POLICY NOTE

THE INVASIVE NON-NATIVE SPECIES (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018 and paragraph 2(2) of Schedule 2 of the European Communities Act 1972. The instrument is subject to affirmative procedure.

Purpose of the instrument.
The Invasive Non-Native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 ('the 2020 Regulations') is a deficiency-fixing instrument to correct deficiencies in Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species ('the EU Regulation').

The EU Regulation is directly applicable in Scotland and will form a body of retained EU law which continues to have effect in Scotland after the end of the transition period. The 2020 Regulations require to be made prior to 31 December in order to ensure that the retained EU Regulation remains operable in Scotland at the end of the transition period following the United Kingdom leaving the EU and that those restrictions that are currently in place for invasive non-native species (INNS) are maintained.

Policy Objectives
The intention is to ensure that the safeguards against invasive non-native species and other measures and functions set out in the EU Regulation 1143/2014 ('the EU Regulation') are maintained in Scotland when the United Kingdom leaves the European Union.

The amendments made by the 2020 Regulations do not amount to a change in policy in that they only correct deficiencies that arise as a result of EU Exit to ensure that the legislation operates effectively. The amendments include removing or replacing EU terminology, for example: replacing references to Member States and the European Commission with references to Scotland and Scottish Ministers as appropriate; and, revoking provisions with no relevance to the operation of the invasive non-native species regime in the Scottish context. This instrument extends to Scotland only.

A separate instrument, The Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2020, covers the remainder of the United Kingdom, with separate provisions being made for Northern Ireland, in accordance with the Northern Ireland Protocol. This instrument applies in respect of areas that the UK Government considers reserved as they apply to INNS, including imports to, and exports from, the European Union; and, the offshore marine area. This UK instrument will also take forward Article 27 and Article 28 of the EU Regulation for the UK as a whole. The effect of this will be to enable Scottish Ministers to appoint representatives to two new UK statutory bodies that will be created post EU-Exit: a Committee and a Scientific Forum. Article 27 of the EU Regulation provides for the EU Commission to be assisted on INNS by a Committee ('the Committee'). The Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit)

Regulations 2020 make amendments to provide that the role of the EU Commission will, at the end of the transition period, be fulfilled by the Secretary of State for Environment, Food and Rural Affairs and the devolved administrations. The Committee may be assisted in its task by a Scientific Forum as referred to in Article 28 of the EU Regulation. The UK instrument makes amendments to provide that the responsible authorities, including Scottish Ministers, shall be assisted by such a Committee and that representatives of the scientific community appointed by the responsible authorities shall provide advice on any scientific question related to the application of the retained EU Regulation. Provisions in the UK SI will ensure that these bodies can operate as intended, providing advice to the UK Government and the devolved administrations both jointly and individually. The Committee will be advisory only and decisions will be referred to the relevant Ministers, including Scottish Ministers, as necessary.

Explanation of the law being amended by the regulations
The 2020 Regulations amend Regulation (EU) No. 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species ("the EU Regulation"). The EU Regulation sets out rules to prevent, minimise and mitigate the adverse impact on biodiversity of the introduction and spread, both intentional and unintentional, of invasive alien species across the EU. Invasive non-native species are referred to as invasive alien species in the EU and the EU Regulation provides for a set of measures to be taken in relation to invasive alien species that are currently on the list of species of Union concern.

Reasons for and effect of the proposed change or changes on retained EU law
The 2020 Regulations will take forward the necessary provisions to correct deficiencies in the EU Regulation and ensure the retained EU law operates effectively within Scotland at the end of the transition period. This will allow for the prevention and management of the introduction and spread of invasive non-native species within Scotland.

The main effect of the 2020 Regulations is to enable Scottish Ministers to amend, by regulations, a Scottish list of species of special concern and to add and remove species from that list. The policy intention is to maintain this list as close as possible to the list of species of special concern that applies to the rest of the United Kingdom, while retaining flexibility to list species of particular concern within Scotland.

The 2020 Regulations also provide that where Scottish Ministers have evidence concerning the presence or imminent risk of introduction, of an invasive non-native species, that emergency measures can be introduced, consisting of any of the restrictions set out in Article 7(1) of the retained EU Regulation. These emergency measures are intended as a rapid way of introducing restrictions, as a precautionary measure, while a risk assessment is undertaken to inform decisions about whether a permanent listing of a species on the list of species of concern is necessary. The EU Regulation does not detail the procedure for introducing these measures nor the associated legislation for breaching of those measures. This lack of clarity stems from the drafting of the EU Regulation.

