EXPLANATORY MEMORANDUM TO

THE AQUATIC ANIMAL HEALTH AND ALIEN SPECIES IN AQUACULTURE (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 will provide the necessary minor and technical corrections to The Aquatic Animal Health Regulations (Northern Ireland) 2009 and The Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012 to ensure operability when the UK leaves the EU. This instrument does not introduce any policy changes. It does not contain amendments to any primary legislation.

2.2 The intention is to maintain the status quo and keep the aquatic animal health and alien species in aquaculture regimes functioning as they do now. As a result, there are not expected to be any significant impacts arising from this SI for anyone. In bringing forward this legislation, a workable legal framework underpinning business as usual in aquatic animal health and alien and locally absent species in aquaculture, will be preserved after Exit.

2.3 The amendments include:

- the removal of references to "Member States";
- where necessary, replacement with "Northern Ireland" or "Department"; and
- appropriate references to retained EU Law.

2.4 There will be no additional impact or costs arising from these Regulations.

Explanations

Legislative context

2.5 This SI does not amend EU law itself, but amends Northern Ireland secondary legislation, which has transposed EU Regulations into domestic legislation and enables authorisation, inspection and enforcement powers under that legislation.

2.6 The domestic laws in Northern Ireland being amended are as follows:

- In the field of aquatic animal health, 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 establishes an EU-wide biosecurity framework for fish and shellfish diseases and lays down animal health requirements for movements of fish and shellfish and their products into and within the EU. The

Directive lists requirements for bringing to the market aquaculture animals and their products, including the authorisation of aquaculture production businesses and processing establishments and recording obligations of aquaculture production businesses. The Directive also lists requirements for disease control, including: requirements for good hygiene practice; requirements for risk-based animal health surveillance schemes; requirements for disease prevention during transportation; requirements for animal health certification; conditions for the introduction of aquaculture animals into disease-free areas and importation into the EU from a third country; notification and minimum measures for control of diseases; epizootic investigations and control measures for listed diseases; control measures for emerging diseases; requirements for surveillance and eradication programmes; contingency plans for emerging and exotic diseases; vaccination requirements; and the establishment and maintenance of disease-free status of Member States and zones and compartments within Member States. The Directive also provides for Member States to take national measures for diseases not subject to EU-wide disease controls.

- The Aquatic Animal Health Regulations (Northern Ireland) 2009, implement the requirements of Directive 2006/88/EC in Northern Ireland. The Regulations provide a framework for the authorisation and registration of aquaculture businesses; list health, certification and transport requirements for aquaculture animals and products to allow trade and prevent disease; list obligations regarding notification and control of disease outbreaks; list requirements for a register of declarations of disease-freedom; and include a list of reportable diseases subject to national measures.
- In relation to alien and locally absent species in aquaculture, Council Regulation (EC) No. 708/2007 concerning the use of alien and locally absent species in aquaculture establishes an EU-wide framework governing aquaculture practices in relation to these species to assess and minimise the possible impact of these and associated species on aquatic habitats and contribute to the sustainable development of the aquaculture sector. This framework applies to the introduction or translocation of any alien or locally absent species in the EU, with the exception of certain alien species specified in Annex IV of Regulation 708/2007. However, Member States may take their own measures to restrict the use of these species in their territories. The Regulation does not apply to movements within EU Member States.
- The Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012, which implement the permitting system; monitoring requirements; inspection and enforcement powers; and penalties required to implement Council Regulation (EC) No. 708/2007 concerning the use of alien and locally absent species in aquaculture. The Regulations also make provision to restrict the movement of species that are exempt from Regulation 708/2007 and species that are locally absent within the United Kingdom.

Why is it being changed?

2.7 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") to make necessary changes to the domestic secondary legislation referred to above. It makes minor and technical changes which are necessary to ensure that the domestic laws in Northern Ireland which give effect to and provide for the enforcement of Aquatic Animal Health and Alien and Locally Absent Species measures in Northern Ireland will continue to operate effectively after the UK leaves the EU.

