
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 473

**The Invasive Non-native Species (EU Exit)
(Scotland) (Amendment etc.) Regulations 2020**

PART 1

Amendment of the Invasive Alien Species Regulation

Amendment of the Invasive Alien Species Regulation

2.—(1) The Invasive Alien Species Regulation is amended in accordance with paragraph (2) and regulations 3 to 8.

(2) In each place it occurs—

- (a) except where otherwise indicated in these Regulations for “the Union” substitute “Scotland”,
- (b) for “Union law” substitute “retained EU law”,
- (c) for “at Union level” substitute “in Scotland, England or Wales”,
- (d) for “Union list” substitute “Scottish list of species of special concern”,
- (e) for “of Union concern” substitute “of special concern”.

Amendment of Chapter 1 (general provisions) of the Invasive Alien Species Regulation

3.—(1) Chapter 1 of the Invasive Alien Species Regulation is amended as follows.

(2) In Article 2(2), in point (d)(1)—

- (a) for the words “pursuant to Article 5(2) or Article 32(3)” substitute “in retained EU law relating to plant health”,
- (b) for the words “Article 30(1), of Regulation (EU) 2016/2031 of the European Parliament and of the Council” substitute “retained EU law relating to plant health”.

(3) In Article 3—

(a) omit point (4),

(b) after point (17), insert—

“(a) ‘the Scottish list of species of special concern’ means the list of species in the Annex to Commission Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No. 1143/2014 of the European Parliament and of the Council, as amended from time to time,

(b) ‘the Committee’ has the meaning given by Article 27,

(c) ‘the Scientific Forum’ means the forum referred to in Article 28.”

- (4) In Article 4—
- (a) in paragraph 1—
 - (i) for the words from “The Commission” to “(‘the Union list’)” substitute “The Scottish Ministers may by regulations amend the Scottish list of species of special concern so as to add or remove species from that list”,
 - (ii) omit the words from “Those implementing acts” to the end,
 - (b) in paragraph 2—
 - (i) for “The Commission” substitute “The Scottish Ministers”,
 - (ii) for “at least every six years” substitute “before 2 August 2022, and before the last anniversary of that date in each subsequent period of six years”,
 - (c) in paragraph 3—
 - (i) in point (a)—
 - (aa) for “the Union” substitute “Scotland, England or Wales”,
 - (bb) omit “excluding the outermost regions”,
 - (ii) in point (b), for the words from “one biogeographical region” to “their outermost regions” substitute “Scotland, England or Wales”,
 - (d) in paragraph 4—
 - (i) for “Member States may submit to the Commission” substitute “The Scottish Ministers may consult and have regard to”,
 - (ii) after “requests” insert “from the Committee”,
 - (e) in paragraph 5 omit from the words “indicating the categories of goods” to the end,
 - (f) in paragraph 6—
 - (i) for “adopting or updating” substitute “amending”,
 - (ii) for “Commission” substitute “Scottish Ministers”,
 - (iii) omit “for Member States”,
 - (iv) in point (a) and point (b) for “the Union” substitute “Scotland, England or Wales”
 - (g) omit paragraph 7.
- (5) In Article 5—
- (a) in point (e) for “the Union” substitute “Scotland, England or Wales”,
 - (b) in paragraph 2, for the first subparagraph, substitute—

“When the Scottish Ministers propose to amend the Scottish list of species of special concern under Article 4(1), they must make a request to the Scientific Forum or such other expert as they consider appropriate to carry out the risk assessment referred to in paragraph 1.”,
 - (c) in paragraph 2, in the second subparagraph—
 - (i) for the first sentence substitute “Whenever the Committee submits a request for the inclusion of a species on the Scottish list of species of special concern the Scottish Ministers must make a request for the risk assessment referred to in paragraph 1 to be carried out by the Scientific Forum or such other expert as they consider appropriate.”,
 - (ii) omit the last sentence,
 - (d) in paragraph 3—

- (i) for the words from “The Commission shall” to “to further” substitute “The Scottish Ministers, after consulting the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs (as they consider appropriate), may”,
 - (ii) for the last sentence substitute—
“Before taking any action under this paragraph, the Scottish Ministers must consult the Scientific Forum or such other experts as they consider appropriate.”.
- (6) Omit Article 6.

