

POLICY NOTE

THE AQUACULTURE AND FISHERIES (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2020

SSI 2020/393

The Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (“the Regulations”) are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraphs 1(1) and (3) and 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018. The Regulations are subject to negative procedure.

In accordance with paragraph 4(a) of schedule 2 of the European Union (Withdrawal) Act 2018, the Secretary of State has been consulted prior to the making of these Regulations.

The purpose of the Regulations

The Regulations are required to address failures of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the UK from the EU. The Regulations make a number of changes to existing Scottish legislation which has been amended already by EU Exit SSIs.

In addition, the Regulations transpose provisions in Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals, so that those provisions remain operable in domestic law after IP completion day.

The Regulations will ensure that the relevant domestic legislation will continue to operate after the transition period when relevant Directives will not form part of retained EU law.

Policy Objectives

Aquaculture

With regards to aquatic animal health and alien and locally absent species in aquaculture, the Scottish Government will retain current standards set out in EU legislation and derived domestic legislation which protects aquatic animal health, relates to prevention and control of disease, protection of native species, habitats and ecosystems from harmful introduction of alien and locally absent species, and facilitates trade in aquatic animals and their products with the EU and other trading partners.

Previous EU exit legislation, namely the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the 2019 Aquaculture Regulations”) made a number of technical corrections to Scottish legislation to ensure

Scotland's aquatic health framework would remain operable upon exit day. Those amendments would take effect from IP completion day. However, further amendment is required to the legislation that would be amended by the 2019 Aquaculture Regulations in order to ensure operability after IP completion day and to reflect the Withdrawal Agreement. Rather than amend the 2019 Aquaculture Regulations, these Regulations revoke the 2019 Aquaculture Regulations and amend the legislation that those Regulations would have otherwise amended.

No policy changes are made as a result of the amendments to aquaculture legislation.

Fisheries

With regards to fisheries, the Regulations make amendments to the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 ("the 2019 Fisheries Regulations"). The amendments are required for two purposes. Firstly, the Regulations remove provisions in the 2019 Fisheries Regulations that are no longer required as a result of amendments to be made to the underlying SSIs by other legislation. Secondly, the Regulations make amendments to reflect the terms of the Withdrawal Agreement between the UK and the EU ("the Withdrawal Agreement") with regards to the European Maritime and Fisheries Fund.

No policy changes are made as a result of the amendments to fisheries legislation.

Explanation of the law being amended by the Regulations

Aquaculture

(a) Aquatic animal health

The Aquatic Animal Health Regulations (Scotland) 2009 ("the 2009 Regulations") implement the requirements of Directive 2006/88/EC in Scotland. Directive 2006/88/EC on animal health requirements for aquaculture animals and products, 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 requirements of the Directive are wide ranging and include those relating to bringing aquaculture animals and their products to market including the authorisation of aquaculture production businesses and processing establishments and recording obligations of aquaculture production businesses. Requirements also include disease control including animal health surveillance schemes, disease prevention during transportation, animal health certification, conditions for the introduction of aquaculture animals into disease-free areas and importation into the EU from a third country, measures for investigating and controlling diseases, surveillance and eradication programmes; contingency planning and the establishment and maintenance of disease-free status of Member States and zones and compartments within Member States.

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.

Directive 2006/88/EC is also implemented through a number of Commission Decisions, which are directly applicable in the UK.

(b) Alien and locally absent species in aquaculture

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

The Alien and Locally Absent Species in Aquaculture Regulations (Scotland) 2015 implement the permitting system, monitoring requirements, inspection and enforcement powers, and penalties required to implement Regulation 708/2007.

Fisheries

The 2019 Fisheries Regulations made amendments to secondary legislation to remedy deficiencies arising from EU Exit, which will come into force on IP completion day. These Regulations amend provisions in the 2019 Fisheries Regulations. The provisions of the 2019 Fisheries Regulations amended by these Regulations amend, the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011, the Sharks, Skates and Rays (Prohibition of Fishing Trans-shipment and Landing) (Scotland) Order 2012, and the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015.

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

Aquaculture

The Regulations make two sets of amendments to the 2009 Regulations, one of which comes into force immediately before IP completion day, with the other set coming into force on IP completion day.

The first set of amendments, in Part 2 of the Regulations, insert a new Part 3A into the 2009 Regulations concerning quarantine. These transpose Articles 17 and 20 of Directive 2006/88/EC. Articles 17 and 20 are currently given effect in Scotland through Commission Decision 2008/946/EC, which is directly applicable, so those Articles were not transposed in domestic legislation. Commission Decision 2008/946/EC is being amended by a separate statutory instrument made by the UK Government with permission from Scottish Ministers and the Scottish Parliament: the Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”). In order to make the Decision operable after IP completion day, references in it to Directive 2006/88/EC will be amended by provision in the 2020 Regulations to references to legislation that would be applicable in Scotland as retained EU law; in this case, the 2009 Regulations. The amendments in Part 2 of these Regulations are therefore necessary so that provision exists in domestic legislation which can then be amended using powers under the European Union (Withdrawal) Act 2018 to make it operable after IP completion day. Certain provisions in Part 3 of these Regulations amend the regulations inserted by Part 2 so that they are operable after IP completion day.

