

## **NOTIFICATION TO THE SCOTTISH PARLIAMENT**

### **The Aquatic Animal Health (Amendment) Regulations 2022 (“the SI”)**

#### **Is the notification Type 1 or Type 2.**

Type 1 notification.

#### **A brief overview of the SI**

The SI is to be made using powers under Sections 38(1) and 51(1) of the Fisheries Act 2020. It amends both retained EU and domestic legislation in order that certain future changes relating to the import of species of aquaculture animals into Great Britain (GB) and their placement on the market within GB can be made administratively rather than through amendments being made to legislation. This will enable such changes to be made more swiftly and efficiently in response to changing scientific assessments as to risks to biosecurity.

Currently the control of imports of and the placement on the market within GB of species of aquaculture animals is managed through legislation. Specifically, retained EU and domestic regulations include lists of diseases (the “listed diseases”) which need to be controlled as well as a list of zones and compartments within third countries from where certain species of aquaculture animals can be permitted entry into GB (“zones and compartments list”). In relation to the listed diseases, the retained EU regulations also includes a list of species of aquaculture animals known to be vectors of certain of those diseases and the circumstances in which they would be considered a vector of a listed disease (“vector species”). The retained EU and domestic regulations also contain lists of species of aquaculture animals known to be susceptible to certain of the listed diseases (“susceptible species”).

As the zones and compartments list and lists of vector species and susceptible species (the “lists”) are currently provided for in legislation, they can only be amended through the legislative process. As scientific knowledge improves either at a domestic level by government associated scientists, or as a result of international collaboration with the EU or at World Organisation for Animal Health (OIE) forums, there is a need to be more reactive and have the ability to update these lists quickly to ensure biosecurity of trade is always optimal. Each of the lists will require to be changed at different times and how often they will each require to be changed is difficult to predict since it will be influenced by shifts in biological understanding.

This SI is subject to the negative procedure and will be laid in the UK Parliament on Tuesday 19 July 2022. If approved by the UK Parliament, it will come into force in July 2022.

#### **Details of the provisions that Scottish Ministers are being asked to consent to**

As regards Scotland, the SI amends the following legislation:

1. retained Regulation (EC) No. 1251/2008;
2. retained Commission Decision 2008/896;

3. retained Commission Decision 2008/946;
4. retained Commission Decision 2009/177 ;
5. retained Commission Implementing Decision 2015/1554; and
6. the Aquaculture Animal Health (Scotland) Regulations 2009

## 1. Retained Regulation (EC) No. 1251/2008

Retained Regulation (EC) No. 1251/2008 (the “retained Regulation”) provides for a list of vector species and a list susceptible species and sets out additional certification requirements for placing species of aquaculture animals on the GB market and also importing those species into GB.

Vector species and the conditions under which species of aquaculture animals shall be regarded as vector species are currently listed in Annex I.

Annex IA currently contains a list of diseases for which control measures are provided, together with a list of species of aquaculture animals susceptible to those diseases.

Annex III currently contains a third countries and territories list which also contains a list of particular zones and compartments within those countries and territories from where certain species of aquaculture animals can be imported into GB in accordance with the purposes provided for in Articles 10 and 11 of the retained Regulation.

Regulation 2 of this SI amends the retained Regulation as follows:

The lists of vector species and susceptible species are removed from the retained Regulation and replaced with powers given to the Scottish Ministers as regards Scotland (and the Welsh Ministers as regards Wales and the Secretary of State as regards England) to publish documents which specify: (i) vector species and conditions under which those species are to be regarded as vector species for the diseases listed in Annex 1A (new Article 3); and (ii) species susceptible to the diseases listed in Annex 1A (Article 3(a)). With the consent of the Scottish Ministers, the Secretary of State can also exercise these powers as regards Scotland.

The retained Regulation already makes provision for particular animal health certification requirements for susceptible species as regards importation and for both susceptible species and vector species as regards placement on the GB market. Particular categories of susceptible species are also referenced in the third countries and territories list at Annex III.

