

The Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Amendment) (EU Exit) Regulations 2018

Notification to the Scottish Parliament of Scottish Ministers' intention to consent to UK legislative proposals on areas of devolved competence

Title of instrument:

The Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Amendment) (EU Exit) Regulations 2018.

Instrument and summary of proposal:

The Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Amendment) (EU Exit) Regulations 2018 ("the Regulations") address failures of the EU law that will become domestic law after the UK leaves the EU, to operate effectively and other deficiencies arising from the withdrawal of Scotland as part of the United Kingdom from the European Union. These amendments will ensure that EU legislation in this field continues to be operable after the UK leaves the EU.

The Regulations amend retained directly applicable EU legislation on aquatic animal health and on alien and locally absent species in aquaculture.

There will also be further UK regulations required to amend deficiencies not addressed in these regulations, relating to transfer of functions in particular, where these issues are being grouped by the UK Government across a policy area. Separate to the UK Regulations, each Devolved Administration will also be required to amend applicable domestic legislation. The legislation in respect of Scotland is: the Aquatic Animal Health (Scotland) Regulations 2009; and the Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015. These amendments will be brought forward in a Scottish Statutory Instrument.

The Regulations are made under the European Union (Withdrawal) Act 2018, are subject to the negative procedure in the UK Parliament and are expected to be laid before the sifting committee on 13 November. The regulations will not come into force until EU exit day.

What is to be amended?

A list of the EU Instruments which are amended by these Regulations are listed in ANNEX A.

Why is change necessary:

In the European Union, basic legal provision on animal health requirements for aquaculture and on prevention and control of diseases is provided across a range of legislative instruments. The legislation is important in order to protect the animal health status of EU Member States and to facilitate trade, whilst preventing and minimising the spread of economically damaging animal diseases within the Union. For example, controls are provided for minimum rules to control measures in the event of an actual or suspected outbreak of certain diseases in aquatic animals. Minimum requirements are also applied for fish health surveillance and minimum health requirements apply for the placement of animals farmed through aquaculture on the market and for their certification. The majority of EU aquatic animal health legislation is transposed by the Aquatic Animal Health Regulations (Scotland) 2009 in Scotland. However there are several directly applicable Commission Decisions and Regulations which will become retained EU law as result of the European Union (Withdrawal) Act 2018. The Regulations are necessary to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These deficiencies require to be fixed to allow the continued operation of

fish health legislation on exit day, assist the continuation of trade and ensure that aquatic animal health continues to be protected by minimum standards within the United Kingdom.

The amendments made by this instrument do not amount to a change in policy. The amendments include removing or replacing EU terminology, for example replacing references to Member States with references to the United Kingdom or the constituent nations of the United Kingdom, as appropriate, and replacing references to the European Commission with references to the Secretary of State or the appropriate devolved authority.

A number of provisions are redundant and are revoked, for example provisions with relevance only to certain other Member States. A number of references to EU legislative procedures are corrected. References to the EU's Trade Control and Export System (TRACES) are replaced by references to the UK's replacement import notification system. 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 Directive 2006/88/CE is inserted in order that it can continue to be maintained and 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 cross-references to Directive 2006/88/EC, which will not be incorporated into UK law under the Withdrawal Act, are corrected. In most cases, this is achieved by providing that cross-references to Directive 2006/88/EC are accompanied with the appropriate explanation (for example, references to Member States being supplanted by references to the appropriate Minister, e.g. the Scottish Ministers).

Correction of these deficiencies will ensure that domestic legislation will continue to operate smoothly within Scotland on exit day. The amendments made do not amount to a change in policy and generally replace references to Member States. Instruments to be amended are included in Annex A.

Categorisation of significance of proposals:

Category A - The amendments made by this instrument do not amount to a change in policy.

Administrations are in agreement that in the fields of aquatic animal health and alien and locally absent species in aquaculture 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 should be maintained.

Accordingly, 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.

EU law regarding aquatic animal health sets 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 would likely result in the UK being unable to trade in aquaculture animals and their products with EU member States and third countries.

Impact on environmental and animal welfare guiding principles

Addressing the deficiencies ensures continued adherence to the environmental principles established in EU and international law. In maintaining the current approach aquatic animal health, and the management of aquaculture the Regulations maintain the existing level of environmental protection.

