

DRAFT STATUTORY INSTRUMENTS

2019 No. 000

EXITING THE EUROPEAN UNION

ANIMALS

AQUACULTURE

PLANT HEALTH, ENGLAND AND WALES

PLANT HEALTH, NORTHERN IRELAND

The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a).

A draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019 and come into force on exit day.

PART 2

Functions relating to aquatic animal health

Meaning of “the appropriate authority”

- 2.—(1) In this Part, “the appropriate authority” means—
- (a) in the case of regulations applying in relation to England, the Secretary of State;
 - (b) in the case of regulations applying in relation to Wales, the Welsh Ministers;
 - (c) in the case of regulations applying in relation to Scotland, the Scottish Ministers;
 - (d) in the case of regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.
- (2) But “the appropriate authority” is the Secretary of State if consent is given—
- (a) in the case of regulations applying in relation to Wales, by the Welsh Ministers;
 - (b) in the case of regulations applying in relation to Scotland, by the Scottish Ministers;
 - (c) in the case of regulations applying in relation to Northern Ireland, by the Department of Agriculture, Environment and Rural Affairs.

General interpretation

3. In this Part—

“Commission Regulation (EC) No 1251/2008” means Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species^(a);

“the other responsible authorities” means—

- (a) as regards Wales, the Welsh Ministers;
- (b) as regards Scotland, the Scottish Ministers;
- (c) as regards Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

“third country” means a country or territory outside the United Kingdom.

4. The following terms have the same meaning as they have in 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 EU law immediately before exit day—

- (a) “aquaculture”;
- (b) “aquaculture animal”;
- (c) “aquatic animal”;
- (d) “farm”;
- (e) “mollusc farming area”;
- (f) “wild aquatic animal”.

5. Other terms used in this Part have the same meaning in this Part as they have in Commission Regulation (EC) No 1251/2008.

(a) Commission Regulation (EC) No 1251/2008 was amended by S.I. 2019/xxx [the Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019].

(b) OJ No. L 328, 24.11.2006, p.14, as last amended by Commission Implementing Directive 2014/22/EU (OJ No. L 44, 14.2.2014, p.45).

Power to amend Annex 1A to Commission Regulation (EC) No 1251/2008

6.—(1) The appropriate authority may by regulations amend Annex 1A to add, vary or remove an exotic or non-exotic disease where the amendment is necessary or appropriate in the light of—

- (a) the relevant criteria specified in paragraphs (3) and (4); and
- (b) any assessment carried out which is relevant to the determination of whether a disease is an exotic or non-exotic disease for the purposes of Annex 1A.

(2) Any assessment which is relied upon for the purposes of paragraph (1) must have been approved by the Secretary of State and the other responsible authorities.

(3) The criteria applicable in relation to an exotic disease are that—

- (a) the disease is not established in the United Kingdom;
- (b) its pathogen is not known to be present in the United Kingdom; and
- (c) if introduced into the United Kingdom—
 - (i) the disease may have a significant adverse economic impact on aquaculture in the United Kingdom, due to—
 - (aa) the likely production losses in the aquaculture sector as a result of the introduction; or
 - (bb) the likely loss of opportunities to export aquaculture animals or products to third countries as a result of the introduction; or
 - (ii) the disease may have a detrimental harmful impact on wild aquatic animal populations of species.

(4) The criteria in relation to a non-exotic disease are that—

- (a) at least two regions which, either individually or taken together, cover territory that is located in more than one constituent UK territory, are free of the disease;
- (b) the disease—
 - (i) may have a significant adverse economic impact on aquaculture if introduced into those regions due to—
 - (aa) the production losses in the aquaculture sector as result of the introduction and the annual costs associated with the disease and its control, which are likely to exceed, in the case of each region, 5% of the value of the production of susceptible aquaculture animal species produced in the region; or
 - (bb) the loss of opportunities to export aquaculture animals or products to third countries as a result of the introduction; or
 - (ii) the disease has shown, where it occurs in the United Kingdom, to have a detrimental harmful impact on wild aquatic animal populations of species;
- (c) the disease is difficult to control and contain at farm level or mollusc farming area level without stringent control measures and restrictions on trade;
- (d) zones or compartments that are free from the disease can be established and maintained in those regions in a manner that is cost-effective;
- (e) there is a risk that the disease would establish itself in those regions if aquaculture animals were placed on the market; and
- (f) reliable and simple tests are available to detect the presence of the disease in aquaculture animals susceptible to the disease.

(5) In this regulation, “Annex 1A” means Annex 1A to Commission Regulation (EC) No 1251/2008(a).

(a) Annex 1A was inserted by regulation 2(19) of S.I. 2019/xxx.

