

**EXPLANATORY MEMORANDUM TO**  
**THE AQUATIC ANIMAL HEALTH (ENGLAND AND WALES) (AMENDMENT)**  
**REGULATION 2011**

**2011 No. 981**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These Regulations, made under section 2(2) of the European Communities Act 1972, amend the Aquatic Animal Health (England and Wales) Regulations 2009 (the 2009 Regulations). The main purpose of the amendments is to meet the European Commission requirements that will allow the implementation of approved national measures for limiting the impact of Ostreid herpesvirus 1  $\mu$ var (OsHV-1  $\mu$ var). This is done by adding Ostreid herpesvirus 1  $\mu$ var (OsHV-1  $\mu$ var) to the list of notifiable diseases in the Schedule to the 2009 Regulations. Other amendments remove references in the 2009 Regulations to repealed legislation and make provision relating to the amendment, suspension and withdrawal of initial and confirmed designations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 The 2009 Regulations implement 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.
  - 4.2 The Directive specifies measures Member States must take in response to suspicion or confirmation of the diseases listed in Annex IV to the Directive. Article 43 of the Directive allows a Member State to take approved national measures in relation to diseases which are not listed where the disease is considered to constitute a significant risk to that Member State. Commission Decision 2010/221/EU, which approves national measures in accordance with Article 43 of the Directive, is being amended to approve UK national measures for OsHV-1  $\mu$ var from 1 May 2011.
  - 4.3 To maintain approved national measures and ensure imports of species susceptible to OsHV-1  $\mu$ var only come from areas with at least an equivalent health status, the UK must comply with the placing on the market requirements in Commission Regulation (EC) 1251/2008. One of these requirements is that the disease is notifiable in the UK. This is achieved by listing the disease in Schedule 1 to the 2009 Regulations in relation to which there is already a requirement to notify knowledge or suspicion of such a disease.

## **5. Territorial Extent and Application**

5.1 This amendment extends to England and Wales.

5.2 Similar and parallel amendments are required to legislation in Scotland and Northern Ireland.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 There are 76 authorised shellfish farms in England and Wales generating some £7m of product per year<sup>1</sup>. Pacific oysters represent the second largest output by the shellfish industry after mussels.

7.2 Ostreid herpesvirus 1  $\mu$ var (OsHV-1  $\mu$ var) is an emerging disease that has caused large scale mortalities of Pacific oyster stocks in other parts of Europe since 2009. With the aim of preventing the further spread Commission Regulation No. 175/2010 was adopted and introduced measures to control the disease. Under these measures, England and Wales (and Scotland & N Ireland) established a UK surveillance programme. This ensured early detection of any occurrence of OsHV-1  $\mu$ var in oyster production areas and allowed for the control of imports from affected areas (and those that did not have similar surveillance programmes).

7.3 Commission Regulation No. 175/2010 lapses at the end of April 2011 and the European Commission has agreed that the UK can utilise national measures under Article 43 of Council Directive 2006/88/EC to make provisions for OsHV-1  $\mu$ var as it constitutes a significant risk. The Commission is amending relevant EU legislation to reflect this and these changes will come into force on 1 May 2011.

7.4 Having a surveillance programme that is recognised by the Commission and having the disease listed in the domestic regulation as notifiable, means we can restrict trade from potentially diseased areas not in a surveillance programme or not known to be free from the disease.

## **8. Consultation outcome**

8.1 The Shellfish Association of Great Britain (SAGB) are representative of the industry affected by this legislative amendment. Consultation was undertaken with the Association rather than individual businesses and there is strong support for the use of national measures for OsHV-1  $\mu$ var.

## **9. Guidance**

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<sup>1</sup> Fish Health Inspectorate statistics (2009)

9.1 The Fish Health Inspectorate at the Centre for Environment, Fisheries and Aquaculture Sciences (Cefas) on behalf of the Department for Environment, Food and Rural Affairs will be providing advice to the affected Aquaculture Production Businesses. Information will also be placed on the eFishbusiness website, run in partnership by Defra, WAG, Cefas and the Environment Agency.

## **10. Impact**

10.1 No specific impact assessment has been carried out in respect of these amending regulations.

10.2 The amendments made by this statutory instrument are not expected to have direct additional burdens on businesses. The industry wishes to see imports controlled to provide protection to the Pacific oyster industry. Commission Regulation 175/2010 currently controls imports and when this lapses the industry has requested a form of protection continues, and the use of national measures provides this. It is not expected that this legislative provision will result in a significant change in what happens currently.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The implementation of this amendment will reduce disease-risk and therefore protect the further development and expansion of the businesses.

## **12. Monitoring & review**

12.1 The success of the amending legislation lies in reducing the likelihood of incursion of OsHV-1 into Pacific oyster stocks in England and Wales. The outcome of the surveillance and continuing dialogue with the industry will be used as a monitoring method. This will be used to review the effectiveness of the disease control measures.

## **13. Contact**

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