SCOTTISH STATUTORY INSTRUMENTS

2020 No. 393

EXITING THE EUROPEAN UNION

AQUACULTURE

FISHERIES

The Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020

Made - - - - *20th November 2020*

Laid before the Scottish Parliament *24th November 2020*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**) and paragraphs 1(1) and (3) and 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018(**b**) and all other powers enabling them to do so.

In accordance with paragraph 4(a) of schedule 2 of the European Union (Withdrawal) Act 2018(**c**), the Scottish Ministers consulted the Secretary of State prior to the making of these Regulations.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020.

(**a**) 1972 c.68 ("the 1972 Act"). The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) ("the 2018 Act") with effect from exit day (see section 20 of the 2018 Act), but saved, subject to modifications, until IP completion day by section 1A of that Act. Section 1A of the 2018 Act was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1) ("the 2020 Act"), and defines "IP completion day" by reference to section 39(1) to (5) of the 2020 Act. Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act 1998 (c.46) ("the 1998 Act"), (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) ("the 2006 Act")). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(3) and the schedule of the European Union (Amendment) Act 2008 (c.7). The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Section 2(2) is relied upon in relation to regulation 2.

(**b**) 2018 c.16. Paragraph 11M was inserted by section 22 of the 2020 Act.

(**c**) Paragraph 4 was amended by section 27(7)(a) of the 2020 Act.

(2) Subject to paragraph (3), these Regulations come into force immediately before IP completion day.

(3) Part 3 comes into force on IP completion day.

PART 2

Amendments not due to EU Exit

The Aquatic Animal Health (Scotland) Regulations 2009

2.—(1) The Aquatic Animal Health (Scotland) Regulations 2009(**a**) are amended as follows.

(2) In regulation 3(1) (interpretation)—

(a) for the definition of "the competent authority", substitute—

""the competent authority" has the meaning given in regulation 3A;",

(b) omit the definition of "Decision 946/2008/EC".

(3) After regulation 3 insert—

"The competent authority

3A. The Scottish Ministers are the competent authority for the purposes of—

(a) these Regulations;

(b) Regulation (EC) No. 1251/2008;

(c) Commission Decision 2008/896/EC on guidelines for the purpose of the risk-based animal health surveillance schemes provided for in Council Directive 2006/88/EC(**b**);

(d) Commission Implementing Decision (EU) 2015/1554 laying down rules for the application of Directive 2006/88/EC as regards requirements for surveillance and diagnostic methods(**c**).".

(4) After Part 3 insert—

"PART 3A

Quarantine

Interpretation of Part 3A

21A. In this Part—

"Commission Decision 2008/946/EC" means Commission Decision 2008/946/EC implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals(**d**);

"declared disease-free" means declared disease free in accordance with Article 49 or 50 of Directive 2006/88/EC as the case may be.

(**a**) S.S.I. 2009/85, as amended by S.S.I. 2011/259, S.S.I. 2011/427 and S.S.I. 2019/412.
(**b**) OJ L 322, 2.12.2008, p.30.
(**c**) OJ L 247, 23.9.2015, p.1.
(**d**) OJ L 337, 16.12.2008, p.94.

Vector species

21B. An aquaculture animal intended for farming or restocking may only be introduced into a part of Scotland which has been declared disease-free in respect of a disease for which that animal is a vector if it—

(a) originates from another Member State, zone or compartment declared disease-free in respect of that specific disease; or

(b) has been, or will be, held in quarantine facilities in accordance with the requirements of Commission Decision 2008/946/EC.

Wild aquatic animals

21C. Wild aquatic animals of species susceptible to one or more of the diseases listed in Part 2 of Annex 4 to Directive 2006/88/EC caught in a Member State, zone or compartment not declared disease-free must be placed in quarantine in accordance with the requirements of Commission Decision 2008/946/EC before release into a farm or mollusc farming area in any part of Scotland which has been declared disease-free.".

(5) In the cross-headings of regulations 32 and 33, for "salaries" substitute "salaris".

PART 3

Amendments due to EU Exit – Aquaculture

The Aquatic Animal Health (Scotland) Regulations 2009

3.—(1) The Aquatic Animal Health (Scotland) Regulations 2009 are amended as follows.