Part 2 of the Regulations also corrects two minor typographical errors and removes a redundant definition in the 2009 Regulations and clarifies that the Scottish Ministers are the competent authority not only for the purposes of the 2009 Regulations but also for the purposes of directly applicable EU legislation in the field of aquatic animal health.

The amendments to the 2009 Regulations in Part 3 of these Regulations concern deficiencies in cross-references to Directive 2006/88/EC which need to be corrected so that they are operable after the transition period ends because Directive 2006/88/EC will not form part of retained EU law. References to the list of diseases in 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, which is being inserted into that Regulation by the 2020 Regulations. 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 in Part 3 also give effect to the Protocol to the Withdrawal Agreement on Northern Ireland.

Part 5 of the Regulations revokes the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the 2019 Aquaculture Regulations”). As a result of the Withdrawal Agreement, particularly the Protocol on Northern Ireland, further amendments were required to be made to both the 2009 Regulations and the Alien and Locally Absent Species in Aquaculture Regulations (Scotland) 2015 (“the 2015 Regulations”) to give effect to that Agreement. The extent of those amendments meant that the most straightforward approach was to revoke the 2019 Aquaculture Regulations and make the necessary amendments in these Regulations.

Fisheries

The provisions of the 2019 Fisheries Regulations amended by these Regulations amend, *inter alia* the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 (“the Licences and Notices Regulations”), the Sharks, Skates and Rays (Prohibition of Fishing Trans-Shipments and Landing) (Scotland) Order 2012 (“the Sharks Regulations”), and the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015 (“the EMFF Regulations”).

The UK Fisheries Bill, which has completed its passage through the UK Parliament and is expected to receive Royal Assent before IP completion day, makes various amendments to the Licences and Notices Regulations and the Sharks Regulations. Those amendments render the amendments made by the 2019 Fisheries Regulations to the Licences and Notices Regulations and the Sharks Regulations unnecessary. Consequently, these Regulations omit those amendments from the 2019 Fisheries Regulations.

The amendments made by the 2019 Regulations to the EMFF Regulations are no longer necessary as a result of the Withdrawal Agreement. These Regulations omit those amendments and make one amendment to the EMFF Regulations, to ensure that the references to EU legislation in the EMFF Regulations continue to be operable after IP completion day, even if some of all of that legislation is amended or revoked at EU level (as is anticipated). At present, the EMFF Regulations contain references to EU legislation “as amended from time to time” at EU level, so these Regulations amend the EMFF Regulations so that they refer to the relevant EU legislation as it applies in EU law at IP completion day.

Statements required by the European Union (Withdrawal) Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

The Regulations are made in exercise of powers in the European Union (Withdrawal) Act 2018 both to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of schedule 2 and to implement the Northern Ireland Protocol (paragraph 11M(1) of schedule 2. The Regulations also exercise the powers in section 2(2) of the European Communities Act 1972 (“the 1972 Act”).

Regulation 2 is made in exercise of the powers under the 1972 Act.

Regulations 3, 4, 5 and 6 are made in exercise of the deficiencies powers, except for regulations 4(2) and 4(4), which are made using the power to implement the Northern Ireland Protocol.

The Statements set out below relate to the exercise of the deficiencies powers. The Additional Information set out below relates, except where indicated, to the deficiencies powers and the power to implement the Northern Ireland Protocol.

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 and Tourism, Mr Fergus Ewing, has made the following statement: “The Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 and Tourism, Mr Fergus 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 the Alien and Locally Absent Species in Aquaculture Regulations (Scotland) 2015 continue to operate after the transition period ends, in order to protect Scotland’s fish health status and Scotland’s aquaculture sector which is vital to our economy. We must further ensure that sea fisheries legislation continues to be operable to protect Scotland’s fisheries sector. 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 and Tourism, Mr Fergus Ewing, has made the following statement: “In my view the Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 and Tourism, Mr Fergus Ewing, has made the following statement: “In my view the Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 and Tourism, Mr Fergus Ewing, has made the following statement: “The Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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.

Low – The amendments made by this instrument are minor and technical and for the purpose of ensuring continuity of law and operability following the implementation period. There are no significant policy decisions for Ministers to make.

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

In relation to the exercise of the Northern Irish Protocol powers, this instrument is subject to negative procedure under paragraph 8F(6) Schedule 7 of the European Union (Withdrawal) Act 2018.

In relation to the exercise of the deficiencies powers (paragraphs 1(1) and (3) of Part 1 of schedule 2 of the European Union (Withdrawal) Act 2018) where there is a choice of procedure in terms of paragraph 1(7) of schedule 7 of that Act, negative procedure is considered appropriate as the instrument contains minor and technical amendments and does no more than is necessary to ensure continuity of law and operability at the end of the implementation period.

Further information

Consultation

This instrument does not amount to change in policy. There has been no formal public consultation regarding this instrument. Changes are essential to ensure legislative operability from IP completion day.

Impact Assessments

Impact Assessments have 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 and Tourism, 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
19 November 2020