

2011 No. 2292

AQUACULTURE, ENGLAND AND WALES

The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011

Made - - - - - *12th September 2011*

Laid before Parliament *16th September 2011*

Laid before the National Assembly for Wales *16th September 2011*

Coming into force - - - *10th October 2011*

The Secretary of State and the Welsh Ministers are each designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy.

These Regulations make provision for purposes mentioned in that section and it appears to the Secretary of State and the Welsh Ministers that it is expedient for any reference in these Regulations to Annex IV to Council Regulation (EC) No 708/2007(c) concerning use of alien and locally absent species in aquaculture to be construed as a reference to that Annex as amended from time to time.

The Secretary of State in relation to England and the Welsh Ministers in relation to Wales make these Regulations under the powers conferred by section 2(2) of, as read with paragraph 1A(d) of Schedule 2 to, the European Communities Act 1972.

PART 1

General

Title and commencement

1. These Regulations may be cited as the Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 and come into force on 10th October 2011.

Extent and application

2.—(1) These Regulations extend to England and Wales.

(a) S.I. 1972/1811 and S.I. 2010/2690.

(b) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51). The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

(c) OJ No L 168, 28.6.2007, p1 as last amended by Regulation (EU) No 304/2011, OJ No L 88, 4.4.2011, p. 1.

(d) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

- (2) Subject to paragraph (3), these Regulations apply in relation to England and Wales.
- (3) Regulation 4 applies in relation to England only.

Interpretation

3.—(1) In these Regulations—

“an Annex IV species” means any species listed in Annex IV to Council Regulation 708/2007 as amended from time to time;

“aquaculture facility” includes open and closed aquaculture facilities;

“the competent authority” means, in relation to England, the Secretary of State, and, in relation to Wales, the Welsh Ministers;

“Council Regulation 708/2007” means Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture;

“England” includes the area of sea within the seaward limits of the territorial sea adjacent to England but does not include any part of the Welsh zone or the Scottish zone;

“inspector” means any person authorised by the competent authority to be an inspector for the purposes of these Regulations;

“permit” means a permit issued by the competent authority under Council Regulation 708/2007;

“Wales” has the same meaning as it has by virtue of section 158(1) of the Government of Wales Act 2006(a).

(2) In this regulation—

“Scottish zone” has the same meaning as it has by virtue of section 126(1) and (2) of the Scotland Act 1998(b);

“Welsh zone” has the same meaning as it has by virtue of section 158(1) of the Government of Wales Act 2006(c)

(3) Other expressions used in these Regulations that are also used in Council Regulation 708/2007 have the meaning they bear in that Regulation.

Review

4.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) lay the report before Parliament.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Council Regulation 708/2007 is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of 5 years beginning with the day on which these Regulations come into force, and

(a) 2006 c. 32; section 158(1) was amended by the Marine and Coastal Access Act 2009 (c. 23), s.43(1) & (2).

(b) 1998 c. 46.

(c) The Welsh zone is specified in S.I. 2010/760.

(b) subject to paragraph (5), each successive period of 5 years.

(5) If a report under this regulation is laid before Parliament before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is laid.

PART 2

Movements

Permits

5.—(1) A permit—

- (a) must be in writing;
- (b) must be identifiable by reference to a unique number;
- (c) must specify the duration for which it is issued;
- (d) must specify the species to which it applies;
- (e) must specify the aquaculture facility into which the introduction or translocation may take place;
- (f) may be made subject to such further conditions as the competent authority considers appropriate.

(2) Any refusal to issue a permit must—

- (a) be notified to the applicant in writing;
- (b) give reasons; and
- (c) inform the applicant of the right of appeal under regulation 20.

Notifying movement of Annex IV species or locally absent species

6.—(1) This regulation applies in relation to the proposed movement of—

- (a) an Annex IV species; or
- (b) a locally absent species from within the United Kingdom.

(2) A person proposing to undertake a movement must notify that proposal to the competent authority in writing.

(3) An application for, or to make changes to, an authorisation to operate an aquaculture production business under the Aquatic Animal Health (England and Wales) Regulations 2009^(a) in respect of an Annex IV species or a locally absent species is a notification for the purposes of paragraph (2).

