

## DRAFT STATUTORY INSTRUMENTS

**2019 No.000**

## EXITING THE EUROPEAN UNION

## ENVIRONMENTAL PROTECTION

The Invasive Non-native Species (Amendment etc.) (EU Exit)  
Regulations 2019

Made - - - -

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*Coming into force in accordance with regulation 1(1)(b)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

## PART 1

## Introduction

### Citation, commencement and interpretation

1.—(1) These Regulations—

- (a) may be cited as the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019; and
- (b) come into force on exit day.

(2) In these Regulations, “the 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.

## Extent

2.—(1) The following regulations do not extend to Scotland—

- (a) regulations 4 to 10, except so far as those regulations amend—

(a) 2018 c.16.

- (i) any provision of the Invasive Alien Species Regulation which applies in relation to—
  - (aa) controls on imports into, and exports from, the European Union; or
  - (bb) the Union list referred to in Article 4(1) of the Invasive Alien Species Regulation (so far as relevant for the purpose of any provision referred to in sub-paragraph (aa)); or
- (ii) any other provision of that Regulation so far as it applies in relation to—
  - (aa) the offshore marine area; or
  - (bb) any provision mentioned in paragraph (i);
- (b) regulation 12(b) to (d).
- (2) Regulations 3 and 12(a) do not extend to Northern Ireland.

## PART 2

### Amendment of primary legislation

#### **Amendment of the Destructive Imported Animals Act 1932**

- 3.—(1) The Destructive Imported Animals Act 1932 is amended as follows.
- (2) In section 11 (interpretation), omit subsection (2).

## PART 3

### Amendment of retained direct EU legislation

#### **Amendment of the Invasive Alien Species Regulation**

- 4.—(1) The Invasive Alien Species Regulation is amended in accordance with paragraph (2) and regulations 5 to 10.
- (2) In each place where it occurs—
  - (a) (except where otherwise indicated in these Regulations) for “the Union” substitute “the United Kingdom”;
  - (b) for “Union law” substitute “retained EU law”;
  - (c) for “Union level” substitute “UK level”;
  - (d) for “Union list” substitute “list of species of special concern”;
  - (e) for “of Union concern” substitute “of special concern”.

#### **Amendment of Chapter 1 (general provisions)**

- 5.—(1) Chapter 1 is amended as follows.
- (2) In Article 2(2), in point (d)—
  - (a) for the words “Annex I or Annex II to Directive 2000/29/EC” substitute “retained EU law relating to plant health”;
  - (b) for the words “Article 16(3) of that Directive” substitute “retained EU law relating to plant health”.
- (3) In Article 3—
  - (a) omit point (4);
  - (b) after point (17), insert—

“(18) ‘the responsible authorities’ means each person who, in relation to any part of the United Kingdom, is the appropriate authority;

(19) ‘the other responsible authorities’ means, so far as any given part of the United Kingdom is concerned, the responsible authorities other than the appropriate authority for that part;

(20) ‘the appropriate authority’ means—

- (a) the Secretary of State in relation to—
  - (i) England;
  - (ii) the offshore marine area; or
  - (iii) the regulation of imports into, and exports from, the United Kingdom;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

(21) ‘the list of species of special concern’ means the list of species in Annex 1 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;

(22) ‘the UK marine area’ has the meaning given by section 42(1) of the Marine and Coastal Access Act 2009<sup>(a)</sup>;

(23) ‘England’, ‘Scotland’, ‘Wales’ and ‘Northern Ireland’ include that part of the territorial sea which is respectively adjacent to them;

(24) ‘the offshore marine area’ means—

- (a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (exploration and exploitation of the continental shelf)<sup>(b)</sup>;
- (b) any part of the waters within British fishery limits<sup>(c)</sup> (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);

(25) ‘the Committee’ has the meaning given by Article 27;

(26) ‘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 Secretary of State may by regulations amend the 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 Secretary of State”;
  - (ii) for “at least every six years” substitute “before 2nd 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), omit “excluding the outermost regions”;

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<sup>(a)</sup> 2009 c. 23.