Consequential amendments are made to Article 8a regarding certification requirements required as a result of the new administrative power provided at (new) Regulation 3B of the Aquaculture Animal Health (Scotland) Regulations 2009 (susceptible species and disease-free areas) (see below).

The amendments made to Articles 10 and 11 gives the Secretary of State, with the consent of the Scottish Ministers as regards imports to Scotland (and the Welsh Ministers as regards Wales), the power to publish a list of zones and compartments in respect of the countries and territories listed at Annex III and specify those species of

aquaculture animals which are permitted to enter GB from the third countries and territories listed at Annex III.

2. Retained Commission Decision 2008/896

Regulation 3 of this SI makes consequential amendments to retained Commission Decision 2008/896 to reflect the new administrative power provided for at Article 3a (1) of the retained Regulation (susceptible species).

3. Retained Commission Decision 2008/946

Regulation 4 of this SI makes consequential amendments to retained Commission Decision 2008/946 to reflect the new administrative powers provided for at Article 3a (1) (susceptible species) and (new) Article 3(1) (vector species) of the retained Regulation.

4. Retained Commission Decision 2009/177

Regulation 5 of this SI makes consequential amendments to retained Commission Decision 2009/177 to reflect the new administrative powers provided for at Article 3a (1) of the retained Regulation (susceptible species).

5. Retained Commission Implementing Decision 2015/1554

Regulation 6 of this SI makes consequential amendments to retained Commission Implementing Decision 2015/1445 to reflect the new administrative powers provided for at Article 3a(1) (susceptible species) and (new) Article 3(1) (vector species) of the retained Regulation.

6. The Aquaculture Animal Health (Scotland) Regulations 2009

The Aquaculture Animal Health (Scotland) Regulations 2009 (the “2009 Regulations”) implemented EU Decisions and Directives relating to measures against certain diseases in aquaculture animals; animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquaculture animals, as well as implementing Regulation 1251/2008. The Aquaculture Animal Health (England and Wales) Regulations 2009, which this SI also amends, implemented the same EU Decisions, Directives and Regulation 1251/2008 in relation to England and Wales. Note that products of aquatic animal origin are not relevant in the context of the amendments made by this SI.

Schedule 1 of the 2009 Regulations currently provides for a list of diseases, species susceptible to those diseases and areas within Scotland which are declared free of those diseases.

Regulation 8 of this SI amends the 2009 Regulations as follows:

Schedule 1 is amended in order that it only contains a list of diseases. A power is provided at (new) Regulation 3B in order that the Scottish Ministers may from time to time specify a list of species of aquaculture animal susceptible to the diseases in

Schedule 1 as well as the areas within Scotland which are declared free of those diseases (“disease-free areas”).

Regulation 18 makes provision regarding additional animal health certification requirements. This Regulation is consequentially amended to reflect the Scottish Ministers’ new administrative powers provided for at (new) Article 3 (vector species) and Article 3a (susceptible species) of the retained Regulation and Regulation 3B.

Regulation 21B makes provision regarding vector species and disease-free areas. This Regulation is consequentially amended to reflect the Scottish Ministers new administrative power provided for at (new) Article 3 (vector species) of retained Regulation (EC) No. 1251/2008.

Regulation 21C makes provision regarding wild aquatic animals and disease-free areas. This regulation is consequentially amended to reflect the Scottish Ministers’ new administrative power provided for at (new) Article 3 (vector species) retained Regulation (EC) No. 1251/2008.

A summary table of the new administrative powers provided for in this SI is annexed to this notification and sets out the matters that may be specified administratively and by whom.