(4) A person who makes a notification under paragraph (2) must not undertake the proposed movement except in accordance with a notice issued under regulation 7(2)(b) or (3)(b) or regulation 8(2).

(5) This regulation does not apply to subsequent movements notified under paragraph (2) made by the same person to the same location.

Movement of Annex IV species

7.—(1) This regulation applies where the competent authority receives a notification under regulation 6(2) in relation to the proposed movement of an Annex IV species.

(a) S.I. 2009/463 to which there are amendments not relevant to these Regulations..

(2) The competent authority must serve written notice on the person proposing to undertake the introduction within 90 days of receiving notification—

- (a) prohibiting that movement;
- (b) permitting that movement, and any subsequent movement of the same species to the same location, subject to any conditions stated in the notice; or
- (c) requiring the person to submit an environmental risk assessment carried out under Article 9(1) of Council Regulation 708/2007.

(3) After considering any environmental risk assessment required under paragraph (2)(c), the competent authority must serve a written notice on the person who submitted it within 90 days of receiving it—

- (a) prohibiting the movement; or
- (b) permitting the movement, and any subsequent movement of the same species to the same location, subject to any conditions stated in the notice.

(4) A notice served under paragraph (2)(b) or (3)(b) must—

- (a) include a number that is unique to that notice;
- (b) specify the species to which it applies; and
- (c) specify the aquaculture facility into which the movement may take place.

(5) A notice served under paragraph (2)(a) or (b) or (3) must inform the person on whom the notice is served of the right of appeal under regulation 20.

Movement of locally absent species

8.—(1) This regulation applies where the competent authority receives a notification under regulation 6(2) in relation to the proposed movement of a locally absent species from within the United Kingdom.

(2) The competent authority must serve written notice on the person proposing to undertake the movement within 90 days of receiving notification informing them whether for the purposes of Article 2(2) of Council Regulation 708/2007 there are grounds for foreseeing environmental threats due to the proposed translocation.

Environmental risk assessment

9. An environmental risk assessment carried out under Article 9(1) of Council Regulation 708/2007 is produced at the applicant's own expense.

Contingency plan

10.—(1) A contingency plan drawn up under Article 17 of Council Regulation 708/2007 is produced at the applicant's own expense.

(2) A person who fails immediately to implement an approved contingency plan when a contingency event in that plan occurs commits an offence.

Monitoring

11.—(1) This regulation applies where monitoring is required under Article 18 or 22 of Council Regulation 708/2007.

(2) The applicant must submit to the competent authority for written approval a programme detailing how the monitoring will be carried out.

(3) The approved monitoring programme must be carried out, at the applicant's own expense—

- (a) by the applicant; or
- (b) where the competent authority determines that the applicant does not have the expertise, by a person nominated by the applicant and approved by the competent authority.

PART 3

Enforcement, penalties and appeals

Entry and inspection of land and premises

12.—(1) For the purposes of enforcing these Regulations and Council Regulation 708/2007, an inspector has power, on producing a duly authenticated authorisation if required, to enter any land or premises (except any premises used wholly or mainly as a private dwelling house) at any reasonable hour by giving reasonable notice.

(2) But the requirement to give notice is not necessary—

- (a) where reasonable efforts to agree an appointment have failed;
- (b) where an inspector has reasonable suspicion of a failure to comply with these Regulations or Council Regulation 708/2007; or
- (c) in an emergency.

(3) A justice of the peace may by signed warrant permit an inspector to enter any land or premises, if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied—

- (a) that there are reasonable grounds to enter that land or premises for the purpose of enforcing these Regulations and Council Regulation 708/2007; and
- (b) that any of the conditions in paragraph (4) are met.

(4) The conditions are—

- (a) entry to the premises has been, or is likely to be, refused, and notice of the intention to apply for a warrant has been given to the occupier;
- (b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
- (c) entry is required urgently; or
- (d) the premises are unoccupied or the occupier is temporarily absent.

(5) A warrant is valid for three months.

(6) An inspector entering any land or premises may be accompanied by—

- (a) any person, equipment or vehicle as the inspector considers necessary for the purposes of this regulation;
- (b) any representative of the European Commission acting for the purposes of Council Regulation 708/2007.

(7) An inspector entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.

