

# LEGHOLD TRAPS - NOTIFICATION TO THE SCOTTISH PARLIAMENT

## The Leghold Traps (Amendment) (EU Exit) Regulations 2018

### **1. Name of instrument and summary of proposal:**

The Leghold Traps (Amendment) (EU Exit) Regulations 2018 (the “Regulations”). The purpose of the proposed Regulations is to provide technical fixes to UK legislation to deliver a functioning statute book on exit. The proposed Regulations will revoke or amend retained directly applicable EU legislation and domestic legislation covering leghold traps measures and the import of pelts and manufactured goods of certain wild animal species.

### **2. Explanation of law that the proposals amend and summary of the proposals**

#### General overview – legislative context

The Regulations are being brought forward to ensure operability of Council Regulation (EEC) 3254/91 (“the leghold trap regulation”) and associated tertiary legislation following the withdrawal of the United Kingdom from the European Union.

The leghold trap regulation prohibits both the use of leghold traps in the European Community and the introduction into the European Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.

For the purpose of the Regulations, ‘leghold trap’ means a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal’s limbs, thereby preventing withdrawal of the limb or limbs from the trap.

The Regulations make amendments to retained direct EU legislation concerning the use of leghold traps and the import of pelts and manufactured goods of certain wild animal species. Part 2 amends retained direct EU legislation and Part 3 revokes tertiary retained direct EU legislation.

#### Proposed amendments

The Regulations amend the leghold trap regulation and two pieces of associated tertiary legislation (Commission Regulation (EC) No 35/97 and Council Decision (EC) No 97/602) to ensure their operability following the withdrawal of the United Kingdom from the European Union.

The Legislation to be amended is as follows:

- Council Regulation (EC) No 338/1997 on the protection of species of wild fauna and flora by regulating trade therein.
- Council Regulation (EEC) No 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animals originating in countries which

catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.

- Commission Regulation (EC) No 35/97 laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91.

The proposed amendments make some small technical changes to the above EC Council Regulations only. For example, for “Community” in each place it occurs; substitute “United Kingdom”. There are no substantive policy changes to the leghold trap regulation and its tertiary legislation. The leghold trap regulation will continue to prohibit the use of leghold traps in the UK and the introduction into the UK, unless from Member States of the EU, of pelts and manufactured goods incorporating such pelts of certain wild animal species, unless the pelts originate from an approved country or are from animals which were captive-bred.

The leghold trap regulation also requires certificates of origin to be issued by competent authorities of exporting and re-exporting countries (except member States of the EU) and presented to border control officers at the point of Entry into the UK. The amendments make no substantive policy changes to the requirements in this area.

### Proposed Revocations

The Regulations also revoke Commission Decision 1771/94/EC, as it will be redundant following Exit, and Commission Decisions 98/188/EC and 98/596 because they will be redundant following the amendments to Council Decision 97/602/EC.

The reasons for the proposed Regulations revoking legislation are as follows:

- **Commission Regulation 1771/94** put into effect a one-year delay on the import ban contained in the Leghold Trap Regulation (to 1st January 1996) and also set deadlines for the Commission to put in place related tertiary rules (by 1st September 1995). These deadlines have now long passed and the SI is now spent. This is why it is being revoked.
- **Commission Decisions 98/188 and 98/596** each Decision updated the list of countries and species set out in the Annex to Council Decision 97/602/EC by replacing the original Annex with new ones. They are being revoked as they are now spent. Regulation 4(4) and Annex of the 2018 Regulations replaces the list in its entirety, with the result that these previous amending decisions have no ongoing effect.

### **3. Why are these changes necessary?**

The consequences of not proceeding with the Regulations would be that the leghold trap regulation would not function properly, meaning we will not be able to meet the leghold trap regulation’s objectives of securing better welfare for mammals commonly trapped for their pelts.

It is therefore essential that the UK import controls continue to operate and deliver the leghold trap regulation’s objectives from day one, ensuring pelts are only sourced from countries which ensure animals are trapped humanely.

#### **4. Scottish Government categorisation of significance of proposals**

Category A. The provisions are making small, minor technical changes to preserve the functioning of the legislation.

#### **5. Impact on Devolved Areas**

There are no changes to the powers or functions of Scottish Ministers as a result of these Regulations.

#### **6. Stakeholder engagement/consultation**

We have written to our stakeholders setting out the general approach we are taking to correcting deficiencies in environmental legislation and are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at preserving the functioning of the law as it stands at present and, therefore, we have not undertaken any engagement, or any formal consultation, about these specific amendments.

Defra advise that they have not carried out formal consultation on the Regulations and do not intend to do so. No change in policy will occur as a result of the Regulations. The changes being made are technical in nature. Defra have advised that they have not carried out formal consultation on their draft SI, instead they have used targeted engagement of key stakeholders. No objections to the proposed amendments have been received.

#### **7. Any other impact assessments**

On the basis that these amendments do not result in any policy changes, no impact assessment has been prepared.

#### **8. Summary of reasons for Scottish Ministers proposing to consent to UK Ministers legislating**

The leghold trap regulation covers both reserved and devolved issues and the boundary between the two is difficult to discern. The Scottish Government's view is that apart from the ban on the use of leghold traps, the majority of the Regulation is probably reserved.

Given the existing complex mix of reserved/devolved competence, it would be extremely difficult to disaggregate Scottish interests only. Officials have worked with Defra to ensure the drafting delivers for our interests, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

**9. Have Scottish Ministers had regard to the guiding principles on animal welfare and the environment?**

Yes. The guiding principles on the environment and animal welfare as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The existing leghold trap regulations are already in line with these principles, and as no policy changes are being introduced, it is considered that these amendments are in adherence with these principles.

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

There are no reporting or monitoring obligations in the EU Regulation and the operability SI does not create any.

Later this year, Scottish Ministers will consult on the governance gaps that will be created once the UK leaves the EU, with a view to bringing proposals back to the Scottish Parliament on environmental governance arrangements once the future relationship is clear.

**11. Intended UK Laying Date**

The proposed Regulations are due to be laid for sifting at Westminster on 21 November. Defra have agreed that no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

A further SI, provisionally titled The Environment, Wildlife and Fisheries (Legislative Functions) (EU Exit) Regulations 2018, which contains further provisions relating to leghold traps is due to be laid on 8 January. A further notification on this instrument will follow in due course.

**12. Does the Scottish Parliament have 28 days to scrutinise?**

Yes.

**13. Information about any time dependency associated with the proposal?**

The provisions make small, minor technical changes to preserve the functioning of the Regulations, so there is no time dependency associated with the proposals.

**14. Any significant financial implications?**

There are no financial implications arising from proposed solutions to legislative deficiencies above.

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