

POLICY NOTE

THE AQUATIC ANIMAL HEALTH AND ALIEN SPECIES IN AQUACULTURE (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/9

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Summary Box

The Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 will provide the necessary technical corrections to the Aquatic Animal Health Regulations (Scotland) 2009 and the Alien and Locally Absent Species in Aquaculture Regulations (Scotland) 2015 to ensure that they continue to operate when the UK leaves the EU.

Policy Objectives

Where practical and appropriate, European legislation is being retained in UK law on the UK's exit from the EU. In the fields of aquatic animal health and alien and locally absent species in aquaculture, Scottish Government and other devolved administrations plan to retain the current standards set out in EU legislation and EU-derived domestic legislation that protect aquatic animal health, protect native species, habitats and ecosystems from the harmful introduction of alien and locally absent species, and facilitate trade in aquatic animals and their products with the EU and other trading partners.

Upon exit day a number of technical corrections are required. The objective is to ensure the operability of Scotland's aquatic animal health framework. Amendments include, for example, substituting references to Member States to Scotland or appropriate authority.

This instrument does not introduce any policy changes.

Explanation of the law being amended by the regulations

In the field of aquatic animal health, Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals establishes an EU-wide biosecurity framework for fish and shellfish diseases and lays down animal health requirements for movements of fish and shellfish and their products into and within the EU. The Directive lists requirements for bringing to the market aquaculture animals and their products, including the authorisation of aquaculture production businesses and processing establishments and recording obligations of aquaculture production businesses. The Directive also lists requirements for disease control, including: requirements for good hygiene practice; requirements for risk-based animal health surveillance schemes; requirements for disease prevention during transportation; requirements for animal health certification; conditions for the introduction of

aquaculture animals into disease-free areas and importation into the EU from a third country; notification and minimum measures for control of diseases; epizootic investigations and control measures for listed diseases; control measures for emerging diseases; requirements for surveillance and eradication programmes; contingency plans for emerging and exotic diseases; vaccination requirements; and the establishment and maintenance of disease-free status of Member States and zones and compartments within Member States. The Directive also provides for Member States to take national measures for diseases not subject to EU-wide disease controls.

The Aquatic Animal Health Regulations (Scotland) 2009 (“the 2009 Regulations”), implement the requirements of Directive 2006/88/EC in Scotland. The 2009 Regulations provide a framework for the authorisation and registration of aquaculture businesses; list health, certification and transport requirements for aquaculture animals and products to allow trade and prevent disease; list obligations regarding notification and control of disease outbreaks; list requirements for a register of declarations of disease-freedom; and include a list of reportable diseases subject to national measures.

In relation to alien and locally absent species in aquaculture, Council Regulation (EC) No. 708/2007 concerning the use of alien and locally absent species in aquaculture establishes an EU-wide framework governing aquaculture practices in relation to these species to assess and minimize the possible impact of these and associated species on aquatic habitats and contribute to the sustainable development of the aquaculture sector.

The Alien and Locally Absent Species in Aquaculture Regulations (Scotland) 2015 (“the 2015 Regulations”), which implement the permitting system; monitoring requirements; inspection and enforcement powers; and penalties required to implement Council Regulation (EC) No. 708/2007 concerning the use of alien and locally absent species in aquaculture. The Regulations also make provision to restrict the movement of species that are exempt from Regulation 708/2007 and species that are locally absent.

Reasons for and effect of the proposed change or changes on retained EU law

The amendments to the 2009 Regulations concern deficiencies in cross-references to Directive 2006/88/EC which need to be corrected so that they are operable after the UK leaves the EU because Directive 2006/88/EC will not form part of retained EU law. References to the list of diseases in Part II and IV to Directive 2006/88/EC (diseases which are at present subject to EU-wide controls) are replaced by references to a new Annex 1A of Commission Regulation (EC) No 1251/2008. This flows from amendments to retained direct EU legislation in the field of aquatic animal health made by the Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019, a separate statutory instrument made under section 8(1) of the Withdrawal Act by the UK Government with permission from Scottish Ministers and the Scottish Parliament.

Powers of EU officials to accompany inspectors have been removed. Provision is also made for cross-references in the 2009 Regulations to Directive 2006/88/EC to be read in accordance with the appropriate modification (for example, as if references to Member States were references to the Scottish Ministers).

The amendments to the 2015 Regulations remove the powers of EU officials to inspect UK premises and the need for Ministers to consider how Regulation 708/2007 is applied in EU Member States when reviewing the 2015 Regulations.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate. This is the case because amendments are not being made to introduce policy change.”

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for the Rural Economy, Mr Ewing has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. We must ensure that the Aquatic Animal Health (Scotland) Regulations 2009 continue to operate after the UK leaves the EU, in order to protect Scotland’s fish health status and Scotland’s aquaculture sector which is vital to our economy. Amendments are technical in nature to ensure legislative operability only.”

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Cabinet Secretary for the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for the Rural Economy, Mr Fergus Ewing, has made the following statement “In my view the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”.

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

This heading is not applicable

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Category A - The amendments made by this instrument do not amount to a change in policy. Amendments are technical in nature to allow continuity of law.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

The instrument is subject to negative procedure because it does not contain provision falling within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

Further information

Consultation

This instrument does not amount to change in policy. There has been no formal public consultation regarding this instrument. The SSI is linked to Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019, a separate statutory instrument made under section 8(1) the Withdrawal Act by the UK Government with permission from Scottish Ministers and the Scottish Parliament. Changes are essential to ensure legislative operability on day one of the UKs exit from the EU.

Impact Assessments

An Impact Assessment has not been prepared for this instrument because it relates to maintenance of existing regulatory standards and will not introduce any new policy. The amendments do not alter Scottish Government’s current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

The Cabinet Secretary for Rural Economy, Mr Fergus Ewing, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government

Marine Scotland Directorate
January 2019