

EXPLANATORY MEMORANDUM TO

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

2019 No. 452

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 (England and Wales) (Amendment) (EU Exit) Regulations 2019 ensure that the English and Welsh legislation which implements EU legislation in the fields of aquatic animal health and alien and locally absent¹ species in aquaculture will continue to be operable in England and Wales after the UK has left the EU. This instrument does not introduce any policy changes.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The domestic secondary legislation amended by this instrument implements two instruments of EU legislation in England and Wales.

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, regarding 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

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. non-native), or polyploid or fertile artificially hybridised irrespective of its natural range or dispersal potential. It is locally absent if it is located within the known natural range i.e. native but absent from a particular area.

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 (England and Wales) Regulations 2009 implement the requirements of Directive 2006/88/EC in England and Wales. 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, EU Council Regulation 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 minimise the possible impact of these and associated species on aquatic habitats and contribute to the sustainable development of the aquaculture sector. This framework applies to the introduction or translocation of any alien or locally absent species in the EU, with the exception of certain alien species specified in Annex IV of Regulation 708/2007. However, Member States may take their own measures to restrict the use of these species. The Regulation does not apply to movements within EU Member States.

The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 implement the permitting system; monitoring requirements; inspection and enforcement powers; and penalties required to implement Regulation 708/2007. The 2011 Regulations also make provision to restrict the movement of species that are exempt from Regulation 708/2007 and species that are locally absent within the United Kingdom.

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 domestic secondary legislation referred to above to ensure that the law continues to operate effectively after the UK has left the EU.

The amendments to the Aquatic Animal Health (England and Wales) Regulations 2009 concern deficiencies in cross-references to Directive 2006/88/EC which need to be corrected so that they are operable after EU exit because Directive 2006/88/EC will not form part of retained EU law. References to the list of diseases in Part II of Annex IV to Directive 2006/88/EC (diseases which are at present subject to EU-wide controls) are replaced by references to a new Annex II of Regulation 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 also made under section 8(1) of, and paragraph 21 of Schedule 7, to the Withdrawal Act and covered by a separate Explanatory Memorandum. 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, 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). Some of these cross-references themselves contain further cross-references to the Directive and, in

these cases, the cross-references have been followed through so as to modify all the necessary provisions. The amendments to the Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 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 2011 Regulations.

What will it now do?

- 2.4 The instrument makes no policy changes and ensures that the English and Welsh law which implements 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.

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 (England and Wales) (Amendment) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 13th November 2018. On 27th November 2018, 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 England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

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 EU Regulations and Decisions in the areas of aquatic animal health and alien and locally absent species in aquaculture which currently apply to the UK as an EU Member State and will ensure that this legislation remains operable as retained EU law after the UK leaves the EU (in the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Amendment etc.) Regulations 2019); 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 2 of the Withdrawal Act makes provision for saving EU-derived domestic legislation implementing the UK's obligations as an EU Member State. 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.
- 6.4 The Withdrawal Act does not preserve EU Directives. Changes made under Section 8 of the Withdrawal Act are therefore made to the relevant legislation which implements an EU Directive in the UK.

7. Policy background

What is being done and why?

- 7.1 The Government has stated that, where practical and appropriate, European 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 the English and Welsh Regulations that implement EU legislation continue 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 therefore decided to maintain regulations regarding aquatic animal health at or above EU standards following EU exit.

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

- 8.1 This instrument is being made using the power in section 8 of 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 that 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.
- 14.3 Regulation 4 of the Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 requires Ministers to review the Regulation every five years from the date it came into force.

15. Contact

- 15.1 Birgit Oidtmann at the Department for Environment, Food and Rural Affairs, Telephone: 0208 026 7828 or email: Birgit.Oidtmann@defra.gsi.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:

1.2 “In my view The Aquatic Animal Health and Alien Species in Aquaculture (England and Wales) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”. This is the case because this instrument does not fall within the categories for which use of the affirmative procedure is required under the Withdrawal 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 (England and Wales) (Amendment) (EU Exit) Regulations 2018 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 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 legislation regarding aquatic animal health and alien and locally absent species in aquaculture continues to function correctly once the UK has left the EU.

b) Ensuring that aquatic animal health and alien and locally absent species in aquaculture standards are maintained and trade can continue with EU member states and third countries.

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.