Search and examination of items on land and premises

13. Subject to regulation 16, where an inspector exercises the power conferred by regulation 12, the inspector may—

- (a) search the land or premises for any item, including any aquatic organism or water;
- (b) examine anything that is—
 - (i) on the land or premises;
 - (ii) attached to or otherwise forms part of the land or premises.

Production of documents

14. Subject to regulation 16, an inspector may require any person—

- (a) to produce any document or record that is in that person's possession or control;
- (b) to render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.

Seizure of items

15.—(1) Subject to regulation 16, where an inspector exercises the powers conferred by regulation 13 or 14 the inspector may—

- (a) seize, detain or remove any item that is on the land or premises;
- (b) take copies of or extracts from any document or record found on the land or premises.

(2) The power in paragraph (1)(a) includes a power to take samples of any aquatic organism or water.

(3) An inspector to whom any document or record has been produced in accordance with a requirement imposed under regulation 14, may—

- (a) seize, detain or remove that document or record;
- (b) take copies of or extracts from that document or record.

(4) If, in the opinion of the inspector, it is not for the time being practicable for the inspector to seize and remove any item, the inspector may require any person on the land or premises to secure that the item is not removed or otherwise interfered with until such time as the inspector may seize and remove it.

(5) Any item seized by an inspector may be retained so long as is necessary in the circumstances.

(6) Any aquatic organism seized may be disposed of as the inspector sees fit.

Enforcement powers

16. The powers conferred by regulations 13, 14 and 15 may only be exercised—

- (a) for the purpose of determining whether an offence under these Regulations has been committed; or
- (b) in relation to an item which an inspector reasonably believes to be evidence of the commission of an offence under these Regulations.

Enforcement notices

17.—(1) The competent authority may serve an enforcement notice on any person whom it considers has failed to comply with Council Regulation 708/2007 or these Regulations.

(2) The competent authority may serve an enforcement notice on an operator where it considers that aquatic organisms present in an aquaculture facility were introduced in contravention of Council Regulation 708/2007 or these Regulations or any condition of a permit or a notice issued under these Regulations.

(3) An enforcement notice must—

- (a) be in writing;
- (b) state the matters which constitute the failure to comply or contravention;
- (c) state what, and by when, the person must do or refrain from doing;
- (d) state that there is the right of appeal under regulation 20;
- (e) state that the grounds for serving a notice of appeal under regulation 20(2) are those in regulation 21(1); and
- (f) state that a notice of appeal must be accompanied by the statement referred to in regulation 21(2).

(4) In particular, an enforcement notice may require the person on whom it is served to—

- (a) remove and dispose of the aquatic organisms, at their own expense, in a manner and within the period specified in the notice;
 - (b) take steps to ensure that the position is, so far as possible, restored to what it would have been prior to the contravention.
- (5) If an enforcement notice is not complied with, the competent authority may—
- (a) take such steps as it considers necessary (including the removal and disposal of the aquatic organisms)—
 - (i) to ensure compliance with the requirements of the notice;
 - (ii) to remedy the consequences of the failure to carry them out; and
 - (b) recover any costs reasonably incurred in so doing from the person who has failed to comply with the enforcement notice.
- (6) The competent authority may remove and dispose of the aquatic organisms without serving an enforcement notice—
- (a) in an emergency; and
 - (b) at the expense of the operator.
- (7) In this regulation, “operator” means any person who is responsible for the management of the aquaculture facility.

Recovery of expenses of enforcement

18.—(1) This regulation applies where a court convicts a person of an offence under regulation 22(b) or (d).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the competent authority for any expenditure which the competent authority has incurred under regulation 17(5) or (6).

Amendment, suspension or revocation of permit or notice

19.—(1) This regulation applies in relation to—

- (a) a permit; or
- (b) a notice under regulation 7(2)(b) or (3)(b).

(2) The competent authority may—

- (a) amend the permit or notice, including any condition of the permit or notice; or
- (b) suspend or revoke the permit or notice if satisfied that any condition of the permit or notice or any provision of Council Regulation 708/2007 or these Regulations is contravened.

(3) An amendment under paragraph (2)(a) may be made—

- (a) on the initiative of the competent authority; or
- (b) on application by the permit or notice holder in such form and containing such information as the competent authority may reasonably require.

(4) An amendment under paragraph (2)(a) or a suspension or revocation under paragraph (2)(b) must be notified in writing to the permit or notice holder.