Power to amend Annex 3 to Commission Regulation (EC) No 1251/2008

7.—(1) The appropriate authority may by regulations amend Annex 3 where the amendment is necessary or appropriate in the light of an assessment of the risks to the health of aquatic animals in the United Kingdom from the introduction of aquaculture animals or products reared or produced in a third country, taking into account—

- (a) the legislation of the third country;
- (b) the way in which the relevant competent authority and its inspection services are organised, the powers of the inspection services, the supervision to which the inspection services are subject and the means at their disposal to apply the legislation effectively;
- (c) the requirements in or under the legislation of the third country that are in force in relation to the production, manufacture, handling, storage and dispatch of live aquaculture animals intended for export to the United Kingdom;
- (d) the assurances given by the relevant competent authority as to the compliance of the health requirements that apply in the third country with, or their equivalence to, the aquatic animal health requirements in the United Kingdom;
- (e) the extent to which exports of live aquaculture animals from the third country have complied with aquatic animal health requirements in the United Kingdom;
- (f) the results of any assessment made on behalf of the United Kingdom of the relevant competent authority or any report submitted to the United Kingdom by the relevant competent authority at the request of the United Kingdom on any inspections carried out;
- (g) the health status of farmed and wild aquatic animals in the third country, including any exotic animal diseases and any aspects of the animal health situation in that country in general which might pose a risk to aquatic animal health in the United Kingdom;
- (h) the regularity, speed and accuracy with which the third country has supplied information on the existence of infectious or contagious aquatic animal diseases in its territory, and in particular, the notifiable diseases listed by the World Organisation for Animal Health; and
- (i) the rules on the prevention and control of aquatic animal diseases, including on imports from other countries, which are in force in the third country and the way in which they have been implemented.

(2) Any assessment which is relied on or used for the purposes of paragraph (1) must be appropriate to the circumstances and must have been approved by the Secretary of State and the other responsible authorities.

(3) In the case of a third country which is not listed in Annex 3 or which is only listed in Annex 3 as regards part of its territory, the assessment must demonstrate that the relevant competent authority of that country is able to provide appropriate guarantees regarding the compliance of aquaculture animals and products reared or produced in that country with relevant animal health requirements in the United Kingdom.

(4) Regulations under paragraph (1) may, among other things, add, vary or remove an entry in Annex 3.

(5) In this regulation—

“Annex 3” mean Annex 3 to Commission Regulation (EC) No 1251/2008;

“relevant competent authority”, in relation to a third country, means the authority or authorities in the third country with official responsibility for aquatic animal health in the country.

PART 3

Functions relating to plant health

Meaning of “the appropriate authority”

8.—(1) In this Part, “the appropriate authority” means—

- (a) in the case of regulations applying in relation to England, the Secretary of State;
- (b) in the case of regulations applying in relation to Wales, the Welsh Ministers;
- (c) in the case of regulations applying in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

(2) But “the appropriate authority” is the Secretary of State if consent is given—

- (a) in the case of regulations applying in relation to Wales, by the Welsh Ministers;
- (b) in the case of regulations applying in relation to Northern Ireland, by the Department of Agriculture, Environment and Rural Affairs.

General interpretation

9.—(1) In this Part—

“the other responsible authorities” means—

- (a) as regards Wales, the Welsh Ministers;
- (b) as regards Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

“risk to plant health” means risk to plant health in the United Kingdom;

“the Plant Health Regulations” means the Plant Health (EU Exit) Regulations 2019(a).

(2) Other terms used in this Part have the same meaning in this Part as they have in the Plant Health Regulations.

Power to modify the lists of regulated plant pests and relevant material

10.—(1) The appropriate authority may by regulations modify Schedules 1 to 7 to the Plant Health Regulations where the modification is—

- (a) necessary or appropriate in the light of developments in scientific or technical knowledge;
or
- (b) technically justified and consistent with the risk to plant health.

(2) Regulations under paragraph (1) may, among other things, add, vary or omit an entry in Schedules 1 to 7 to the Plant Health Regulations.

Power to make further derogations

11.—(1) The appropriate authority may by regulations modify Schedule 8 to the Plant Health Regulations.

(2) Regulations under paragraph (1) may, among other things, specify further exemptions and derogations from an import prohibition, an import restriction or a documentary requirement that applies to relevant material originating in a third country.

