EXPLANATORY MEMORANDUM TO

ALIEN AND LOCALLY ABSENT SPECIES IN AQUACULTURE REGULATIONS (NORTHERN IRELAND) 2012

2012 No. 335

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Agriculture and Rural Development (DARD) to accompany the above Statutory Rule which has been laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to negative resolution procedure.

2. Description

2.1 The Statutory Rule implements in Northern Ireland the requirements of Council Regulation (EC) No 708/2007, as last amended by Regulation (EU) No 304/2011 of the European Parliament and of the Council, concerning use of alien and locally absent species in aquaculture.

2.2 Council Regulation (EC) No 708/2007 places an obligation on Member States to ensure that all appropriate measures are taken to avoid adverse effects on biodiversity, and especially on species, habitats and ecosystem functions, which may be expected to arise from the introduction or translocation of aquatic organisms and non-target species in aquaculture and from the spreading of these into the wild. To this end, the Statutory Rule provides for a system of permits governing the use of alien and locally absent species in

aquaculture to minimise the possible impact of these and any associated non-target species on aquatic habitats and thus contribute to the sustainable development of the aquaculture industry. The intention is that such permits will be granted only if the risk associated with the activities proposed by an applicant can be considered low, or the risk can be reduced to a low level by mitigating action on the part of the applicant.

2.3 Council Regulation (EC) 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 translocation.

2.4 The Statutory Rule introduces a permitting system for the introduction of alien species or the translocation of locally absent species and obligations in relation to environmental risk assessment, contingency plans and monitoring. It also makes 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 or the translocation of a locally absent species within Northern Ireland or from within the United Kingdom. The movement of an Annex IV species can be prohibited or allowed subject to certain conditions by means of a notice where such measures are deemed necessary. Notifying persons will be advised by means of a notice if the risk of threats to the environment is considered such that the Council Regulation (EC) No 708/2007 should apply to the translocation.

2.5 The Regulations give enforcement powers to inspectors, make provision for appeals and create offences and penalties for breach of the EU or implementing Regulations.

3. Consultation

3.1 Consultation on Council Regulation (EC) No 708/2007 has taken place at various stages with Defra engaging closely with industry stakeholders during the negotiation stages. 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.

3.2 Overall it was felt that the Regulation would not have a great 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. Concerns were raised about the risk assessment requirement in particular, which was perceived as a hurdle by some parts of the industry. However, this was not considered a sufficient deterrent given that it is essential that the risk posed by the introduction of alien species is assessed, and that appropriate protection is accorded to aquatic ecosystems.

3.3 DARD also undertook a 12 week consultation from 20 December 2011 to 13 March 2012. Copiers of the consultation were sent to relevant stakeholders and placed on the DARD internet site.

3.4 The consultation exercise was not on the EU Regulations but on proposals for implementing their requirements through the Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012. Most of the requirements of the EU Regulation are obligatory and Member States must therefore adopt them. However

there are some measures in respect of which individual governments can determine how they are to be implemented with the framework of the Regulations and it is on these measures that the Department consulted.

3.5 A total of 10 responses were received. Overall the Regulations were welcomed by those who commented and there was support for the majority of the proposals in them. In light of comments received, a number of minor amendments were made to the Regulations.

4. Territorial Extent and Application

4.1 The Statutory Rule applies to Northern Ireland.

5. European Convention on Human Rights

5.1 The Statutory Rule has been screened for Human Rights issues and none were identified.

6. Equality Impact

6.1 The Statutory Rule has been subject to equality screening which concluded that a full EQIA is not necessary as the Regulations will not have any adverse differential impact on any of the section 75 equality categories.

7. Regulatory Impact

7.1 A Regulatory Impact Assessment has been prepared for the Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012.

7.2 DARD has considered how the Regulations meet the requirement for Better Regulation and has concluded that they will not impose any additional burden on the aquaculture sector. Officials are content that the proposed legislation meets DARD's commitment to Better Regulation and "gold plating" is not applicable.

8. Financial Implications

8.1 There are currently no aquaculture businesses in Northern Ireland licensed to cultivate alien or locally absent species in open aquaculture facilities, other than Pacific oysters, Rainbow trout and Manila clams which are exempted from the permitting and risk assessment requirement under Article 2.5 and Annex IV of Council Regulation 708/2007. There will therefore be no additional costs to existing businesses.

8.2 Costs associated with administering, monitoring and enforcing the requirements of the Regulation are expected to be low and can be absorbed within existing DARD budgets.

9. Section 24 of the Northern Ireland Act 1998

9.1 The Regulations do not have any human rights implications, nor are they incompatible with EU law. They are therefore deemed to comply with the requirements of Section 24 of the Northern Ireland Act 1998.

10. EU Implications

10.1 The Regulations implement Council Regulation (EC) No 708/2007 as last amended by Regulation (EU) No 304/2001 of the European Parliament and of the Council concerning use of alien and locally absent species in aquaculture.

11. **Additional Information**

11.1 None.

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