

EXPLANATORY MEMORANDUM TO
THE AQUATIC ANIMAL HEALTH AND ALIEN SPECIES IN AQUACULTURE
(AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 451

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 ensure that EU legislation in the fields of aquatic animal health and alien and locally absent¹ species in aquaculture will continue to be operable after the UK leaves the EU. This instrument does not introduce any policy changes.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument covers nine pieces of directly applicable EU legislation in the fields of aquatic animal health and the use of alien and locally absent species in aquaculture.

The majority of these relate to aquatic animal health and, together with Council Directive 2006/88/EC, establish an EU-wide biosecurity framework for fish and shellfish diseases. Council Directive 2006/88/EC sets out requirements for: bringing to the market aquaculture animals and their products; disease control measures; importation; and health certification. The Directive is transposed in England and Wales by the Aquatic Animal Health (England and Wales) Regulations 2009. The Department is bringing forward a separate instrument (the Aquatic Animal Health and Alien Species in Aquaculture (England and Wales) (EU Exit) Regulations 2019) to amend these Regulations and this is covered in a separate Explanatory Memorandum. The following directly applicable EU legislation implements the overall framework set out in Directive 2006/88/EC:

- (i) Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88 as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species;
- (ii) Commission Decision 2008/392 implementing Council Directive 2006/88/EC as regards an Internet-based information page to make information on

¹ An aquatic organism is alien if it is located outside of its known natural range and its area of natural dispersal potential (i.e. it is non-native), or is a polyploid or a fertile, artificially-hybridised organism irrespective of its natural range or dispersal potential. It is locally absent if it is located within its known natural range i.e. it is native but absent from a particular area.

aquaculture production businesses and authorised processing establishments available by electronic means;

- (iii) Commission Decision 2008/896 on guidelines for the purpose of the risk-based animal health surveillance schemes provided for in Council Directive 2006/88/EC;
- (iv) Commission Decision 2008/946 implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals;
- (v) Commission Decision 2009/177 implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments;
- (vi) Commission Decision 2010/221 approving national measures for limiting the impact of certain diseases in aquaculture animals and wild aquatic animals in accordance with Article 43 of Council Directive 2006/88/EC;
- (vii) Commission Decision 2015/1554 laying down rules for the application of Directive 2006/88/EC as regards surveillance and diagnostic methods.

The following pieces of directly applicable EU legislation concern the use of alien and locally absent species in aquaculture. They set out the process that should be followed when individuals or businesses seek to move an aquatic non-native species for use in aquaculture within the EU, including imposing a permitting requirement for movements. They also set out a common standard for assessing the risks involved in such movements and conditions that may be applied to permits:

- (viii) Council Regulation (EC) No 708/2007 concerning the use of alien and locally absent species in aquaculture;
- (ix) Commission Regulation (EC) No 535/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 708/2007 concerning the use of alien and locally absent species in aquaculture.

Various requirements in Council Regulation (EC) No 708/2007 are implemented in England and Wales by the Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011. As above for aquatic animal health, the Department is bringing forward a separate instrument (the Aquatic Animal Health and Alien Species in Aquaculture (England and Wales) (Amendment) (EU Exit) Regulations 2019) to amend these Regulations and this is covered in a separate Explanatory Memorandum.

Why is it being changed?

- 2.3 This instrument is being made using the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to make necessary changes to the EU Regulations and Decisions listed above to enable continued operability of the legislative framework.

