

Draft Regulations laid before the Scottish Parliament under paragraph 2(2) of schedule 2 of the European Communities Act 1972 and paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

EXITING THE EUROPEAN UNION

ENVIRONMENTAL PROTECTION

The Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020

Made - - - - 2020

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) and paragraph 1A of schedule 2 of the European Communities Act 1972⁽¹⁾ (“the 1972 Act”) and paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018⁽²⁾ (“the 2018 Act”), and all other powers enabling them to do so.

In accordance with paragraph 2(2) of schedule 2 of the 1972 Act and paragraph 1(6) of schedule 7 of the 2018 Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 and come into force on IP completion day.

(2) In these Regulations, “the Invasive Alien Species Regulation” means 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⁽³⁾.

(1) [1972 c.68](#) Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act [1998 \(c.46\)](#) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(3) and Part 1 of the schedule of the European Union (Amendment) Act [2008 \(c.7\)](#) (“the 2008 Act”). The functions conferred upon the Minister of the Crown under section 2(2), insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of schedule 2 was inserted by section 28 of the 2006 Act and was relevantly amended by Part 1 of the schedule of the 2008 Act. Section 2(2) and paragraph 1A of schedule 2 were repealed by section 1 of the European Union (Withdrawal) Act [2018 \(c.16\)](#) (“the 2018 Act”) from exit day (see section 20 of the 2018 Act). The use of section 2(2) is preserved by section 1A of the 2018 Act until IP completion day (see section 1A(5) of the 2018 Act).

(2) [2018 c.16](#).

(3) OJ L 317, 4.11.2014, p.35.

PART 1

Amendment of the Invasive Alien Species Regulation

Amendment of the Invasive Alien Species Regulation

2.—(1) The Invasive Alien Species Regulation is amended in accordance with paragraph (2) and regulations 3 to 8.

(2) In each place it occurs—

- (a) except where otherwise indicated in these Regulations for “the Union” substitute “Scotland”,
- (b) for “Union law” substitute “retained EU law”,
- (c) for “at Union level” substitute “in Scotland, England or Wales”,
- (d) for “Union list” substitute “Scottish list of species of special concern”,
- (e) for “of Union concern” substitute “of special concern”.

Amendment of Chapter 1 (general provisions) of the Invasive Alien Species Regulation

3.—(1) Chapter 1 of the Invasive Alien Species Regulation is amended as follows.

(2) In Article 2(2), in point (d)(4)—

- (a) for the words “pursuant to Article 5(2) or Article 32(3)” substitute “in retained EU law relating to plant health”,
- (b) for the words “Article 30(1), of Regulation (EU) 2016/2031 of the European Parliament and of the Council” substitute “retained EU law relating to plant health”.

(3) In Article 3—

- (a) omit point (4),
- (b) after point (17), insert—

“(a) ‘the Scottish list of species of special concern’ means the list of species in the Annex to Commission Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No. 1143/2014 of the European Parliament and of the Council, as amended from time to time.”,

(b) ‘the Committee’ has the meaning given by Article 27,

(c) ‘the Scientific Forum’ means the forum referred to in Article 28.”

(4) In Article 4—

(a) in paragraph 1—

- (i) for the words from “The Commission” to “(‘the Union list’)” substitute “The Scottish Ministers may by regulations amend the Scottish list of species of special concern so as to add or remove species from that list”,
- (ii) omit the words from “Those implementing acts” to the end,

(b) in paragraph 2—

- (i) for “The Commission” substitute “The Scottish Ministers”,
- (ii) for “at least every six years” substitute “before 2 August 2022, and before the last anniversary of that date in each subsequent period of six years”,

- (c) in paragraph 3—
 - (i) in point (a)—
 - (aa) for “the Union” substitute “Scotland, England or Wales”,
 - (bb) omit “excluding the outermost regions”,
 - (ii) in point (b), for the words from “one biogeographical region” to “their outermost regions” substitute “Scotland, England or Wales”,
 - (d) in paragraph 4—
 - (i) for “Member States may submit to the Commission” substitute “The Scottish Ministers may consult and have regard to”,
 - (ii) after “requests” insert “from the Committee”,
 - (e) in paragraph 5 omit from the words “indicating the categories of goods” to the end,
 - (f) in paragraph 6—
 - (i) for “adopting or updating” substitute “amending”,
 - (ii) for “Commission” substitute “Scottish Ministers”,
 - (iii) omit “for Member States”,
 - (iv) in point (a) and point (b) for “the Union” substitute “Scotland, England or Wales”
 - (g) omit paragraph 7.
- (5) In Article 5—
- (a) in point (e) for “the Union” substitute “Scotland, England or Wales”,
 - (b) in paragraph 2, for the first subparagraph, substitute—

“When the Scottish Ministers propose to amend the Scottish list of species of special concern under Article 4(1), they must make a request to the Scientific Forum or such other expert as they consider appropriate to carry out the risk assessment referred to in paragraph 1.”,
 - (c) in paragraph 2, in the second subparagraph—
 - (i) for the first sentence substitute “Whenever the Committee submits a request for the inclusion of a species on the Scottish list of species of special concern the Scottish Ministers must make a request for the risk assessment referred to in paragraph 1 to be carried out by the Scientific Forum or such other expert as they consider appropriate.”,
 - (ii) omit the last sentence,
 - (d) in paragraph 3—
 - (i) for the words from “The Commission shall” to “to further” substitute “The Scottish Ministers, after consulting the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs (as they consider appropriate), may”,
 - (ii) for the last sentence substitute—

“Before taking any action under this paragraph, the Scottish Ministers must consult the Scientific Forum or such other experts as they consider appropriate.”.
- (6) Omit Article 6.