<sup>(b)</sup> 1964 c. 29. Section 1(7) was amended by section 37 and paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c. 23). Areas have been designated under section 1(7) by S.I. 1987/1265, 2000/3062, 2001/3670 and 2013/3162.

<sup>(c)</sup> As defined by section 1 of the Fishery Limits Act 1976 (c. 86).

- (ii) in point (b), for the words from “one biographical region” to “their outermost regions” substitute “the territory of the United Kingdom”;
- (d) in paragraph 4, for “Member States may submit to the Commission” substitute “The Committee may submit to the Secretary of State”;
- (e) in paragraph 6—
  - (i) for “adopting or updating” substitute “amending”;
  - (ii) for “Commission” substitute “Secretary of State”;
  - (iii) omit “for Member States”;
- (f) omit paragraph 7.
- (5) After paragraph 7 insert—
 

“8. For the purposes of this Article, references to “the United Kingdom” are to be read as references to the United Kingdom and the UK marine area.”.
- (6) In Article 5—
  - (a) in paragraph 2, for the first subparagraph, substitute—
 

“When the Secretary of State proposes to amend the list of species of special concern under Article 4(1), the Scientific Forum must carry out the risk assessment referred to in paragraph 1.”
  - (b) in paragraph 2, in the second subparagraph—
    - (i) for “a Member State” substitute “the Committee”;
    - (ii) for “it shall be” substitute “the Scientific Forum is”;
    - (iii) omit the last sentence;
  - (c) in paragraph 3—
    - (i) for the words from “The Commission shall” to “to further” substitute “The responsible authorities, acting jointly, may”;
    - (ii) for the last sentence substitute—
 

“Before taking any action under this paragraph, the responsible authorities, acting jointly, must consult the Scientific Forum and such other experts as they consider appropriate.”.
- (7) Omit Article 6.

## **Amendment of Chapter 2 (prevention)**

- 6.—(1) Chapter 2 is amended as follows.
  - (2) In Article 7(2)
    - (a) for “Member States” substitute “The appropriate authority”.
  - (3) In Article 8—
    - (a) in paragraph 1, for “Member States” in both places where it occurs, substitute “the appropriate authority”;
    - (b) in paragraph 2—
      - (i) for “Member States shall empower their competent authorities to” substitute “The appropriate authority may”;
      - (ii) in point (b), for “competent authorities” substitute “appropriate authority”;
      - (iii) in point (f), for “competent authority” substitute “appropriate authority”;
    - (c) in paragraph 4, for “competent authority” substitute “appropriate authority”;
    - (d) in paragraph 5, for “Member States shall empower their competent authorities to” substitute “The appropriate authority may”;
    - (e) omit paragraph 6;

- (f) in paragraph 7, for “Member States, shall” substitute “the appropriate authority must”;
- (g) in paragraph 8—
  - (i) for “Member States” substitute “The appropriate authority”;
  - (ii) omit “by their competent authorities”.
- (4) In Article 9—
  - (a) in paragraph 1—
    - (i) for “Member States” substitute “the appropriate authority”;
    - (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 appropriate authority must consult and have regard to the opinions of—