Amendment of Chapter 2 (prevention) of the Invasive Alien Species Regulation

- 4.—(1) Chapter 2 of the Invasive Alien Species Regulation is amended as follows.
- (2) In Article 7 in paragraph 2, for “Member States” substitute “The Scottish Ministers”
 - (3) In Article 8—
 - (a) in paragraph 1, for “Member States” in both places it occurs substitute “the Scottish Ministers”,
 - (b) in paragraph 2—
 - (i) for “Member States shall empower their competent authorities to” substitute “The Scottish Ministers may”,
 - (ii) in point (b), for “competent authorities” substitute “Scottish Ministers”,
 - (iii) in point (f), for “competent authority” substitute “Scottish Ministers”,
 - (c) in paragraph 4, for “competent authority” substitute “Scottish Ministers”,
 - (d) in paragraph 5, for “Member States shall empower their competent authorities to” substitute “The Scottish Ministers may”,
 - (e) omit paragraph 6,
 - (f) in paragraph 7, for “Member States, shall” substitute “the Scottish Ministers must”,
 - (g) in paragraph 8—
 - (i) for “Member States” substitute “The Scottish Ministers”,
 - (ii) omit “by their competent authorities”.
 - (4) In Article 9—
 - (a) in paragraph 1—
 - (i) for “Member States” substitute “the Scottish Ministers”,
 - (ii) omit “subject to authorisation by the Commission”,
 - (b) omit paragraph 2,
 - (c) for paragraph 3, substitute—

“3. Before issuing a permit under paragraph 1 of this Article, the Scottish Ministers must consult and have regard to the opinions of—

 - (a) the Committee,
 - (b) the Scientific Forum,
 - (c) the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs.”,
 - (d) in paragraph 4—
 - (i) for “an authorisation” in each place it occurs substitute “a permit”,

- (ii) in point (e), for “authorisation” substitute “permit”,
- (iii) in point (i), omit “national”,
- (e) in paragraph 5—
 - (i) for “Authorisations granted by the Commission” substitute “Permits granted by the Scottish Ministers under paragraph 1”,
 - (ii) for “competent authority of the Member State concerned” substitute “Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs”,
 - (iii) for “An authorisation”, in both places it occurs, substitute “A permit issued under paragraph 1”,
 - (iv) for “the authorisation” substitute “the permit”,
 - (v) for “that authorisation” substitute “that permit”,
- (f) in paragraph 6—
 - (i) for “Following an authorisation by the Commission, the competent authority” substitute “The Scottish Ministers”,
 - (ii) omit the second sentence,
- (g) in paragraph 7—
 - (i) for “The Commission” substitute “The Scottish Ministers”,
 - (ii) for “an authorisation” substitute “a permit under paragraph 1”,
- (h) in paragraph 8—
 - (i) for “The Commission” substitute “The Scottish Ministers”,
 - (ii) for “Member State concerned” substitute “applicant, the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs”.
- (5) In Article 10—
 - (a) in paragraph 1—
 - (i) for “a Member State has” substitute “the Scottish Ministers have”,
 - (ii) for “its territory” substitute “Scotland”,
 - (iii) for “competent authorities have” substitute “Scientific Forum has”,
 - (iv) for “it may” substitute “the Scottish Ministers may by regulations”,
 - (b) for paragraph 2 substitute—

“2. When introducing emergency measures under paragraph 1, the Scottish Ministers must notify the Committee and the Scientific Forum.”,
 - (c) in paragraph 3—
 - (i) for “The Member State concerned” substitute “The Scottish Ministers must request that the Scientific Forum or such other expert as the Scottish Ministers consider appropriate”,
 - (ii) for the words “of the adoption” to the end of the sentence substitute “on which the emergency measures come into force”,
 - (d) after paragraph 3, insert—

“3A. Emergency measures must not apply for a period exceeding 2 years.”,
 - (e) omit paragraphs 4 and 5,

- (f) for paragraph 6 substitute—
 - “6. Where the Scottish Ministers include the invasive alien species on the Scottish list of species of special concern the Scottish Ministers must revoke or amend the emergency measures.”
- (6) Omit Articles 11 and 12.
- (7) In Article 13—
 - (a) in paragraph 1—
 - (i) for “Member States shall” substitute “The Scottish Ministers, after consulting the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs (as they consider appropriate), must”,
 - (ii) after “within 18 months of” insert “IP completion day and in respect of”
 - (iii) for the words from “their territory” to “[Directive 2008/56/EC](#)” substitute “Scotland”,
 - (b) in paragraph 2—
 - (i) after “Within three years of” insert “IP completion day and in respect of”
 - (ii) for “each Member State shall” substitute “the Scottish Ministers, after consulting the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs (as appropriate) must”,
 - (c) omit paragraph 3,
 - (d) in paragraph 4 in point (b), for “third” substitute “other”,
 - (e) omit point (c),
 - (f) for paragraph 5 substitute—
 - “5. The Scottish Ministers must review the action plan or plans established under paragraph 2 at least every six years.”,