The amendments made by this instrument do not amount to a change in policy. The instrument fixes only deficiencies that arise as a result of EU exit so that the legislation works after EU exit. The amendments include removing or replacing EU terminology, for example replacing references to Member States with references to the United Kingdom or the constituent UK territories, as appropriate, and replacing references to the European Commission with references to the appropriate authority. A number of provisions are redundant and are revoked, for example provisions with

relevance only to certain other Member States. References to the EU's Trade Control and Export System (TRACES) are replaced by references to the UK's system for import control notifications. Amendments are made to refer appropriately to movements of aquatic animals between EU Member States and the United Kingdom where previously these references were to movements from one EU Member State to another. A list of diseases subject to EU-wide controls in Part 2 of Annex 4 to Directive 2006/88/EC is re-stated in a new Annex 1A to Commission Regulation (EC) No 1251/2008; this list will continue to be updated after the UK has left the EU. A deficient cross-reference to the definition of 'aquaculture' in Regulation 1198/2006 on the European Fisheries Fund, which will not be retained in domestic legislation when the UK leaves the EU, is corrected. A number of deficient cross-references to Directive 2006/88/EC, which will not be incorporated into UK law under the Withdrawal Act, are modified for the purposes of interpretation. Provision is also made to address cross-references in the 2009 Regulations to Directive 2006/88/EC, which are to be read in accordance with the appropriate modification for the purposes of interpretation (for example, as if references to Member States were references to the United Kingdom).

What will it now do?

- 2.4 The instrument makes no policy changes and ensures that retained direct EU legislation in the fields of aquatic animal health and the use of alien and locally absent species in aquaculture will remain operable after the UK has left the EU.

Why are the Regulations being re-laid for sifting?

- 2.5 The draft Regulations, as originally laid for sifting in November 2018, were cleared to proceed as a negative instrument, but needed to be amended and were relaid in January 2019 to ensure that quarantine requirements apply in relation to imports of aquatic animals from EU27 as well as third countries. As previously drafted, the instrument did not include provision for quarantine for imports from EU27. These changes have been agreed with the devolved administrations.

The specific changes made in this respect are as follows. The draft Regulations, as originally laid for sifting, have been amended as regards the amendments (or modifications) they make to, and for the purposes of, Commission Decision 2008/946, which implements Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals (see regulation 5(12) and the Schedule, new paragraphs 3(a), 4 and 9(2)).

Paragraph 9(1) of the Schedule to the Regulations makes modifications to Article 49 that were principally intended to operate for the purposes of retained EU law other than Decision 2008/946. The effect of these modifications is that the United Kingdom, or "a constituent UK territory", is to be declared free of listed non-exotic diseases if the conditions set out in Article 49 of that Directive are met in relation to the United Kingdom, or a constituent UK territory, as the case may be. (References to the Regulatory Committee procedure in Articles 5 and 7 of Decision 1999/468 will no longer apply.)

New paragraph 9(2) of the Schedule, however, now preserves the effect of Article 49 in relation to a Member State for the purposes of the relevance of Article 49 for Article 20 of the Directive (which refers to it, and which is in turn referred to in

Articles 1 and 11 of Decision 2008/946). This ensures that, in Article 20 (which requires the quarantine of aquatic animals caught in a Member State, zone or compartment that is not declared disease-free), the reference to “declared disease-free in accordance with Article 49” works correctly in relation to a Member State. It does this by preserving the position that (by virtue of the general gloss in Article 2a(a) of the Decision as inserted by regulation 5(3)), for the purposes of the references to Article 20 in Articles 1 and 11 of Decision 2008/946, “Member State” includes, but is not limited to, the United Kingdom. The result is that animals caught in a Member State that is not declared disease-free “in accordance with Article 49 or 50” must (if present in the United Kingdom) be placed in quarantine. The definition of “third country” for the purposes of Decision 2008/946 has been aligned with the definition which applies for the purposes of Council Regulation 1251/2008 so as to exclude Member States (regulation 5(9)).

Following relaying in January 2019, the Clerk identified an inconsistency in references to the title of the instrument in Part 2 of the Explanatory Memorandum and requested that the instrument and Explanatory Memorandum be re-laid. The Explanatory Memorandum had referred to the Regulations as ‘The Aquatic Animal Health and Alien Species in Aquaculture (UK) (Amendment etc.) (EU Exit) Regulations 2019’. The inclusion of “(UK)” in the title did not correctly reflect the title in the draft instrument. The Explanatory Memorandum has now been corrected.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 14th February 2019. On 26th February 2019, the Sifting Committees agreed with the Government that this instrument does not have to have a debate in parliament though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the UK.
4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The key legislative context for the instrument is set out in section 2.2 above.