2.8 This instrument is essential for Northern Ireland to have an operable legislative framework for Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture post EU Exit. Without this instrument, domestic legislation as it currently stands will not be operable after EU Exit. This may prevent trade between Northern Ireland and the EU and Third Countries after the UK leaves the EU.

2.9 If this legislation is not progressed then this would result in an incomplete statute book on Day 1 of the UK's withdrawal from the EU.

2.10 The amendments to the Aquatic Animal Health Regulations (Northern Ireland) 2009 concern deficiencies in cross-references to Directive 2006/88/EC which need to be corrected so that they are operable after EU exit because Directive 2006/88/EC will not form part of retained EU law. In most cases, this is achieved by providing that cross-references in the 2009 Regulations to Directive 2006/88/EC are to be read in accordance with the appropriate gloss (for example, as if references to Member States were references to the appropriate Minister, i.e. the Department of Agriculture, Environment and Rural Affairs). Some of these cross-references themselves contain further cross-references to the Directive and, in these cases, the cross-references have been followed through so as to gloss all the necessary provisions.

2.11 The amendments to the Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012 remove the powers of EU officials to inspect UK premises and the need for Ministers to consider how Regulation 708/2007 is applied in EU Member States when reviewing the 2012 Regulations.

What will it do now?

2.12 This instrument will address deficiencies in domestic legislation arising from withdrawal of the United Kingdom from the European Union. The instrument makes no policy changes and ensures that the Northern Ireland law which implements EU legislation in the fields of aquatic animal health and the use of alien and locally absent species in aquaculture will remain operable after the UK has left the EU. There are therefore no changes to policy and all amendments are strictly technical fixes for operability.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations were presented to the Sifting Committees on 22 November 2018. The Lords Sifting Committee agreed with the Government that this instrument does not have to have a debate in Parliament, though it did state that it is arguable that the effect of conferring legislative functions as stated in the instrument is to trigger the requirement under the Withdrawal Act for the affirmative procedure to apply to this instrument. However, the Commons Sifting Committee disagreed with the Government and recommended that this instrument needs to be debated in Parliament; the recommendation was published on gov.uk on 7 December 2018.

3.2 The Commons Sifting Committee made this recommendation because it believed that regulation 2(11) of the Regulations confers a legislative function - to establish appropriate buffer zones to prevent the introduction of exotic diseases to aquatic species in Northern Ireland - directly on the Competent Authority in Northern Ireland,

in its capacity as a UK public authority, that EU Regulations confer in respect of the UK as a Member State. The Committee believed that this may be sufficient to make this instrument mandatory affirmative under paragraph 1 (2)(a) of Schedule 7 to the Withdrawal Act. The Committee went on to state that in any event, it is probably sufficient to indicate affirmative resolution, as legislative delegation (albeit one of a relatively narrowly circumscribed nature).

3.3 Consequently, Lord Gardiner of Kimble, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs, has agreed for this instrument to be made subject to affirmative procedure.

3.4 The instrument has not been amended since it was presented to the Sifting Committees, other than to reflect that it is now being laid under the affirmative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.5 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 Lord Gardiner of Kimble has made the following statement regarding Human Rights:

"In my view the provisions of The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights.".

6. Legislative Context

6.1 The key legislative context is set out in section 2 above.

6.2 In addition to this instrument, the Department for Environment, Food and Rural Affairs will introduce other instruments as part of the exit process, which interact with the legislation amended by this instrument. In particular, this instrument is linked to and should be read in conjunction with The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc) (EU Exit) Regulations 2018, which apply across the United Kingdom. These Regulations will cover the EU Regulations and Decisions in the areas of Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture, which currently apply to the UK as a Member State and will ensure that this legislation remains operable as retained EU law after the UK leaves the EU. In addition, these Regulations will transfer functions of the European Commission under Directive 2006/88/EC to the appropriate authority in the UK. These Regulations are covered in separate Explanatory Memoranda.