Amendment of Chapter 3 (early detection and rapid eradication) of the Invasive Alien Species Regulation

- 5.—(1) Chapter 3 of the Invasive Alien Species Regulation is amended as follows.
- (2) In Article 14—
 - (a) After “Within 18 months of” insert “IP completion day and in respect of”
 - (b) in paragraph 1, for “Member States” substitute “the Scottish Ministers”,
 - (c) in paragraph 2—
 - (i) in point (a), for “the territory, including marine territorial waters, of the Member States” substitute “Scotland”,
 - (ii) in point (b), for “the territory or part of the territory of a Member State” substitute “Scotland”,
 - (iii) in point (c), after “set out in” insert “retained EU law which transposed”.
- (3) Omit Article 15.
- (4) In Article 16—
 - (a) in paragraph 1—
 - (i) for “Member States” substitute “The Scottish Ministers”,
 - (ii) omit “and the information collected at official controls provided for by Article 15”,
 - (b) in paragraph 2—

- (i) for “Member States” substitute “The Scottish Ministers”,
 - (ii) for “the Commission” substitute “the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs”,
 - (iii) omit “and inform the other Member States”,
 - (iv) for “on their territory or part of their territory” in both places where it occurs substitute “in Scotland”,
 - (v) for “their territory or in part of their territory” substitute “Scotland”.
- (5) In Article 17—
- (a) in paragraph 1, for “the Commission and inform the other Member States” substitute “the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs”,
 - (b) in paragraphs 1 and 2, for “Member States” substitute “the Scottish Ministers”,
 - (c) in paragraph 3, for “Member States”, in both places it occurs, substitute “The Scottish Ministers”,
 - (d) in paragraph 4—
 - (i) for “Member States shall inform the Commission” substitute “The Scottish Ministers must inform the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs”,
 - (ii) for “the Commission”, in the second place it occurs, substitute “them”,
 - (iii) omit the second sentence.
- (6) In Article 18—
- (a) in paragraph 1—
 - (i) for “A Member State may” substitute “The Scottish Ministers, after consulting the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs, may”,
 - (ii) omit the second subparagraph,
 - (b) omit paragraphs 2 and 3,
 - (c) in paragraph 4—
 - (i) for “Member States”, in the first place it occurs, substitute “The Scottish Ministers”,
 - (ii) for “Member States”, in the second place it occurs, substitute “parts of Great Britain”,
 - (d) in paragraph 5—
 - (i) for “Commission rejects a decision notified in accordance with the second subparagraph of” substitute “Scottish Ministers decide not to make a decision referred to in”,
 - (ii) for “the Member State concerned” substitute “the Scottish Ministers”,
 - (e) in paragraph 6, for “Commission does not reject a decision notified in accordance with the second subparagraph of” substitute “Scottish Ministers make a decision referred to in”.

Amendment of Chapter 4 (management of invasive alien species that are widely spread) of the Invasive Alien Species Regulation

6.—(1) Chapter 4 of the Invasive Alien Species Regulation is amended as follows.

- (2) In Article 19—
- (a) in paragraph 1—

- (i) in the first subparagraph—
 - (aa) for “Member States”, in the first place it occurs, substitute “the Scottish Ministers”,
 - (bb) for “the Member States” substitute “the Scottish Ministers”,
 - (cc) for “on their territory” substitute “in Scotland”,
- (ii) in the second subparagraph, for “the Member States” substitute “Scotland”,
- (b) in paragraph 3, for “Member States” substitute “the Scottish Ministers”,
- (c) in paragraph 5—
 - (i) for “Member State”, in the first place it occurs, substitute “part of the United Kingdom”,
 - (ii) for “the Member States in which that species is present” substitute “the Scottish Ministers”,
 - (iii) for “other Member States and the Commission” substitute “Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs”,
 - (iv) for “the Member States concerned” substitute “the Scottish Ministers”,
 - (v) omit the last sentence.
- (3) In Article 20, for “Member States” substitute “The Scottish Ministers”.

Amendment of Chapter 5 (horizontal provisions) of the Invasive Alien Species Regulation

7.—(1) Chapter 5 of the Invasive Alien Species Regulation is amended as follows.