(3) But regulations may only be made under paragraph (1) where—

- (a) an assessment has been carried out that has taken account of available scientific and technical information and any information obtained from investigations carried out by or

(a) S.I. 2019/xxx.

on behalf of the national plant protection organisation of the United Kingdom in the third country concerned or from the national plant protection organisation of the third country;

- (b) the assessment has confirmed that—
 - (i) in the case of any derogation from an import prohibition, an import restriction or a documentary requirement which is based on the use of a particular treatment or on conditions as to the use of the relevant material, the treatment or those conditions would be sufficient to eliminate any risk to plant health arising from imports of the relevant material; and
 - (ii) the exemptions or derogations otherwise provide appropriate safeguards to address the risk to plant health arising from imports of the relevant material; and
- (c) the assessment has been approved by the Secretary of State and the other responsible authorities.

(4) In this regulation—

“documentary requirement” means a requirement under a relevant Plant Health Order for relevant material to be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export on its entry into the United Kingdom;

“import restriction” means a prohibition under a relevant Plant Health Order which applies to any relevant material specified in column 2 of Part A, C or D of Schedule 4 to the Plant Health Regulations unless the requirements specified in respect of that material in column 3 are met;

“import prohibition” means a prohibition under a relevant Plant Health Order that applies to relevant material specified in Schedule 3 to the Plant Health Regulations.

Power to recognise the equivalence of phytosanitary measures adopted by third countries

12.—(1) The appropriate authority may by regulations modify the Plant Health Regulations to make provision for or in connection with the recognition of any phytosanitary measure adopted by a third country where the third country has objectively demonstrated to the national plant protection organisation of the United Kingdom that the measure is equivalent to a domestic phytosanitary measure.

(2) Regulations under paragraph (1) may (among other things)—

- (a) modify the domestic phytosanitary measure concerned to recognise the equivalence of the phytosanitary measure of the third country; and
- (b) specify the relevant material to which, and the conditions under which, the recognition of equivalence applies.

(3) In this regulation, “domestic phytosanitary measure” means a phytosanitary measure specified in the Plant Health Regulations that applies in relation to a plant pest or relevant material under or by virtue of a relevant Plant Health Order.

Power to make provision in relation to emergency measures

13.—(1) The appropriate authority may by regulations modify the Plant Health Regulations to make temporary provision for the purposes of preventing the introduction of a plant pest into the relevant territory or the spread of a plant pest within the relevant territory where the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) there is an imminent danger that the plant pest may be introduced into or spread within the relevant territory unless provision is promptly made to prevent the introduction or spread of the plant pest or that any existing measures to prevent its introduction or spread are insufficient;
- (b) protective measures or further protective measures are necessary to prevent the introduction into or the spread of the plant pest within the territory; and

- (c) the measures are consistent with an assessment, appropriate to the circumstances, of the risk to plant health arising from the introduction or spread of the plant pest which has been approved by the Secretary of State and the other responsible authorities.
- (3) Regulations under paragraph (1) may, among other things, add, vary or omit an entry in Schedules 1 to 7 to the Plant Health Regulations that relates to emergency measures.
- (4) In this regulation, “the relevant territory” means—
- (a) where the appropriate authority is the Secretary of State, England, Wales or Northern Ireland (as the case may be);
 - (b) where the appropriate authority is the Welsh Ministers, Wales;
 - (c) where the appropriate authority is the Department of Agriculture, Environment and Rural Affairs, Northern Ireland.

PART 4

General

14. Regulations made by the Secretary of State or the Welsh Ministers under these Regulations are to be made by statutory instrument.

15. For regulations made under Part 2 of these Regulations by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010(a).

16. Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under these Regulations is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979(b).

17. A statutory instrument containing regulations made by the Secretary of State under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

18. A statutory instrument containing regulations made by the Welsh Ministers under these Regulations is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

19. Regulations made by the Scottish Ministers under Part 2 of these Regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

20. Regulations made by the Department of Agriculture, Environment and Rural Affairs under these Regulations are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954(c) as if they were a statutory instrument within the meaning of that Act.

21. Such regulations may—

- (a) contain supplementary, incidental, consequential, transitional, transitory or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018));
- (b) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas.

	<i>Name</i>
	Parliamentary Under Secretary for State
Date	Department for Environment, Food and Rural Affairs

(a) 2010 asp 10.
 (b) S.I. 1979/1573 (N.I. 12), amended by S.I. 2018/1242; there are other amending instruments but none is relevant.
 (c) 1954 c. 33; section 41(6) was amended by S.I. 1999/663.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular the deficiency referred to in paragraph (f) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 makes provision for certain functions of the European Commission of a legislative character under 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 (OJ No. L 328, 24.11.2006, p.14) to be exercisable instead by the Secretary of State, Welsh Ministers, Scottish Ministers or the Department of Agriculture, Environment and Rural Affairs.

Part 3 makes provision for certain functions of the European Commission of a legislative character under Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No. L 169, 10.7.2000, p.1) to be exercisable instead by the Secretary of State, Welsh Ministers or the Department of Agriculture, Environment and Rural Affairs.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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