- 6.2 In addition to this instrument the Department will introduce other instruments as part of the exit process, which interact with the legislation amended by this instrument. These instruments will: cover the English and Welsh legislation which currently implements the requirements of Directive 2006/88/EC for aquatic animal health and Regulation 708/2007 for alien and locally absent species to ensure that this remains operable after the UK leaves the EU; and will also transfer functions of the European Commission under Directive 2006/88/EC and Regulation 708/2007 to the appropriate authority in the UK. These instruments are covered in separate Explanatory Memoranda.
- 6.3 Section 3 of the Withdrawal Act makes provision for incorporating direct EU legislation, as it stands at the moment of exit, into UK law. This includes the Regulations and Decisions listed in section 2.2 above. This legislation will form part of a new body of domestic legislation known as retained EU law.
- 6.4 Section 8(1) of the Withdrawal Act provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. Paragraph 21 of Schedule 7 to that Act provides that the section 8(1) power may be exercised to modify retained EU law or make different provision for different cases and includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision re-stating any retained EU law in a clearer or more accessible way). This instrument is made in exercise of these powers.

7. Policy background

What is being done and why?

- 7.1 The Government has stated that, where practical and appropriate, EU legislation will be 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, the Government plans 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.
- 7.2 The amendments made by this instrument do not amount to a change in policy but ensure that retained EU law continues to operate effectively after the UK leaves the EU.
- 7.3 EU law regarding aquatic animal health set standards equivalent or higher than the international standards set by the World Organisation for Animal Health (Office International des Epizooties, OIE). Whilst the UK will be under no legal obligation to adhere to EU rules for aquatic animal health following EU exit, failure to do so could result in the UK being unable to trade in aquaculture animals and their products with EU member states and third countries. The Government has decided to maintain regulations regarding aquatic animal health at or above EU standards following EU exit.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of the Withdrawal Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

9.1 It is not intended to consolidate the relevant legislation. Informal consolidation of new instruments is available to the public free of charge via the National Archives website: <http://www.legislation.gov.uk>.

10. Consultation outcome

10.1 The Department for Environment, Food and Rural Affairs has consulted with the devolved administrations of Wales, Scotland and Northern Ireland regarding this instrument. There has been no other consultation.

11. Guidance

11.1 There is no associated guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 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.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 There is no additional impact on small businesses (employing up to 50 people) because this instrument maintains the status quo and does not introduce any policy change. Therefore, no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is in continuing dialogue with stakeholders.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Birgit Oidtmann at the Department for Environment, Food and Rural Affairs, Telephone: 0208 026 7828 or email: Birgit.Oidtmann@defra.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Catherine Harrold, Deputy Director for Future Animal and Plant Health, Endemics and Traceability, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because this instrument does not fall within the categories for which use of the affirmative procedure is required under that Act: establishing a new public authority; transferring an EU function to a newly created public authority; transferring an EU legislative function to a UK body; provisions relating to fees; creating or widening the scope of a criminal offence; or creating or amending a power to legislate. For all other matters, the negative procedure can be used.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 2.2 This is the case because: the changes made in this instrument to retained EU legislation are very minor and do no more than is strictly necessary to ensure that the Regulations and Decisions set out in paragraph 2.2 to the Explanatory Memorandum function correctly once the UK has left the EU.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are:
- a) Ensuring that the retained EU law regarding aquatic animal health and aquaculture continues to function correctly once the UK has left the EU.
 - b) Ensuring that aquatic animal health and aquaculture standards are maintained and trade can continue with EU member states and third countries after exit day.

4. Equalities

4.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner, has made the following statement:

“The instrument 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.”

4.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Parliamentary Under Secretary of State, Lord Gardiner, 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.”

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.