Impact on Devolved Areas

Aquaculture and aquatic animal health is a devolved policy area. As such the arrangements in the Regulations provide for agreement between devolved administrations and the UK Government where there is a requirement for cooperation in the interests of good aquatic health and management of alien or locally absent species in aquaculture.

Amendment of directly applicable EU legislation on aquatic animal health that will become part of domestic law

Amendments have been drafted to retain current policy, including the current devolved settlement. The Regulations define the appropriate Minister, in relation to Scotland, as the Scottish Ministers and there is no change in relation to powers which are currently devolved.

Services and functions currently provided by the EU

1. ScoPAFF

The EU currently provides a mechanism by which aquatic animal health law is influenced by all Member States. The Standing Committee on Plants, Animals, Food and Feed (ScoPAFF) plays a key role in ensuring that Union measures on food and feed safety, animal health & welfare as well as plant health are practical and effective. It delivers opinions on draft measures that the Commission intends to adopt. ScoPAFF is composed of representatives of all Member States and presided over by a European Commission representative.

The responsibility of ScoPAFF includes, for example, detailing procedures with regards to declaration of aquatic animal disease freedom and declaration of disease free zones and compartments. Declarations are important for trade purposes – enabling trade while protecting the import of exotic disease.

The UK will no longer be party to ScoPAFF. There is policy agreement to a process of mutual agreement whereby decisions will be made by mutual consent by the 4 UK administrations. Where the Commission would have previously issued decisions on the advice of ScoPAFF, the appropriate UK Minister is now referenced, which in relation to Scotland is the Scottish Ministers. However, the appropriate Minister will be the Secretary of State if consent is given by all devolved administrations.

In essence there is an agreement to establish a UK version of ScoPAFF to ensure that an overarching body of experts continues to feed into the decision making process regarding aquatic animal health across the United Kingdom. By this process mutual consent will be sought from the devolved administrations. Where consent cannot be reached the Secretary of State will have no powers to make legislation with regards to the territory of Scotland. In such cases Scottish Ministers will maintain the power to make their own legislation.

It is essential that collaboration in aquatic animal health continues as fish pathogens do not respect borders. We expect the formation of a UK ScoPAFF to be part of any future discussions regarding United Kingdom Frameworks.

Scottish Government supports the formation of a UK technical committee in the event the UK leaves the EU without a withdrawal agreement and termination of UK membership of the existing ScoPAFF Committee.

2. Trade Control and Expert System (TRACES)

Under current EU legislation EU Member States use the TRACES system. TRACES is the European Commission's online management tool for all sanitary requirements on intra-EU trade and importation of animals, semen and embryo, food, feed and plant. It digitises the entire certification process through a harmonised export certification system.

When the United Kingdom leaves the EU it will no longer be able to access the TRACES system. The United Kingdom will require a replacement TRACES service whereby the United Kingdom can be notified of imports and exports. This amending SI replaces references to the TRACES system with reference to a “UK Imported Notification System” which is currently under development. It is essential that a notification system is in place to allow trade into and out of the United Kingdom. Trade is a reserved function and as such the UK Government will meet the financial requirements for creation of the UK Imported Notification System. The UK notification system is a priority readiness project for Defra.

3. Health Certificates, Disease Lists and Quarantine Facilities

All Member States currently use a single pro forma aquatic animal health certificate for exports, provided for and published by the European Commission. The European Commission also publish and update disease lists on behalf of the Member States through consultation with ScoPAFF and keeps a centralised list of acceptable quarantine facilities for aquatic animal health purposes. Third countries must notify the Commission of newly registered quarantine facilities. For functions such as this the Regulations establish the appropriate Minister as the responsible party for publication of common documents which in relation to Scotland is the Scottish Ministers. However the appropriate Minister will be the Secretary of State (SoS) where consent is granted by the devolved administrations.

The regulations includes a general transitional provision with regard to health certification.