(2) In regulation 3 (interpretation)—

(a) in paragraph (1)—

(i) before the definition of "the competent authority" insert—

""Commission Decision 2009/177/EC" means Commission Decision 2009/177/EC implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments(**a**);",

(ii) after the definition of "the competent authority" insert—

""Decision 2015/1554" means Commission Implementing Decision (EU) 2015/1554 laying down rules for the application of Directive 2006/88/EC as regards requirements for surveillance and diagnostic methods(**b**);",

(iii) in the definition of "listed disease", for "Part II of Annex IV to Directive 2006/88/EC" substitute "Annex 1A to Regulation (EC) No. 1251/2008(**c**)",

(b) in paragraph (3), for "(list of diseases)" substitute "(list of diseases and geographical demarcation of areas declared disease free)".

(3) After regulation 13(6) (public record of aquaculture production businesses and processing establishments) insert—

"(7) The reference in paragraph (2) to Part 1 of Annex 2 to Directive 2006/88/EC is to be read in accordance with paragraph 2 of schedule 1E of these Regulations.

(8) The reference in paragraph (3) to Part 2 of Annex 2 to Directive 2006/88/EC is to be read in accordance with paragraph 3 of schedule 1E of these Regulations.".

(**a**) EUDN 2009/177.
(**b**) EUDN 2015/1554.
(**c**) EUR 1251/2008.

(4) In regulation 18 (additional certification provisions)—

(a) in paragraph (1)—

(i) for "Part II of Annex IV to Directive 2006/88/EC" substitute "Annex 1A to Regulation (EC) No. 1251/2008",

(ii) for "that Directive" substitute "Directive 2006/88/EC",

(b) in paragraph (4)(a)—

(i) for ""Part II of Annex IV to Directive 2006/88/EC" substitute "Annex 1A to Regulation (EC) No. 1251/2008",

(ii) for "that Part", in both places where it occurs, substitute "that Annex",

(c) in paragraph (5)(b)(i)—

(i) for "Part II of Annex IV to Directive 2006/88/EC" substitute "Annex 1A to Regulation (EC) No. 1251/2008",

(ii) for "that Part" substitute "that Annex",

(d) after paragraph (6) insert—

"(7) The reference in paragraph (1) to Part A of Annex 3 to Directive 2006/88/EC is to be read in accordance with paragraph 4 of schedule 1E of these Regulations.".

(5) For Part 3A substitute—

"PART 3A

Quarantine

Interpretation of Part 3A

21A.—(1) In this Part—

"Commission Decision 2008/946/EC" means Commission Decision 2008/946/EC implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals(**a**);

"constituent GB territory" means England, Wales or Scotland as the case may be;

"the EU Directive" means 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(**b**) as it has effect in European Union law, as amended from time to time.

(2) References in this Part to a part of Scotland, or to a constituent GB territory or a zone or compartment thereof, being "declared free" of one or more diseases means declared free in accordance with Section 2 of Commission Decision 2009/177/EC.

Vector species

21B.—(1) An aquaculture animal intended for farming or restocking may only be introduced into a part of Scotland which has been declared free of a disease for which that animal is a vector if it—

(a) originates from—

(i) a constituent GB territory, or a zone or compartment thereof, declared free of that disease;

(**a**) EUDN 2008/946.
(**b**) OJ L 328, 24.11.2006, p.14.

(ii) Northern Ireland, or a zone or a compartment thereof, declared free of that disease in accordance with Article 49 or Article 50 of the EU Directive; or

(iii) the Channel Islands, the Isle of Man or a third country, where the competent authority has consented to its introduction; or

(b) has been, or will be, held in quarantine facilities in accordance with the requirements of Commission Decision 2008/946/EC.

(2) For the purposes of paragraph (1)(a)(iii), consent may only be given if the competent authority is satisfied that the aquaculture animal concerned is free of the relevant disease.

(3) In this regulation, an aquaculture animal is a vector for a disease if it is of a species appearing in Column 2 of the table in Annex 1 to Regulation (EC) No. 1251/2008 opposite the reference to the disease in Column 1, and it fulfils the conditions set out in Columns 3 and 4 of that table.

Wild aquatic animals

21C.—(1) Wild aquatic animals of species susceptible to one or more of the diseases listed in Annex 1A to Regulation (EC) No. 1251/2008 which are intended for release into a farm or mollusc farming area in a part of Scotland which has been declared free of any of those diseases must—

(a) originate from—

(i) a constituent GB territory, or a zone or compartment thereof, declared free of that disease;

(ii) Northern Ireland, or a zone or a compartment thereof, declared free of that disease in accordance with Article 49 or Article 50 of the EU Directive; or

(iii) the Channel Islands, the Isle of Man or a third country, where the competent authority has consented to its introduction; or

(b) be, or have been, held in quarantine facilities in accordance with the requirements of Commission Decision 2008/946/EC.

