EXECUTIVE NOTE

DRAFT SSI: THE AQUATIC ANIMAL HEALTH (MISCELLANEOUS MODIFICATIONS) (SCOTLAND) REGULATIONS 2011

SSI 2011/XXX

The draft Aquatic Animal Health (Miscellaneous Modifications) (Scotland) Regulations 2011 ("the 2011 Regulations") are made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972. Paragraph 1A is relied upon so that any reference in the 2011 Regulations to Regulation (EC) No. 853/2004 and Directive 2006/88/EC is construed as a reference to that Regulation and that Directive as amended from time to time. The 2011 Regulations are subject to the affirmative procedure.

Purpose of the instrument

1. The 2011 Regulations amend the Aquatic Animal Health (Scotland) Regulations 2009 (SSI 2009/85) ("the 2009 Regulations") which give effect to EU legislation on animal health requirements for aquaculture animals and animal products and for the prevention and control of aquatic animal disease. The 2011 Regulations respond to comments made by the Subordinate Legislation Committee ([1]), clarify the extent of Ministers` powers in the event of a Scotland-wide disease outbreak, reinstate record keeping obligations for fish and shellfish farmers and introduce those obligations for authorised processing establishments, and amend the Aquaculture and Fisheries (Scotland) Act 2007 to update definitions in light of Council Directive 2006/88/EC. The 2011 Regulations do not apply to fish caught from the sea.

Legislative context and policy background

What is being done and why

2. The 2011 Regulations, if approved, will be made under section 2(2) of the European Communities Act 1972. Paragraph 2(2) of Schedule 2 to that Act provides that statutory instruments made in reliance of the powers in section 2(2) of the Act may be either approved in draft or may be subject to annulment. The 2011 Regulations seek to amend primary legislation (the Aquaculture and Fisheries (Scotland) Act 2007, see regulation 3) and it is for that reason that the Scottish Government laid the 2011 Regulations in draft and that they are subject to the affirmative procedure.

3. Council Directive 2006/88/EC ("the Directive") on animal health requirements for aquaculture animals and products thereof and on the prevention and control of certain diseases in aquatic animals, updated and expanded the European Community regime for aquatic animal health. The main theme of the Directive was to enhance the aquaculture

([1]) The Subordinate Legislation Committee considered the Aquatic Animal Health (Scotland) Regulations 2009 at its meeting on 27th March 2009, at which time the Scottish Government gave a commitment to correct errors as regards references to "non-commercial undertakings" in the 2009 Regulations. The Committee's comments and the Government's response are available from the following link - http://www.scottish.parliament.uk/s3/committees/subleg/reports-09/sur09-20.htm#app1

industry (farming of aquatic animals for food and products) in the Community. It did so in three ways: authorisation of industry to encourage reasonable standards of bio-security, harmonised trade rules and effective disease control measures. The regime also covers measures for the protection of the wild environment and fish for angling and to guard against the spread of disease from ornamental fish. The Directive is transposed as regards Scotland by the 2009 Regulations.

4. The aquaculture industry in Scotland is worth around £434 million per year, and accounts for almost 40% by value of Scotland's food exports. The amendments in the 2011 Regulations are important to those involved in aquaculture, trade in fish and, to a lesser extent, angling. They do not have implications beyond these sectors.

5. The 2011 Regulations propose to amend the 2009 Regulations which make provision relating to Council Directive 2006/88/EC. In particular, the 2011 Regulations--

- amend the Aquaculture and Fisheries (Scotland) Act 2007, updating definitions of fish farming and shellfish farming to reflect the language of the Directive;
- reinstate notification requirements in relation to fish farm escapes and record keeping requirements for fish and shellfish farms;
- clarify when the Competent Authority may withdraw movement restrictions placed for the control of notifiable disease;
- revoke the Shellfish and Specified Fish (Third Country Imports) Order 1992, and
- amend the definition of "processing establishment" and introduce record keeping requirements for authorised processing establishments.

6. Regulation 2(2) and (3) of the 2011 Regulations amend the 2009 Regulations in light of comments made by the Subordinate Legislation Committee (see paragraph 1 above) and a commitment by the Scottish Government to bring forward amendments at the first convenient opportunity. The 2009 Regulations were amended earlier this year on an emergency basis, and at that time, the Scottish Government committed to bringing forward amending Regulations in September 2011. The 2011 Regulations deliver that commitment.

7. Regulation 2(4) and (5) of the 2011 Regulations amend the 2009 Regulations to clarify that where Scotland-wide movement restrictions are imposed under Part 4 of the 2009 Regulations in response to an outbreak of a notifiable disease, the competent authority (Scottish Ministers) may withdraw the notice when satisfied the disease is no longer present, or not likely to be present in specified areas. There was previous ambiguity regarding whether restrictions were capable of being removed only when the disease was not present in the whole of Scotland, rather than in discreet areas. Regulation 2(4) and (5) of the 2011 Regulations seeks to address this ambiguity.