### **Summary of the proposals**

This SI enables the lists (relating to vector species, susceptible species (and related disease-free areas) and compartments and zones of third countries and territories) to be amended administratively rather than through legislation. The lists relating to vector species and susceptible species (and related disease-free areas) in the retained Regulation and the 2009 Regulations will be able to be amended administratively by the Scottish Ministers. The zones and compartments list in the retained Regulation - as well as the specified species of aquaculture animals which will be permitted entry into GB from the third countries and territories - will be able to be amended administratively by the Secretary of State, as regards Scotland with the consent of the Scottish Ministers.

The SI does not enable a third country or territory listed in Annex III or a disease listed in Annex IA of the retained Regulation to be added or removed administratively and this would still require amendments being made in legislation. Likewise, any amendments required to the list of diseases in Schedule 1 of the 2009 Regulations would require legislation. Should the UK Government make such provision in future legislation to amend the retained Regulation or Commission Decisions listed above, as regards Scotland, or the 2009 Regulations then the Scottish Parliament would require to be notified under SI Protocol 2.

### **Secretary of State power with the consent of the Scottish Ministers (Regulations 10 and 11 of the retained Regulation)**

The Scottish Government is confident that sufficient protections exist in order to ensure that agreement will always be reached cross-GB in relation to import controls and thus as regards any amendments made administratively to the compartments and

zones list – or the species of aquaculture animals permitted entry from third countries or territories into GB – under the administrative powers now provided at (amended) Regulations 10 and 11 of the retained Regulation. This is in part because all GB Sanitary and Phytosanitary (SPS) import decisions are science-based, as required under the UK Government's various trade agreements and under World Trade Organisation rules, and these are always made on a GB or UK-wide basis informed by the recommendations of the Aquaculture Animal Health Policy Group (AAHPG); thus, this SI will not change the requirement for an assessment of the risks to aquaculture animal health to be agreed by all 3 governments within GB.

This SI has been drafted in such a way so as to ensure that parliamentary oversight is still required as regards adding or removing a listed disease or a country/territory for import meaning that both the UK Parliament and the Scottish Parliament (by virtue of the fact that any UK Government SI would engage SI Protocol (2)) will continue to have oversight of any such future amendments.

### **Does the SI relate to a common framework or other scheme?**

No.

### **Summary of stakeholder engagement/consultation**

The amendments made by this SI are technical in nature and there are no substantial changes to policy, so no public consultation has been undertaken.

The UK Government has consulted with the Scottish Government and Welsh Government and, where required, obtained their consent, and all are in agreement that the amendments in this SI are consistent with the cross-GB aquaculture animal health policy for the import of aquaculture animals to GB, and are necessary in order to effectively carry out functions repatriated from the European Union.

### **A note of other impact assessments (if available)**

This SI will have a positive impact on any businesses that import aquaculture animals from trading partners in third countries. It will ensure our certification requirements match the risk associated with imports, thereby protecting biosecurity and supply chains in GB.

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

A full Impact Assessment has not been prepared for this SI because this SI relates to the maintenance of existing regulatory standards.

### **Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation**

Secretary of State power with consent of the Scottish Ministers (amendments made to Articles 10 and 11 of the retained Regulation)

This SI will enable the Secretary of State from time to time, with Scottish Ministers' consent, to publish and amend a list of zones and compartments within third countries and territories from where species of aquaculture animals can be imported into GB (Scotland). This list can also specify the species of aquaculture animal permitted to enter GB from those third countries or territories. This administrative approach will enable changes to be made to this list rapidly and in real-time response to changing assessments about risk to biosecurity.

A single UK SI ensures a consistent approach both in terms of policy and timescales and maintains consistent standards and biosecurity and consequently the integrity of the GB health status as recognised by the OIE and EU. If the Scottish Ministers were to seek concurrent powers and amend this list independently of the rest of GB, it would jeopardise the GB health status and significantly impact on trade to and within Scotland. The SI provides a simplified legal landscape ultimately benefitting importers and the Scottish aquaculture industry by avoiding the confusion which can arise by having to navigate multiple pieces of legislation.