(2) For the purposes of paragraph (1)(a)(iii), consent may only be given if the competent authority is satisfied that the aquaculture animal concerned is free of the relevant disease.".

(6) In regulation 24 (initial designation)—

(a) in paragraph (2)(b), for the words from "authority" to the end, substitute "competent authority",

(b) after paragraph (3) insert—

"(4) The reference in paragraph (2)(c) to Article 29 of Directive 2006/88/EC is to be read in accordance with paragraph 1 of schedule 1E of these Regulations.".

(7) In regulation 35 (entry and inspection of land and premises) for paragraph (2) substitute—

"(2) An inspector entering any land or premises under paragraph (1) may be accompanied by such person, and may enter together with such equipment or vehicle, as the inspector considers necessary.".

(8) In regulation 45(1) (public register of disease-free zones and compartments), for "Article 50 of Directive 2006/88/EC" substitute "Articles 2a and 2b of Commission Decision 2009/177/EC".

(9) In regulation 46 (disclosure of information)—

(a) in paragraph (1), omit "or Directive 2006/88/EC",

(b) in paragraph (2), omit ", or for the purposes of Directive 2006/88/EC".

(10) For schedule 1 (list of diseases), substitute—

"SCHEDULE 1 Regulation 3(3)

List of diseases and geographical demarcation of areas declared disease free

Disease	*Susceptible species*	*Geographical demarcation of the area which is disease free*
Infection with *Gyrodactylus salaris*	Atlantic salmon (*Salmo salar*), rainbow trout (*Oncorhynchus mykiss*), Arctic char (*Salvelinus alpinus*), North American brook trout (*S. fontinalis*), grayling (*Thymallus thymallus*), North American lake trout (*Salvelinus namaycush*), and brown trout (*Salmo trutta*). Other species of fish on sites where any of the above species are present shall also be considered as susceptible species	The whole territory of Scotland
Bacterial kidney disease	Fish belonging to the family *Salmonidae*	
Spring viraemia of carp	Bighead carp (*Aristichthys nobilis*), goldfish (*Carassius auratus*), crucian carp (*C. carassius*), grass carp (*Ctenopharyngodon idellus*), common carp and koi carp (*Cyprinus carpio*), silver carp (*Hypophthalmichthys molitrix*), sheatfish (*Silurus glanis*) and tench (*Tinca tinca*)	The whole territory of Scotland
Ostreid herpesvirus l µvar (OsHV-1 µvar)	Pacific oyster (*Crassostrea gigas*)	The whole territory of Scotland".

(11) After schedule 1D (farmed fish escapes – final notification), insert—

"SCHEDULE 1E

Regulation 13(7) and (8)

Modifications to Directive 2006/88/EC

Modifications to Article 29

1. Article 29 is to be read as if—

(a) in the opening words of paragraph 1—

(i) the reference to "Member States" were a reference to "The competent authority";

(ii) the reference to "Article 28(b)(iii)" were a reference to regulation 24(2)(c) of these Regulations;

(iii) the reference to "Article 28(a)" were a reference to regulation 24(2)(a) and (b) of these Regulations;

(b) in paragraph 1(a)—

(i) the reference to "Part II of Annex IV" were a reference to "Annex 1A to Regulation (EC) No. 1251/2008";

(ii) the reference to "any Member State" were a reference to "Scotland";

(c) in paragraph 1(b)—

(i) the reference to "Part II of Annex IV" were a reference to "Annex 1A to Regulation (EC) No. 1251/2008";

(ii) the reference to "Member States, zones or compartments" were a reference to "Scotland or any zone or compartment within Scotland"; and

(iii) the reference to "Part A of Annex III" were a reference to that Part read in accordance with paragraph 4;

(d) in paragraph 2(b), the reference to "Article 26(1)" were a reference to regulation 23 of these Regulations;

(e) in paragraph 3—

(i) the reference to "the Member State" were a reference to "the competent authority";

(ii) the references to "Article 28" were references to regulation 24 of these Regulations;

(f) paragraph 4 were omitted.

Modifications to Part 1 of Annex 2

2. Part 1 of Annex 2 is to be read as if—

(a) in paragraph 1—

(i) in the words before point (a), the reference to "Article 6" were a reference to regulation 13(1)(a) of these Regulations;

(ii) in point (f), the reference to "Part II of Annex IV" were a reference to "Annex 1A to Regulation (EC) No. 1251/2008";

(iii) in point (g)—

(aa) the reference to "a Member State, zone or compartment" were a reference to "Scotland, or any zone or compartment within Scotland";

(bb) the reference to "Annex IV" were a reference to "Annex 1A to Regulation (EC) No. 1251/2008";

(b) in paragraph 2, the reference to "the second subparagraph of Article 4(1)" were a reference to regulation 5(2) of these Regulations.