The instrument therefore ensures that emergency measures can be effectively introduced and enforced using section 2(2) and Schedule 2(2) of the European Communities Act 1972 to make amendments to the Wildlife and Countryside Act 1981, with the effect of existing offences being extended to contravention of emergency measures. . The EU Regulation required Member States to put in place provisions on penalties applicable to infringements of

the EU Regulation. The Wildlife and Countryside Act 1981 ('the 1981 Act') fulfils this obligation by providing offences and enforcement provisions. The SSI provides that certain of the existing provisions of the 1981 Act for the contravention of restrictions contained within the EU Regulation may be applied to additional species if emergency measures under Article 10 of the SSI are introduced, as they apply to species on the list of species of concern. The breach of such requirements will constitute an offence of breaching article 7(1) of the retained EU Regulation as is already the case with species on the existing IAS list ("Scottish list of species of special concern").

Emergency measures that are introduced will be time-limited and could not apply for a period exceeding two years. The effect of this will be to allow Scottish Ministers to take all necessary steps to prevent INNS from being kept, bred, placed on the market, used or exchanged, permitted to reproduce, released into the environment, or transported within Scotland (except for the transportation of species to facilities in the context of eradication).

Part I of the instrument (regulations 2 -11) and Part III are made using powers under EUWA 2018. Part II of the regulations (regulation 12) are made using the European Communities Act 1972. The statements set out below are relevant to Parts I and III.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for Environment, Climate Change and Land reform, Roseanna Cunningham, has made the following statement "In my view the Invasive Non-Native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 do no more than is appropriate". This is the case because only changes that are necessary to allow for the retained EU Regulation to remain operable in Scotland post EU-Exit have been made.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". Without the changes made by this instrument, we would not have operable law within Scotland on invasive non-native species and therefore the provision made by this instrument is a reasonable course of action.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement "In my view the Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 do 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."

Statement that Scottish Ministers have, in preparing the regulations, 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

The Cabinet Secretary for Environment, Climate Change and Land reform, Roseanna Cunningham, has made the following statement "In my view the Invasive Non-Native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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".

Where the regulations create a criminal offence, an explanation of why there are good reasons for creating the offence and providing a penalty in respect of it.

The instrument will insert new section 14AB into the Wildlife and Countryside Act 1981. This will provide that a breach of article 7(1) of the retained EU regulation will be an offence with respect to any new species which are in future made the subject of emergency measures made under the new retained EU regulation powers (see article 10). A breach of article 7(1) of the EU regulation is already an offence with respect to Invasive Alien Species (section 14AA of the Wildlife and Countryside Act 1981). Parts of section 14AA will also apply to new species mentioned in any emergency legislation in future as they apply to IAS.

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement "In my view the Invasive Non-Native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.".

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

This heading is not applicable.

An indication of how the regulations should be categorised in relation to the significance of the change proposed

Medium. The amendments are predominantly concerned with technical fixes to ensure that the EU Regulation remains operable within Scotland post EU-Exit. However, the instrument will provide that Ministers may make decisions, on the basis of scientific evidence, on the listing of species of concern within Scotland and on the introduction of emergency measures concerning the presence in, or imminent risk of introduction of, INNS within Scotland.

Statement setting out the Scottish Ministers' reasons for their choice of procedure

This SSI is subject to mandatory affirmative procedure under paragraph 1(6) of Schedule 7 of the European Union (Withdrawal) Act 2019. Therefore, the sifting procedure in the SSI protocol is not relevant to this SSI.

Further information

Consultation

The changes being made are technical in nature and do not make changes to existing policy; they are made in order to ensure the operability of the retained EU Regulation post EU-Exit. We have therefore not undertaken a formal public consultation.

Views on earlier drafts of the instrument were sought through the Scottish Non-Native Species Action Group, which consists of stakeholders, NGOs, and other Scottish Government business areas. We have continued to engage with current members of the GB Invasive Species Programme Board within the Scottish Government and SG Agencies, including NatureScot as the lead coordinating body for invasive non-native species in Scotland. Changes that were suggested were implemented or a solution designed with the reviewer.

We have also worked closely with officials in other devolved administrations and in the UK Government during the development of the instrument to ensure compatibility of the instrument with the UK instrument taking forward Article 27 and Article 28 of the EU Regulation for the UK as a whole.

Impact Assessments

Full impact assessments have not been prepared for this instrument because:

- the amendments made by the instrument are minor and technical in nature
- the amendments to not alter the Scottish government's current environmental policies and priorities, and, therefore, do not have a significant impact on the environment
- the impact on business, charities or voluntary bodies is expected to be minimal

Financial Effects

The Cabinet Secretary for Climate Change, Environment and Land Reform, Roseanna Cunningham, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish government, local government, or on business.

Scottish Government
Environment and Forestry Directorate

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