    - (a) the Committee;
    - (b) the Scientific Forum;
    - (c) the other responsible authorities; and
    - (d) the Scottish Ministers.”;
  - (d) in paragraph 4—
    - (i) in the words before point (a), for “an authorisation” substitute “a permit under paragraph 1 of this Article”;
    - (ii) in point (i), omit “national”;
  - (e) in paragraph 5—
    - (i) for “Authorisations granted by the Commission” substitute “Permits granted by the appropriate authority under paragraph 1 of this Article”;
    - (ii) for “competent authority of the Member State concerned” substitute “other responsible authorities”;
    - (iii) for “An authorisation”, in both places where 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 the words “Following an authorisation by the Commission, the competent authority” substitute “The appropriate authority”;
    - (ii) omit the last sentence;
  - (g) in paragraph 7—
    - (i) for “The Commission” substitute “The appropriate authority”;
    - (ii) for “an authorisation” substitute “a permit under paragraph 1”;
  - (h) in paragraph 8—
    - (i) for “The Commission” substitute “The appropriate authority”;
    - (ii) for “Member State concerned” substitute “other responsible authorities”.
- (5) In Article 10—
  - (a) in paragraph 1—
    - (i) for “a Member State” substitute “the appropriate authority”;
    - (ii) for “its territory” substitute “the United Kingdom”;
    - (iii) for “competent authorities have” substitute “Scientific Forum has”;

- (iv) for “it may” substitute “the appropriate authority may”;
- (b) for paragraph 2 substitute—
  - “2. When introducing emergency measures under paragraph 1, the appropriate authority must notify the Scientific Forum and the Committee.”.
- (c) in paragraph 3—
  - (i) for “The Member State concerned shall” substitute “The Scientific Forum must”;
  - (ii) omit “of the adoption” and “, with a view to include that species on the Union list”;
- (d) omit paragraphs 4 and 5;
- (e) in paragraph 6—
  - (i) for “Commission” substitute “Secretary of State”;
  - (ii) for “Member States shall also” substitute “the appropriate authority must”;
  - (iii) for “their” substitute “the”;
- (f) omit paragraph 7.
- (6) Omit Articles 11 and 12.
- (7) In Article 13—
  - (a) in paragraph 1—
    - (i) for “Member States shall” substitute “The responsible authorities, acting jointly, must”;
    - (ii) for the words from “their territory” to “Directive 2008/56/EC” substitute “the United Kingdom and the UK marine area”;
  - (b) in paragraph 2, for “each Member State shall” substitute “the responsible authorities, acting jointly, must”;
  - (c) omit paragraph 3;
  - (d) in paragraph 4—
    - (i) in point (b), for “third” substitute “other”;
    - (ii) in point (c), for “the Union” substitute “the United Kingdom’s”;
  - (e) for paragraph 5 substitute—
    - “ The responsible authorities must review the action plans established under paragraph 2 at least every six years.”;
  - (f) after paragraph 5 insert—
    - “6. In this Article and Article 14, the date of adoption of the list of species of special concern is to be taken to be 2nd August 2016.”.

### **Amendment of Chapter 3 (early detection and rapid eradication)**

- 7.—(1) Chapter 3 is amended as follows.
- (2) In Article 14—
  - (a) in paragraph 1, for “Member States” substitute “the appropriate authority”;
  - (b) in paragraph 2—
    - (i) in point (a), for “the territory, including marine territorial waters, of the Member States” substitute “England, Wales and Northern Ireland”;
    - (ii) in point (b), for “the territory or part of the territory of a Member State” substitute “of England, Wales and Northern Ireland”;
    - (iii) in point (c), after “set out in” insert “ retained EU law which transposed”.
- (3) In Article 15—
  - (a) in paragraph 1, for “Member States” substitute “the Secretary of State”;