8. Regulation 2(6) of the 2011 Regulations inserts a new Part 4A, and associated Schedules 1A-1D, into the 2009 Regulations to reinstate reporting and record keeping obligations for fish and shellfish farms which were repealed by the 2009 Regulations. Industry has continued to record and submit this information on a voluntary basis and the amendments restore the statutory requirements for industry. New record keeping obligations are introduced for authorised processing establishments.

9. Regulation 3 amends the Aquaculture and Fisheries (Scotland) Act 2007 to update the definitions of "fish farming" and "shellfish farming" in that Act. The 2009 Regulations repealed a number of pieces of legislation which then regulated fish farming and shellfish farming activities by a system of "registration" (regulation 48 of, and Schedule 2 to, the 2009 Regulations). The 2009 Regulations introduced a regulatory regime requiring fish farm and shellfish farms to be "authorised" and the amendments in regulation 3 of the 2011 Regulations update relevant definitions to reflect the language of the Directive as transposed in the 2009 Regulations.

10. Regulation 4 of the 2011 Regulations revokes the Shellfish and Specified Fish (Third Country Imports) Order 1992. The 1992 Order prohibits the import, from third countries, of shellfish and specified fish except under licence. Part 3 of the 2009 Regulations replaces this licensing regime with general health and certification requirements, and as such the 1992 Order is no longer required.

Consultation

11. There was a full public consultation on modernisation of the aquatic animal health regime between December 2007 and March 2008 before the 2009 Regulations were made. The Scottish Government considers that no additional consultation is required in relation to the 2011 Regulations as they largely reinstate obligations, including the notification of fish farm escapes, which industry has continued to provide on a voluntary basis.

Guidance

12. Guidance for aquaculture production businesses (fish farms and shellfish farms authorised to operate under the 2009 Regulations) has been developed and is available from the Marine Scotland Science website, see links below:

http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/FHI/authorisation - This is the link to the authorisation pages with links to pages for aquaculture production businesses, and aquaculture processing establishments.

http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/18692 - This is the link to the escapes page with links to the guidance on reporting escapes and escapes notification forms.

Impact and Financial Effects

13. A Regulatory Impact Assessment was produced in relation to the 2009 Regulations and owing to the negligible consequences of the provisions of the 2011 Regulations, no new Business and Regulatory Impact Assessment has been produced in relation to the 2011 Regulations.

Marine Scotland
Scottish Government
September 2011

Transposition Note

Council Directive 2006/88/EC (the Directive) on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals.

The Aquatic Animal Health (Scotland) Regulations 2009 (SSI 2009/85) (the 2009 Regulations) implement the Directive. The animals covered are finfish and shellfish. The aim of the Directive and the 2009 Regulations is to reduce disease in farming of these animals, in the wild environment, and in fish for angling. Fish kept for ornamental purposes are also covered because of their potential interactions with the target sectors.

The draft Aquatic Animal Health (Miscellaneous Modifications) (Scotland) Regulations 2011 (the 2011 Regulations) amend the 2009 Regulations. The 2011 Regulations-

● reinstate record keeping obligations for fish and shellfish farmers, and introduce those obligations for authorised processing establishments;
● address comments made by the Subordinate Legislation Committee at its meeting on 27th March 2009 in relation to the 2009 Regulations;
● clarify the circumstances in which the competent authority may withdraw an interim designation notice and a confirmed designation notice which have Scotland-wide application;
● require notification of fish farm escapes and potential escapes, and
● update definitions of fish farming and shellfish farming in the Aquaculture and Fisheries (Scotland) Act 2007.

Directive Article	**Objective of Article**	**Transposition in Scotland in the 2009 Regulations**	**Provision in the 2011 Regulations**
3	Defines terms used in the Directive.	regulation 3(1)	Regulation 2(2). (This amendment responds to earlier SLC comments.)
4, 12	Member States may derogate so certain aquaculture production businesses can be registered instead of authorised.	regulation 12	Regulation 2(3). (This amendment addresses SLC comments.)
30, 37	Determines the circumstances under which controls placed, due to suspicion of or confirmation of disease (respectively) can be lifted.	regulations 27 and 31	regulation 2(4) and (5)

5(3), 8	Sets out details of record keeping obligations for authorised aquaculture production businesses and processors.	regulations 6, 7	Part 4A (regulations 31 A, B and C) and Schedules 1A and 1B
1 and recitals	Aims of Directive: detection, control and prevention of spread of disease in aquatic animals	.Parts 2 and 4.	Part 4A (regulations 31 D and E) and Schedules 1C and 1D
3	Defines terms used in the Directive	Regulation 3	Sections 12, 37, 44 of the Aquaculture and Fisheries (Scotland) Act 2007 (updates the 2007 Act to align with terminology used in the Directive and the 2009 Regulations).