EXPLANATORY MEMORANDUM TO

THE ALIEN AND LOCALLY ABSENT SPECIES IN AQUACULTURE (ENGLAND AND WALES) REGULATIONS 2011

2011 No. 2292

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations provide for the implementation and enforcement of Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The aim of Council Regulation (EC) No 708/2007 is to ensure there is adequate protection of aquatic habitats from the risks associated with the use of alien and locally absent species in aquaculture whilst contributing to the sustainable development of the aquaculture industry. It does this by providing for a system of permits and environmental risk assessment where necessary.

4.2 Council Regulation (EC) No 708/2007 exempts certain commonly used species, which are listed in Annex IV to the Regulation (Annex IV species) from the permitting requirements of the Regulation. However, Member States are able to place controls on the use of these species where they so wish. Similarly, the translocation of locally absent species within Member States is exempt from the Regulation except where Member States can foresee environmental threats due to the translocation.

4.3 These Regulations make provision for the enforcement of Council Regulation (EC) No 708/2007 and for the notification of both an intended movement of an Annex IV species and the translocation of a locally absent species from within the United Kingdom. Where measures are thought necessary to restrict the use of Annex IV species, that movement can be prohibited or allowed subject to any conditions by means of a notice. In the case of a locally absent species, notifying persons will be advised by means of a notice if there are grounds for foreseeing threats to the environment due to the translocation and in such cases Council Regulation (EC) 708/2007 will apply.

4.4 These Regulations allow for decisions concerning the grant of permits and notices concerning Annex IV species or locally absent species to be appealed.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales. The provision requiring the review of the implementing provisions in Part 2 in 5 years time applies in relation to England only.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 Alien species have been identified as one of the key causes for the loss of biodiversity in the EU and the world at large. They can have significant economic and social impacts, and could undermine the EU's sustainable development objectives. Aquaculture is a fast growing innovative industry, constantly looking for new outlets and markets. In order to fully adapt to market conditions and changes, it is essential that the industry diversifies the species it produces, but that this is balanced with appropriate safeguards for aquatic environments.

7.2 Council Regulation (EC) No.708/2007 establishes a framework governing aquaculture practices in relation to alien and locally absent species. The main objective is to enable the economic growth of the aquaculture sector, whilst ensuring adequate protection for the aquatic environment from the risks associated with the use of alien and locally absent species. The framework enables us to adopt a precautionary approach to the use of such species, whereby they are subject to appropriate risk assessment protocols before their use in proposed aquaculture developments. This approach is consistent with Government policy in relation to the regulation of non-native species, which recognises that preventing the introduction of potentially invasive species is more cost-effective than trying to apply controls retrospectively.

- Consolidation

7.3 None.

8. Consultation outcome

8.1 Consultation on the Council Regulation (EC) No.708/2007 has taken place at various stages since 2006. Defra has engaged with industry stakeholders during the negotiation stages of the Regulation. This, and consultation with the Commission, enabled the UK Government to ensure that the Regulation would not apply retrospectively to

established businesses, thus lessening the burden on the industry. Overall it was felt that the Regulation would not have a significant impact on the UK's established aquaculture production businesses. Most of the existing businesses concerned with non-native species deal in certain, commonly-farmed species that are already well established in trade. These have largely been exempted from any additional controls.

9. Guidance

9.1 Guidance is being developed. This will be placed on the Defra website.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business. There are some large operators, but in the main this industry is made up of small to medium businesses.

12. Monitoring & review

12.1 A review of the instrument will be undertaken within five years of its implementation to ensure that the measures introduced are operating effectively.

13. Contact

Barbara Franceschinis at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 4394 or email: barbara.franceschinis@defra.gsi.gov.uk can answer any queries regarding the instrument.