- (b) in paragraph 3, for the second sentence substitute “In paragraphs 4 to 6 and 8, “the competent authority” means the authority responsible for carrying out the official controls mentioned in paragraph 2.”;
- (c) in paragraph 4(a)—
  - (i) omit “referred to in paragraph (3)”;
  - (ii) after “in accordance with”, insert “retained EU law which implemented or transposed”;
- (d) in paragraph 5—
  - (i) in point (b) omit “referred to in paragraph (3)”;
  - (ii) in the second subparagraph, for “Member States” substitute “The Secretary of State”;
- (e) in paragraph 6, for “Member State concerned” substitute “competent authority”;
- (f) in paragraph 7, for “Member State” substitute “The Secretary of State”;
- (g) in paragraph 8, for the words “the Commission” to “shall” substitute “the Secretary of State, together with the competent authority, must”;
- (4) In Article 16—
  - (a) in paragraph 1, for “Member States” substitute “The appropriate authority”;
  - (b) in paragraph 2—
    - (i) for “Member States” substitute “The appropriate authority”;
    - (ii) for “the Commission” substitute “other responsible authorities”;
    - (iii) omit “inform the other Member States”.
- (5) In Article 17—
  - (a) in paragraph 1, for “the Commission and inform the other Member States” substitute “the other responsible authorities”;
  - (b) for “Member States”, in paragraphs 1 and 2, substitute “the appropriate authority”;
  - (c) for “Member States”, in paragraphs 3 and 4, substitute “The appropriate authority”; ;
  - (d) in paragraph 4—
    - (i) for “the Commission”, in both places where it occurs, substitute “the other responsible authorities”;
    - (ii) omit the last sentence.
- (6) In Article 18—
  - (a) in paragraph 1—
    - (i) for “A Member State may” substitute “The responsible authorities, acting jointly, may”;
    - (ii) omit the second subparagraph;
  - (b) omit paragraphs 2 and 3;
  - (c) in paragraph 4—
    - (i) for “Member States”, in the first place where it occurs, substitute “The appropriate authority”;
    - (ii) for “Member States”, in the second place where it occurs, substitute “parts of the United Kingdom”;
  - (d) in paragraph 5—
    - (i) for the words from “the Commission” to “subparagraph of” substitute “the responsible authorities decide not to make a decision referred to in”;
    - (ii) for “the Member State concerned” substitute “the appropriate authority”;

- (e) in paragraph 6, for the words “Commission does not reject a decision notified in accordance with the second paragraph of” substitute “responsible authorities make a decision referred to in”.

#### **Amendment of Chapter 4 (management of invasive alien species that are widely spread)**

8.—(1) Chapter 4 is amended as follows.

(2) In Article 19—

(a) in paragraph 1—

(i) in the first subparagraph—

(aa) for “Member States” substitute “the appropriate authority”;

(bb) for “the Member States have” substitute “the appropriate authority has”;

(ii) in the second subparagraph, for “the Member States” substitute “the appropriate authority”;

(b) in paragraph 3, for “Member States” substitute “the appropriate authority”;

(c) in paragraph 5—

(i) for “Member State” substitute “part of the United Kingdom”;

(ii) for “the Member States”, in the first place where it occurs, substitute “the appropriate authority”;

(iii) for “Member States and the Commission” substitute “responsible authorities”;

(iv) for “the Member States concerned” substitute “the responsible authorities”;

(v) omit the last sentence.

(3) In Article 20, for “Member States” substitute “The appropriate authority”.

#### **Amendment of Chapter 5 (horizontal provisions)**

9.—(1) Chapter 5 is amended as follows.

(2) In Article 21, for the words from “and without” to “Member States” substitute “the appropriate authority”.

(3) In Article 22—

(a) in paragraph 1—

(i) for “Member States”, in the first place it occurs, substitute “The appropriate authority”;

(ii) for “all Member States” substitute “other countries”;

(iii) for the words from “In particular” to “that share” substitute—

“In particular the appropriate authority concerned shall endeavour to ensure coordination with other countries that share”;

(iv) omit points (c) and (d);

(v) for “in accordance with” substitute “specified in”;

(vi) for the last sentence substitute—

“The Secretary of State and, in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs, must also endeavour to ensure co-ordination with the Republic of Ireland.”;

(b) in paragraph 2—

(i) for “Member States” substitute “The appropriate authority”;

(ii) for “third” substitute “other”;

(c) 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 (b) were omitted.”.

(4) Omit Article 23.

#### **Amendment of Chapter 6 (final provisions)**

10.—(1) Chapter 6 is amended as follows.