(5) That notification—

- (a) must give reasons for the amendment, suspension or revocation;
- (b) must state when the amendment, suspension or revocation comes into effect and, in the case of a suspension, state on what date or event the suspension will cease to have effect;
- (c) must inform the person on whom the notice is served of the right of appeal under regulation 20; and

- (d) may make provision requiring the disposal of any of the organisms to which the permit or notice relates.

Appeals

20.—(1) Subject to regulation 21, a person may appeal to the competent authority against a notice served under regulations 5(2), 7(2)(a) or (b), 7(3), 8(2), 17(1) or (2) or 19(2).

(2) An appellant may within 21 days beginning with the date on which notification was received by the appellant, serve the competent authority with written notice that the appellant wishes to—

- (a) appear before and be heard by an independent person appointed by the competent authority; or
- (b) provide written representations to the competent authority.

(3) Where the appellant serves notice under paragraph (2)(a)—

- (a) the competent authority must appoint an independent person to hear representations and specify a time limit within which representations to that person must be made;
- (b) if the appellant requests, the hearing must be in public;
- (c) the person appointed must report to the competent authority; and
- (d) if the appellant requests, the competent authority must provide a copy of the appointed person's report to the appellant.

(4) Where the appellant serves notice under paragraph (2)(b)—

- (a) the competent authority must appoint an independent person to consider the representations; and
- (b) the requirements in paragraph (3)(c) and (d) apply.

(5) The competent authority must serve the appellant with a written notice of its final decision and the reasons for it.

Appeal against an enforcement notice

21.—(1) The only grounds for serving a notice of appeal under regulation 20(2) against an enforcement notice are—

- (a) that the steps required by the enforcement notice to be taken have been taken;
- (b) that the matters stated in the enforcement notice do not constitute a failure to comply with a requirement specified in regulation 17(1) or the circumstances described in regulation 17(2);
- (c) that any requirement of the notice is unnecessary for complying with the matters listed in regulation 17(1) or (2) and should be dispensed with.

(2) A notice under regulation 20 appealing against an enforcement notice must be accompanied by a statement in writing—

- (a) specifying the grounds on which the appellant is appealing against the enforcement notice; and
- (b) providing such further information as may be appropriate.

Offences

22. A person commits an offence if that person—

- (a) makes a statement in an application for a permit knowing or suspecting it to be false;
- (b) abandons, releases or allows to escape any aquatic organism, the movement of which took place under a permit or under a notice issued under regulation 7 (movement of an Annex IV species) unless that person can show that all reasonable steps were taken and due diligence exercised to avoid the abandonment, release or escape;

- (c) fails to comply with a requirement imposed under regulation 15(5) (seizure of items);
- (d) fails to comply with an enforcement notice served under regulation 17(1) or (2) (enforcement notices);
- (e) fails to comply with any provision requiring the disposal of aquatic organisms under regulation 19(5)(d) (amendment, suspension or revocation of permit or notice);
- (f) fails, without reasonable cause, to give an inspector any assistance or information which the inspector may reasonably require for the purposes of the inspector's functions under these Regulations;
- (g) intentionally obstructs an inspector; or
- (h) knowingly gives false or misleading information to an inspector.

Penalties

23. A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Offences by bodies corporate

24.—(1) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

that officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if that member were a director of the body.

(3) In this regulation “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

PART 4

Miscellaneous

Disclosure of information

25. The competent authority may disclose information to the equivalent authority in Scotland or Northern Ireland for the purposes of Council Regulation 708/2007, these Regulations or the equivalent Regulations in Scotland or Northern Ireland.

Service of notices

26.—(1) A notice served under these Regulations may be served on a person by—

- (a) delivering it to the person;
- (b) leaving it at or sending it by post to the person's proper address; or
- (c) sending it by electronic means to an address which that person has specified in accordance with paragraph (4)(a).

(2) Where the person on whom a notice is to be served is a body corporate, the notice is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of this regulation and section 7 of the Interpretation Act 1978^(a) (service of documents by post) in its application to this regulation, the proper address of any person on whom a notice is to be served is—

- (a) if the person has given an address for service, that address; and
- (b) if no address has been given—
 - (i) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body;
 - (ii) in any other case, the person's last known address at the time of service.