Modifications to Part 2 of Annex 2

3. Part 2 of Annex 2 is to be read as if, in the words before point (a), the reference to "Article 6" were a reference to regulation 13(1)(b) of these Regulations.

Modifications to Part A of Annex 3

4. Part A of Annex 3 is to be read as if—

(a) in the heading, the words from "to" to "Article 12" were omitted;

(b) in the second column of the table—

(i) in the entry corresponding to Category 1, the words in brackets referred to "Article 2a or 2b of Commission Decision 2009/177/EC";

(ii) in the entry corresponding to Category 2, the words in brackets referred to "Article 2b(1) of Decision 2015/1554";

(iii) in the entry corresponding to Category 4, the words in brackets referred to "Article 2b(3) of Decision 2015/1554";

(iv) in the entry corresponding to Category 5, the words in brackets referred to regulation 28 of these Regulations.".

The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015

4.—(1) The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015(**a**) are amended as follows.

(2) In regulation 9(1)(b) (notification of movement or translocation) for "the United Kingdom" substitute "Great Britain".

(3) In regulation 20 (entry and inspection of land and premises), for paragraph (5) substitute—

"(5) An inspector entering any land or premises may be accompanied by such persons, vehicles, equipment or materials as the inspector considers necessary.".

(4) For regulation 30 (disclosure of information) substitute—

"**30.** The competent authority may disclose information to—

(a) the equivalent authority in England and Wales for the purposes of Council Regulation 708/2007, these Regulations, or legislation corresponding to these Regulations in England and Wales;

(b) the equivalent authority in Northern Ireland, for the purposes of Council Regulation 708/2007 as it has effect by virtue of section 7A of the European Union (Withdrawal) Act 2018(**b**), these Regulations, or legislation corresponding to these Regulations in Northern Ireland.".

PART 4

Amendments due to EU Exit – Fisheries

The Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019

5.—(1) The Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019(**c**) are amended as follows.

(**a**) S.S.I. 2015/103.
(**b**) 2018 c.16. Section 7A was inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020 (c.1).
(**c**) S.S.I. 2019/24.

(2) Omit regulation 9 (amendments to the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011).

(3) Omit regulation 10(2)(c) (amendments to the Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012).

(4) For regulation 14 (amendments to the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015) substitute—

"**14.** In regulation 2(2) of the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015(**a**) for "as amended from time to time" substitute "as they or it had effect in EU law immediately before IP completion day".".

PART 5

Revocations

Revocation of the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019

6. The Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019(**b**) are revoked.

MAIRI GOUGEON
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
20th November 2020

(**a**) S.S.I. 2015/359.
(**b**) S.S.I. 2019/9.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraphs 1(1) and (3) and 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies (as defined in section 8(2) and (3) of that Act) arising from the withdrawal of the United Kingdom from the European Union as well as to deal with matters related to the implementation of the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement between the United Kingdom and the European Union. The Regulations are also made using the powers conferred by section 2(2) of the European Communities Act 1972.

Part 2 makes amendments to the Aquatic Animal Health (Scotland) Regulations 2009 ("the 2009 Regulations"). The amendments ensure that provisions in Directive 2006/88/EC concerning quarantine are fully transposed into domestic legislation and clarify that the Scottish Ministers are the competent authority not only in respect of the 2009 Regulations but also in respect of directly applicable EU legislation on aquatic animal health. The amendments also remove an unnecessary definition and correct two typographical errors in the 2009 Regulations.

Part 3 makes amendments required as a result of EU Exit to subordinate legislation in the fields of aquatic animal health and alien and locally absent species in aquaculture to ensure that the legislation continues to operate effectively after IP completion day.

Part 4 makes amendments to fisheries legislation, required as a result of EU Exit. Regulation 4(2) and (3) amends the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 ("the 2019 Regulations") to remove two amendments that are no longer necessary due to amendments made by other legislation.

Regulation 4(4) amends the 2019 Regulations to undo deficiency-fixing amendments made to the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015 ("the 2015 Regulations") which are no longer necessary by virtue of Article 138 of the Withdrawal Agreement. Regulation 4(4) also ensures that references in the 2015 Regulations to EU legislation that will not form part of retained EU law are references to that legislation as it has effect in EU law immediately before IP completion day, so that the cross-references are not rendered redundant by anticipated changes to that legislation at EU level on 1 January 2021.

Part 5 revokes the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019, which are superseded by these Regulations.

A Business and Regulatory Impact Assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

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