Amendment of retained direct EU legislation on alien and locally absent species in aquaculture

Amendments have been drafted to retain current policy. The amendments being made include removing or replacing EU terminology such as replacing references to Member States with references to the appropriate Minister. The appropriate Minister, in relation to Scotland, is defined as the Scottish Ministers in the Regulation. However, the appropriate Minister will be the Secretary of State if consent is given by;

(a) in relation to Wales, the Welsh Ministers

(b) in relation to Scotland, the Scottish Ministers

(c) in relation to Northern Ireland, a Minister within the meaning of the Northern Ireland Act 1998 or a Northern Ireland Department.

Summary of stakeholder engagement/consultation

The Department for Environment, Food and Rural Affairs (DEFRA) has consulted with the devolved administrations of Scotland, Wales and Northern Ireland regarding this instrument. DEFRA has not carried out formal consultation external to government. The amendments made do not amount to a change in policy.

We are in regular contact with all our stakeholders regarding EU exit and any consequent legislative changes.

Any other impact assessments

We have discussed the need for an impact assessment with the UK Government and on the basis that this instrument does not infer any policy changes we have concluded there is not a requirement to undertake an impact assessment.

Reason for Scottish Ministers' consent

Scottish Ministers should consent to UK Ministers laying the Regulations as they do not change current policy nor do they erode any devolved powers. The Regulations are written such that the

Scottish Ministers are designated the appropriate Minister in relation to Scotland. However, it also allows a mechanism by which the Secretary of State may make regulations where there is consent from the devolved administrations to do so. The Regulations will lay the foundations for a future UK framework on aquatic animal health – an area where collaboration and joint working is essential for economic, health and trade purposes.

Intended Laying date of UK Instrument

It is expected that this will be laid before the UK Parliament for sifting on 13 November 2018. We do not yet have a confirmed date for the regulations to be made but Defra have agreed that all EU Exit SIs will not proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process as agreed with the Scottish Parliament. .

Does the Scottish Parliament have 28 days to scrutinise?

Yes.

Time dependencies

It is essential that the Regulations are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable and that there is a system in place to allow the continuation of aquatic animal trade.

Financial implications

Without this Regulation some aquatic animal health legislation will cease to operate. The Regulations amend rules governing minimum health requirements of aquatic animals and their entering into the market place. Without these amendments, Scotland will not have an appropriate system in place for the trade of aquatic animals. Therefore financial implications will arise if the amendments are not made, although they are difficult to quantify at this stage. For example, references to the TRACES notification system will become redundant and the UK import notification system would not be applicable in law. This means that there would be no notification mechanism (in law) by which imports of ova for use in the Scottish salmon industry from Norway could occur. In 2017 ova from Norway supported the production of fish in Scotland worth £1.05 billion.

Some of the policy fixes to amend inoperable legislation will have financial costs for devolved administrations.

This regulation will require continued cooperation between the four UK administrations. It is considered that the services currently provided by the ScoPAFF committee will be replicated by a UK committee and will have associated costs which are difficult to estimate. This includes the publication and maintenance of UK disease lists and aquatic animal health certificates, previously provided for by the Commission. This is a cost of Brexit itself, rather than specifically associated with these Regulations. Costs resulting directly from these amendments would be on the basis of needs from the new system as they arise. These are not yet apparent and will most likely be infrequent. Separately, the UK already contributes staff resource to ScoPaFF which would be diverted to the new UK committee.

ANNEX A – LIST OF EU INSTRUMENTS AMENDED BY THE REGULATIONS

Aquatic Animal Health Legislation

- Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88 as regards conditions and certification requirements for the placing on the market and import into the Community of aquaculture animals and products thereof and laying down a list of vector species.
- Commission Decision 2008/392 implementing Council Directive 2006/88/EC as regards an Internet-based information page to make information on aquaculture production businesses and authorised processing establishments available by electronic means;
- Commission Decision 2008/896 on guidelines for the purpose of risk-based animal health surveillance schemes provided for in Council Directive 2006/88/EC
- Commission Decision 2009/177 of 31 October 2008 implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments
- Commission Decision 2010/221 of April 2010 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
- Commission Decision 2008/946 implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals
- Commission Decision 2015/1554 laying down rules for the application of Directive 2006/88/EC as regards surveillance and diagnostic methods.

Alien and Locally Absent Species Legislation

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