(4) If the notice is transmitted electronically, it is to be treated as duly served if—

- (a) the person upon whom the notice is required or authorised to be served (“the recipient”) has indicated to the person serving the notice the recipient's willingness to receive notices transmitted by electronic means and has provided an address suitable for that purpose; and
- (b) the notice is sent to the address provided.

Transitional provision

27.—(1) This regulation applies where—

- (a) immediately before these Regulations come into force a person holds an ILFA licence granted in relation to the keeping or introduction of non-native fish for use in aquaculture; and
- (b) the introduction or keeping is done in accordance with that licence.

(2) On and after the coming into force of these Regulations, an ILFA licence is deemed to be—

- (a) a permit; or
- (b) where the ILFA licence relates to an Annex IV species, a notice issued under regulation 7(2)(b).

(3) Regulation 6 does not apply to subsequent movements of an Annex IV species introduced or kept under an ILFA licence undertaken by the holder of that licence to the location specified in the licence.

(4) In this regulation, “ILFA licence” means a licence issued under the Import of Live Fish (England and Wales) Act 1980^(b) in relation to—

- (a) live crayfish in accordance with the Prohibition of Keeping of Live Fish (Crayfish) Order 1996^(c); or
- (b) species specified in the Schedule to the Prohibition of Keeping or Release of Live Fish (Specified Species) Order 1998^(d).

Amendment to the Prohibition of Keeping of Live Fish (Crayfish) Order 1996

28.—(1) Article 2 (prohibition of keeping of crayfish) of the Prohibition of Keeping of Live Fish (Crayfish) Order 1996 is amended as follows.

(2) In paragraph (1), after “Subject to paragraph (2)”, insert “and (3)”.

(3) After paragraph (2), insert—

“(3) The prohibition in paragraph (1) does not apply in relation to a person who has been—

(a) 1978 c.30.

(b) 1980 c. 27.

(c) S.I. 1996/1104, amended by S.I. 1996/1374.

(d) S.I. 1998/2409, amended by S.I. 2003/25 and S.I. 2003/416.

- (a) issued with a permit under Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture^(a) in relation to the introduction of crayfish; or
- (b) served with a notice under regulation 7(2)(b) or (3)(b) of the Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 in relation to the introduction of crayfish.”.

Amendment to the Prohibition of Keeping or Release of Live Fish (Specified Species) Order 1998

29. After article 1 of the Prohibition of Keeping or Release of Live Fish (Specified Species) Order 1998, insert—

“Scope

1A. This Order does not apply in relation to a person who has been—

- (a) issued with a permit under Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture^(b) in relation to the introduction of any species specified in the Schedule to this Order; or
- (b) served with a notice under regulation 7(2)(b) or (3)(b) of the Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 in relation to the introduction of any species specified in the Schedule to this Order.”.

7th September 2011

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

12th September 2011 Deputy Minister for Agriculture, Food, Fisheries and European Programmes, under authority of the Minister for Business, Enterprise, Technology and Science, one of the Welsh Ministers

Alun Davies

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations implement Council Regulation (EC) No 708/2007 (OJ No L 168, 28.6.2007, p.1) concerning use of alien and locally absent species in aquaculture.

Regulation 4 requires the Secretary of State to review the operation and effect of these Regulations and lay a report before Parliament within five years after they come into force and within every five years after that.

Part 2 of the Regulations deals with permits (regulation 5), environmental risk assessments (regulation 9), contingency plans (regulation 10) and monitoring (regulation 11). It also makes provision for the movement of species listed in Annex IV to Council Regulation 708/2007 and locally absent species from within the United Kingdom to be restricted (regulations 6 to 8).

(a) O.J. L 168, 28.6.07 p.1 as last amended by Regulation (EU) No 304/2011, OJ No L 88, 4.4.2011, p. 1.
 (b) OJ No L 168, 28.6.07 p.1 as last amended by Regulation (EU) No 304/2011, OJ No L 88, 4.4.2011, p. 1.

Part 3 gives enforcement powers to inspectors and makes provision for appeals. A person found guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to an unlimited fine (regulation 23).

A full impact assessment has been produced and placed in the library of each House of Parliament. It is available on the Defra website at www.defra.gov.uk. A copy can be obtained from the Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.