- (2) In Article 21, for the words from “and without” to “Member States” substitute “the Scottish Ministers”.
- (3) In Article 22—
 - (a) in paragraph 1—
 - (i) for “Member States”, in the first place it occurs, substitute “The Scottish Ministers”,
 - (ii) for “all Member States” substitute “other countries”,
 - (iii) for the words from “In particular” to “that share” substitute “In particular, the Scottish Ministers shall endeavour to ensure coordination with other countries that share”,
 - (iv) at paragraph 1(a) for “in accordance with” substitute “specified in”,
 - (v) at paragraph 1(b) for “in accordance with “ substitute “specified in”,
 - (vi) omit points (c) and (d),
 - (vii) omit the last sentence,
 - (viii) omit paragraph 2,
 - (b) for paragraph 3, substitute—

“3. For the purposes of paragraph 1(a), the reference to Article 4(2) of [Directive 2008/56/EC](#) is to be read as if, in that Article—

 - (a) for the words before point (a) there were substituted “The marine sub-regions are—”,
 - (b) the words after point (a) were omitted.”.
- (4) Omit Article 23.

Amendment of Chapter 6 (final provisions) of the Invasive Alien Species Regulation

- 8.—(1) Chapter 6 of the Invasive Alien Species Regulation is amended as follows.
- (2) In Article 24—
- (a) in paragraph 1—
 - (i) in the first sentence—
 - (aa) for “2019” substitute “2025”,
 - (bb) for “Member States” substitute “the Scottish Ministers”,
 - (cc) for “transmit to the Commission” substitute “publish”,
 - (ii) in point (a) omit “and of the official control system on alien species entering the Union pursuant to Article 15”,
 - (iii) in point (b) omit “or regional concern”,
 - (iv) omit point (c),
 - (v) in point (e), for “the entire national territory” substitute “Scotland”,
 - (b) omit paragraph 2,
 - (c) in paragraph 3—
 - (i) for “Commission” substitute “Scottish Ministers”,
 - (ii) in the first sentence, for the words from “submit a report to the European Parliament and to the Council” to the end of the sentence substitute “publish a report”,
 - (iii) for “the Union” substitute “Great Britain”,
 - (iv) in the second sentence—
 - (aa) omit the words from “the effectiveness” to “concern”,
 - (bb) omit the words from “and whether further harmonisation” to the end,
 - (d) omit paragraph 4.
- (3) Omit Article 25.
- (4) In Article 26—
- (a) the existing text becomes paragraph 1,
 - (b) for “Member States” and “the Member States” substitute “the Scottish Ministers”,
 - (c) after paragraph 1, insert—

“2. For the purposes of this Article, the reference to Article 2(3) of [Directive 2003/35/EC](#) is to be read as if references in that Article 2(3) to “Member States” included Great Britain.”
- (5) In Article 27—
- (a) in paragraph 1—
 - (i) for “Commission” substitute “Scottish Ministers”,
 - (ii) for “a committee” substitute “the committee constituted under Article 27 of the UK Invasive Alien Species Regulation.”
 - (iii) omit the second sentence.
 - (b) for paragraph 2 substitute—

“2. In this Article and Article 28 ‘the UK Invasive Alien Species Regulation’ means Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species as

- amended by the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019(2),”
- (c) omit paragraph 3.
 - (6) In Article 28—
 - (a) for “Commission”, in both places it occurs, substitute “Scottish Ministers”,
 - (b) omit “appointed by the Member States”,
 - (c) after “Articles 4, 5,” insert “9,”,
 - (d) for the last sentence substitute “The scientific forum is established by Article 28 of the UK Invasive Alien Species Regulation as amended by the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019”.
 - (7) Omit Articles 29 and 30.
 - (8) In Article 31—
 - (a) in paragraph 2—
 - (i) for “Competent authorities” substitute “The Scottish Ministers”,
 - (ii) for “Member States” substitute “the Scottish Ministers”,
 - (b) in paragraph 3, for “Member States” substitute “The Scottish Ministers”,
 - (c) in paragraph 4, for “Member States” substitute “the Scottish Ministers”.
 - (9) In Article 32, in paragraph 3, for “Member State” substitute “Scottish Ministers”.
 - (10) After Article 32, insert—

“Article 32B

Regulations by the Scottish Ministers

- 1. Regulations under Articles 4 and 10 are subject to the negative procedure.
- 2. Regulations may—
 - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments),
 - (b) make different provision for different purposes.”.
- (11) Omit Article 33.

Amendment of Commission Implementing Regulation (EU) 2016/1141 of 13 July 2016

9. Commission Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council is amended as follows.

- (a) In Article 1, for “Union” substitute “special”,
- (b) In Article 2, omit the second subparagraph.

(2) [S.I. 2019/223](#), amended by [S.I. 2019/813](#) and [S.I. 2020/1590](#). [S.I. 2019/223](#) comes into force on IP completion day by virtue of paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1). [S.I. 2019/223](#) (as amended) extends to Scotland and makes amendments to Articles 27 and 28 of the Invasive Alien Species Regulation to make provision for Scottish Ministers to appoint members to the Committee and ensure the participation of members of the scientific community in the Scientific Forum.