 2nd day of May 2022

Minister of Home Affairs

[Operative Date: 02 May 2022]