Administrative changes to this list will follow a process within the AAHPG which will collectively consider the scientific basis for change, take account of the domestic industry perspective and only be implemented following explicit consent of the devolved administrations and respective Ministerial clearance.

We are reassured that there are strong arguments for adopting this approach and that there is a policy and operational interest to move these lists from legislation to an administrative basis and online publication with any amendments made to the compartments and zones list – and the particular species of aquaculture animals being permitted entry from third countries and territories into GB - being agreed through the AAHPG, or where consensus cannot be reached, through the Animal Disease Policy Group (ADPG) as the decision-making bodies of the Common UK Animal Health and Welfare Framework.

AAHPG is the formal strategic policy forum for UK-wide aquatic animal health issues representing the UK, Scottish, Northern Ireland and Welsh governments. It identifies and explores issues relating to aquatic animal health, trade and certification, disease control strategies and EU Exit related challenges. ADPG is a cross-governmental body that includes the Chief Veterinary Officers of the four UK administrations, including that of the Scottish Government, alongside the Food Standards Agency, Food Standards Scotland, the Animal and Plant Health Agency and other relevant bodies. We are confident that we will continue to work together to reach agreement on these issues and ensure Scotland's interests are always served.

By making exercise of the powers conferred on the Secretary of State conditional upon the consent of the Scottish Ministers, the amendments contained within the SI are appropriate and fully respect devolution.

New Administrative Powers of the Scottish Ministers (Article 3 and 3a of the retained Regulation and Regulation 3B of the 2009 Regulations)

Where the Scottish Ministers currently have powers on the face of legislation, these powers are being retained but on an administrative rather than legislative basis. The

new administrative powers for the Scottish Ministers provided for in this SI (re: vector species and susceptible species (and associated disease-free areas)), will ensure continuity of the current statutory powers by replicating Scottish Ministers' existing power to amend those lists, as they apply to Scotland.

**Intended laying date (if known) of instruments likely to arise**

This SI will be made and laid on 19 July 2022 and is intended to come into force in July 2022.

**If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?**

This notification complies with the 28 day protocol.

**Information about any time dependency associated with the proposal**

None available

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

None.

**Any significant financial implications?**

Not applicable.

## Annex

### New Administrative Powers provided for in Retained EU and domestic legislation amended by this SI

Retained EU law	Commodities	As a consequence of the SI, matters that may be specified administratively and by whom
Commission Regulation (EC) No 1251/2008 of the European Parliament and of the Council laying down a list of vector species, animal health conditions and animal health certification requirements for placing aquaculture animals on the market.	live aquaculture animals and products thereof (although products are not relevant in the context of the amendments made by this SI)	<p>This SI makes provision for the publication of a list of vector and susceptible species of aquaculture animal by the Scottish Ministers. This will enable the Scottish Ministers to amend these lists as regards Scotland and the Secretary of State to amend these lists GB-wide with consent of the respective devolved administrations.</p> <p>This SI makes provision that the Secretary of State, with the consent of the Scottish Ministers, may publish a list of the zones and compartments of the third countries or territories listed in Annex 3 that species of aquaculture animals can be imported from. This list may also specify the aquaculture species permitted to enter GB from the listed third countries, territories, zones and compartments.</p>
The Aquatic Animal Health (England and Wales) Regulations 2009	live aquaculture animals	<p>This SI makes provision for the appropriate authority (the Secretary of State as regards England and the Welsh Government as regards Wales) to specify in a document a list of species aquaculture animal susceptible to the diseases in Schedule 1 together with the geographic areas declared free from those diseases.</p> <p>With the consent of the Welsh Ministers, the Secretary of State can amend this list as regards Wales.</p>
The Aquatic Animal Health (Scotland) Regulations 2009	live aquaculture animals	This SI makes provision for the Scottish Ministers to publish a document specifying a list of species of aquaculture animal susceptible to the diseases in Schedule 1 together with the geographic areas declared free from those diseases.