EXPLANATORY MEMORANDUM TO

THE AQUATIC ANIMAL HEALTH (AMENDMENT) REGULATIONS 2022

2022 No. 835

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends several pieces of retained European Union law.

2.2 It removes certain lists relating to aquatic animal health from legislation so that they can be published administratively. These lists (hereinafter "the Lists") are:

- lists of aquatic animal species that act as vectors for listed aquatic animal diseases;
- lists of aquatic animal species that are susceptible to listed diseases; and
- the lists of species that can be imported into Great Britain from certain countries, as well as zones within these countries that they can be imported from.

2.3 The amendments will allow the Secretary of State (in relation to England, or for Great Britain, with the consent of all of the relevant administrations), the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales), to amend the Lists administratively, in order to protect Great Britain's aquatic animal health status, and support trade with third countries.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

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 This instrument is being made under section 38 of the Fisheries Act 2020.

6.2 The aquatic animal species which act as vectors for, or are susceptible to, certain diseases are listed in retained EU and domestic legislation. These lists are contained

within Commission Regulation (EC) 1251/2008, the Aquatic Animal Health (England and Wales) Regulations 2009 and the Aquatic Animal Health (Scotland) Regulations 2009. The entries to these lists require periodic amendment to align with updated scientific knowledge.

6.3 Annex III of retained Regulation (EC) No 1251/2008 contains a table of third countries, territories, zones or compartments, and the categories of aquaculture species that can be imported into the UK from these areas. This instrument will remove the "Aquaculture Species" and "Zone/Compartment" columns from this table.

6.4 Prior to withdrawal, the power to amend vector and susceptible species, and third country lists, was conferred on the European Commission using its delegated powers. This enabled changes to be made quickly and frequently by the European Commission through tertiary legislation to reflect changes relevant to the import of aquatic animals (or animal products) presenting biosecurity or animal health risks. For example, a disease outbreak in a certain country or area (or equally to reflect changes to remove restrictions where risks diminished).

6.5 The legislative functions of the European Commission to amend the Lists have been transferred to the Secretary of State and, where appropriate, the respective Devolved Administrations under the following Statutory Instrument: the Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019 No. 817).

6.6 However, this instrument transferred those functions by way of granting power to make secondary legislation. Due to the legislative process that must be undergone when making secondary legislation, the GB administrations are unable to act sufficiently quickly in response to changes in scientific knowledge, or risks in trading partners that may affect aquatic animal health in Great Britain. The retained EU law therefore operates ineffectively.

6.7 Additionally, this instrument makes consequential amendments which are needed to reflect the removal of entries from retained legislation and the conferral of administrative powers to publish certain information.

7. Policy background

What is being done and why?

7.1 Trading partners approved to export aquatic animals and animal products to Great Britain must comply with country-specific import conditions found in retained EU law. Regular amendments to these conditions are required to respond to changes in risk, including to safely manage trade from countries experiencing aquatic animal disease outbreaks.

7.2 Amendments to the Lists in retained EU law are currently made by Statutory Instrument. This means that even when a negative procedure is used and the 21 day rule is breached, there is a significant gap between the identification of risk and the legal implementation of import conditions. This raises a concern about the lack of responsiveness of the current legislative mechanism.

7.3 The amendments made by this instrument confer powers on the Secretary of State (in relation to England or for Great Britain, with the consent of all of the relevant administrations) the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales), to change certain import requirements (in the form of the Lists specified in paragraph 2.2 above) for aquatic animals and aquatic animal products entering Great Britain, by specifying the change in a document published for that specific purpose rather than in legislation. The functions that, prior to the UK leaving the European Union, were carried out by the European Commission to protect aquatic animal health are therefore transferred in a way that enables them to be exercised promptly and effectively.

7.4 Removing these elements from the retained EU legislation will mean that they can be updated more quickly, allowing officials to react to disease outbreaks that are restricted only to certain areas of trading partner countries, or to developments in scientific knowledge relating to vector or susceptible species. This will help protect Great Britain from imports of potentially harmful aquatic animals, whilst ensuring that trade can continue where safe. This will strengthen Great Britain's protection from aquatic animal disease, whilst simultaneously helping, where applicable, to remove potential barriers to trade.

7.5 Powers exist in domestic legislation to publish safeguard declarations at short notice, to manage import risks to public or animal health. However, these are short-term measures, and do not allow amendments to be made to existing import conditions, including the lifting of restrictions (for example, removing a species from the vector or susceptible lists) where appropriate. Making the Lists administrative will enable Defra to more efficiently and effectively manage imports of aquatic animals and products to Great Britain in the long term.

7.6 This instrument has been drafted in such a way that, while "Aquaculture Species" and "Zone/Compartment" lists will be made administrative, parliamentary oversight is retained over the disease and third country lists. Legislation will continue to be required to approve or delist a country, or to add or remove diseases from the list of diseases, ensuring ongoing parliamentary scrutiny of the government's commitment to maintain standards for animal health and welfare and food safety.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not made under powers in the European Union (Withdrawal) Act and therefore does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation of legislation is being carried out.

10. Consultation outcome

10.1 The amendments made by this instrument are technical in nature and there are no substantial changes to policy, so no public consultation has been undertaken.

10.2 The Department has consulted the Centre for Environment, Fisheries and Aquaculture Science ("Cefas") and the Devolved Administrations. These consultees were supportive of the need to remove these elements from legislation. The Department has also sought and received the consent of the respective Devolved Administrations, as required under section 40 of the Fisheries Act 2020.

11. Guidance

11.1 No public guidance is being published in connection with this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is that the Department, and the Devolved Administrations, will be able to more quickly make changes to the Lists specified in paragraph 2.2 above, providing better protection for Great Britain's aquatic animal health status. This will also result in a significant reduction in the resources required to make these changes.

12.3 A full Impact Assessment has not been prepared for this instrument because it does not impose costs or restrictions on businesses or other entities.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not place any burdens on small businesses, therefore no action will be taken.

14. Monitoring & review

14.1 The approach to monitoring this legislation is through the course of normal departmental business.

14.2 This instrument does not include a statutory review clause.

15. Contact

15.1 Joseph de Vere at the Department for Environment, Food and Rural Affairs (telephone: 020 8225 8702, or email: joseph.devere@defra.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Louise Leighton-McTague, Deputy Director for Exotic & Endemic Disease Control, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Benyon, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.