(2) In Article 24—

(a) in paragraph 1—

(i) in the first sentence—

(aa) for “Member States” substitute “the responsible authorities”;

(bb) for “transmit to the Commission” substitute “publish”;

(ii) omit point (c);

(iii) in point (e), for “the entire national territory” substitute “England, Wales and Northern Ireland”;

(b) omit paragraph 2;

(c) in paragraph 3 —

(i) for “Commission shall” substitute “responsible authorities, acting jointly, must”;

(ii) in the first sentence, from the words “submit a report to the European Parliament and to the Council” to the end of the sentence, substitute “publish a report”;

(iii) in the second sentence, omit the words from “the effectiveness” to “concern,”;

(iv) in the last sentence, omit the words from “and whether further harmonisation” to the end;

(d) in paragraph 4—

(i) for “Commission shall, by means of implementing acts” substitute “responsible authorities, acting jointly, may”;

(ii) omit “for the Member States”;

(iii) omit the last sentence.

(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 appropriate authority”;

(c) after paragraph 1, insert—

“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 Article 2(3) to “Member States” included the United Kingdom.”.

(5) In Article 27—

(a) in paragraph 1—

(i) for “Commission” substitute “responsible authorities”;

(ii) omit the second sentence;

(b) for paragraphs 2 and 3 substitute—

“2. The responsible authorities, acting jointly, may appoint members to the Committee.

3. The Committee may determine its rules of procedure.”.

(6) In Article 28—

- (a) for “Commission”, in both places where it occurs, substitute “responsible authorities”;
- (b) omit “appointed by the Member States”;
- (c) after “Articles 4, 5,” insert “9,”.
- (7) Omit Article 29 and 30.
- (8) In Article 31—
  - (a) in paragraph 2—
    - (i) for “Competent authorities” substitute “The responsible authorities”;
    - (ii) for “Member States” substitute “the responsible authorities”;
  - (b) in paragraph 3, for “Member States” substitute “The responsible authorities”;
  - (c) in paragraph 4, for “Member States” substitute “the responsible authorities”.
- (9) In Article 32, for “Member State” substitute “appropriate authority”.
- (10) After Article 32, insert—

*“Article 32A*

**Regulations**

- 1. A power to make regulations under this Regulation is exercisable by statutory instrument.
- 2. A statutory instrument containing regulations under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
- 3. Regulations made under paragraph 1 may—
  - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments);
  - (b) make different provision for different purposes.
- 4. The Secretary of State may not make regulations under paragraph 1 without the consent of each person who is a relevant authority.
- 5. In paragraph 4, “relevant authority” means—
  - (a) in relation to Scotland, for the purposes of any provision mentioned in sub-paragraph (a) of regulation 2(1) of the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019, so far as it falls within paragraph (i) or (ii)(bb) of that sub-paragraph, the Scottish Ministers;
  - (b) in relation to Wales, the Welsh Ministers;
  - (c) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs .”.
- (11) Omit Article 33 and the words after Article 33.

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

11.—(1) 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.

- (2) In Article 1, for “Union” substitute “special”.
- (3) In Article 2, omit the second paragraph.

## PART 4

### Revocations

#### Revocations

12. The following instruments are revoked—

- (a) the Destructive Imported Animals Act 1932 (Amendment) Regulations 1992(a);
- (b) Commission Implementing Regulation (EU) 2016/145 adopting the format of the document serving as evidence for the permit issued by the competent authorities of Member States allowing establishments to carry out certain activities concerning invasive alien species of Union concern pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council;
- (c) Commission Implementing Regulation (EU) 2017/1454 specifying the technical formats for reporting by the Member States pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council;
- (d) Commission Delegated Regulation (EU) 2018/968 supplementing Regulation (EU) No 1143/2014 of the European Parliament and of the Council with regard to risk assessments in relation to invasive alien species.

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department for Environment, Food and Rural Affairs

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (d) and (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations amend legislation in the field of environmental protection and biosecurity. Part 2 amends primary legislation and Part 3 amends retained direct EU legislation. Part 4 contains revocations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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