Amendment of Chapter 2 (prevention) of the Invasive Alien Species Regulation

- 4.—(1) Chapter 2 of the Invasive Alien Species Regulation is amended as follows.

- (2) In Article 7 in paragraph 2, for “Member States” substitute “The Scottish Ministers”.
- (3) In Article 8—
- (a) in paragraph 1, for “Member States” in both places it occurs substitute “the Scottish Ministers”,
 - (b) in paragraph 2—
 - (i) for “Member States shall empower their competent authorities to” substitute “The Scottish Ministers may”,
 - (ii) in point (b), for “competent authorities” substitute “Scottish Ministers”,
 - (iii) in point (f), for “competent authority” substitute “Scottish Ministers”,
 - (c) in paragraph 4, for “competent authority” substitute “Scottish Ministers”,
 - (d) in paragraph 5, for “Member States shall empower their competent authorities to” substitute “The Scottish Ministers may”,
 - (e) omit paragraph 6,
 - (f) in paragraph 7, for “Member States, shall” substitute “the Scottish Ministers must”,
 - (g) in paragraph 8—
 - (i) for “Member States” substitute “The Scottish Ministers”,
 - (ii) omit “by their competent authorities”.
- (4) In Article 9—
- (a) in paragraph 1—
 - (i) for “Member States” substitute “the Scottish Ministers”,
 - (ii) omit “subject to authorisation by the Commission”,
 - (b) omit paragraph 2,
 - (c) for paragraph 3, substitute—

“3. Before issuing a permit under paragraph 1 of this Article, the Scottish Ministers must consult and have regard to the opinions of—

 - (a) the Committee,
 - (b) the Scientific Forum,
 - (c) the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs.”,
 - (d) in paragraph 4—
 - (i) for “an authorisation” in each place it occurs substitute “a permit”,
 - (ii) in point (e), for “authorisation” substitute “permit”,
 - (iii) in point (i), omit “national”,
 - (e) in paragraph 5—
 - (i) for “Authorisations granted by the Commission” substitute “Permits granted by the Scottish Ministers under paragraph 1”,
 - (ii) for “competent authority of the Member State concerned” substitute “Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs”,
 - (iii) for “An authorisation”, in both places it occurs, substitute “A permit issued under paragraph 1”,
 - (iv) for “the authorisation” substitute “the permit”,

- (v) for “that authorisation” substitute “that permit”,
- (f) in paragraph 6—
 - (i) for “Following an authorisation by the Commission, the competent authority” substitute “The Scottish Ministers”,
 - (ii) omit the second sentence,
- (g) in paragraph 7—
 - (i) for “The Commission” substitute “The Scottish Ministers”,
 - (ii) for “an authorisation” substitute “a permit under paragraph 1”,
- (h) in paragraph 8—
 - (i) for “The Commission” substitute “The Scottish Ministers”,
 - (ii) for “Member State concerned” substitute “applicant, the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs”.
- (5) In Article 10—
 - (a) in paragraph 1—
 - (i) for “a Member State has” substitute “the Scottish Ministers have”,
 - (ii) for “its territory” substitute “Scotland”,
 - (iii) for “competent authorities have” substitute “Scientific Forum has”,
 - (iv) for “it may” substitute “the Scottish Ministers may by regulations”,
 - (b) for paragraph 2 substitute—

“2. When introducing emergency measures under paragraph 1, the Scottish Ministers must notify the Committee and the Scientific Forum.”,
 - (c) in paragraph 3—
 - (i) for “The Member State concerned” substitute “The Scottish Ministers must request that the Scientific Forum or such other expert as the Scottish Ministers consider appropriate”,
 - (ii) for the words “of the adoption” to the end of the sentence substitute “on which the emergency measures come into force”,
 - (d) after paragraph 3, insert—

“3A. Emergency measures must not apply for a period exceeding 2 years.”,
 - (e) omit paragraphs 4 and 5,
 - (f) for paragraph 6 substitute—

“6. Where the Scottish Ministers include the invasive alien species on the Scottish list of species of special concern the Scottish Ministers must revoke or amend the emergency measures.”
- (6) Omit Articles 11 and 12.
- 5. In Article 13—
 - (a) in paragraph 1—
 - (i) for “Member States shall” substitute “The Scottish Ministers, after consulting the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs (as they consider appropriate), must”,
 - (ii) for the words from “their territory” to “[Directive 2008/56/EC](#)” substitute “Scotland”,