6.3 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency, in retained EU law arising from the withdrawal of the UK from the EU. This instrument is made in exercise of these powers.

6.4 The Withdrawal Act does not preserve EU Directives. Changes made under Section 8 of the Withdrawal Act are therefore made to the relevant legislation which implements an EU Directive in the UK.

7. Policy background

What is being done and why?

7.1 This instrument applies to Aquatic Animal Health and Alien Species in Aquaculture which are transferred matters for Northern Ireland under Section 4 and Schedule 2 of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK, including Northern Ireland, for exit day in the absence of a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

7.2 This SI is essential for Northern Ireland to have an operable legislative framework for aquatic animal health and alien species in aquaculture post EU Exit. The SI amends Regulations related to these areas ensuring that Northern Ireland can continue to effectively enforce Regulations, enabling the protection of the aquatic animal health regime.

7.3 The Government has stated that, where practical and appropriate, European legislation will be retained in UK law on the UK's exit from the EU. In the fields of Aquatic Animal Health and Alien Species in Aquaculture, the Government plans to retain 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.

7.4 The amendments made by this instrument do not amount to a change in policy but ensure that the Northern Ireland Regulations that implement EU legislation continue to operate effectively after the UK leaves the EU.

7.5 EU law regarding aquatic animal health set 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 could result in the UK being unable to trade in aquaculture animals and their products with EU Member States and third countries. The Government has therefore decided to maintain regulations regarding aquatic animal health at or above EU standards following EU exit.

7.6 This SI corrects two Northern Ireland Statutory Rules to remove references to Member States, Community and European Commissioners etc.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 It is not intended to consolidate the relevant legislation. Informal consolidation of new instruments is available to the public free of charge via the National Archives website: http://www.legislation.gov.uk

10. Consultation outcome

10.1 The Department for Environment, Food and Rural Affairs has consulted with officials in the Department of Agriculture, Environment and Rural Affairs in Northern Ireland regarding this instrument.

10.2 The amendments in this instrument do not give effect to any policy change. There has been no formal consultation on the contents of this instrument given the minor, technical nature of the amendments.

11. Guidance

11.1 There is no associated guidance.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it relates to maintenance of existing regulatory standards and will not introduce any new policy.

13. Regulating small business

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

13.2 There is no additional impact on small businesses (employing up to 50 people), because this instrument maintains the status quo and does not introduce any policy change. Therefore, no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Colette Connor at the Department of Agriculture, Environment and Rural Affairs Telephone: 028 44618033 or email: Colette.Connor@daera-ni.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Small, Deputy Secretary, Environment, Marine and Fisheries Group, at the Department of Agriculture, Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. In addition, to the statutory obligation, the Government has made a political commitment to include these statements alongside all EUWA SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under section 2(2) ECA.	Statement explaining the good reasons for modifying the instrument made under section 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under section 2(2) ECA.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument; and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2
Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, and Lords Minister, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because the changes made in this Statutory Instrument to retained EU legislation are very minor and do no more than is strictly necessary to ensure that the Regulations function correctly once the UK has left the EU as further described in Section 2 of the Explanatory Memorandum.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, and Lords Minister, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this Instrument, and I have concluded they are a reasonable course of action".

2.2 These are:

- Ensuring that the legislation regarding aquatic animal health and alien and locally absent species in aquaculture continues to function correctly once the UK has left the EU.
- Ensuring that aquatic animal health and alien and locally absent species in aquaculture standards are maintained and trade can continue with EU Member States and third countries.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, and Lords Minister, Lord Gardiner of Kimble, has made the following statement:

"The Instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, and Lords Minister, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the Instrument, I, Lord Gardiner have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland, and as The Aquatic Animal Health and Alien Species in Aquaculture

(Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland".

Signed:

Date: