

Draft Regulations laid before the Scottish Parliament under Schedule 2 paragraph 2 to the European Communities Act 1972, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

ANIMALS

RIVER

FISH FARMING

**The Aquatic Animal Health (Miscellaneous Modifications)
(Scotland) Regulations 2011**

Made - - - - *2011*

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) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for any reference to—

- (a) Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(b); and
- (b) Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals(c),

to be construed as a reference to those instruments as amended from time to time.

In accordance with paragraph 2 of Schedule 2 to that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

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- (a) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(4)). Section 2(2) was also amended by the 2006 Act, section 27(1)(a) and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by the 2006 Act, section 28 and amended by the 2008 Act, Schedule, Part 1. Paragraph 2(2) of Schedule 2 has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The functions conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
 - (b) O.J. L 139, 30.4.2004, p.55, as last amended by Commission Regulation (EU) No. 150/2011 (O.J. L 46, 19.2.2011, p.14).
 - (c) O.J. L 328, 24.11.2006, p.14 as last amended by Commission Directive 2008/53/EC (O.J. L 117, 1.5.2008, p.27).

Citation and commencement

1. These Regulations may be cited as the Aquatic Animal Health (Miscellaneous Modifications) (Scotland) Regulations 2011 and come into force on the day after the day on which they are made.

Amendment of the Aquatic Animal Health (Scotland) Regulations 2009

2.—(1) The Aquatic Animal Health (Scotland) Regulations 2009(a) are amended in accordance with paragraphs (2) to (7).

(2) In regulation 3(1) (interpretation), for the definition of “processing establishment” substitute—

““processing establishment” means any food business which is approved for processing aquaculture animals for food purposes in accordance with Article 4 of Regulation (EC) No 853/2004 (O.J. L 139, 30.4.2004, p55)(b) laying down specific hygiene rules for food of animal origin, and which may, when granted an authorisation under regulation 7, slaughter aquaculture animals for disease control purposes in accordance with Article 33 of Chapter V of Directive 2006/88/EC(c); which aquaculture animals—

(a) are the subject of a notice; or

(b) come from an area, farm or mollusc farming area which is the subject of a notice, under Part 4 of these Regulations, or of any provision in any Regulations made in relation to England, Wales or Northern Ireland which has equivalent effect to that Part;”.

(3) In paragraphs (1) and (7) of regulation 12 (registration), for “undertaking” substitute “installation”.

(4) Regulation 27 (withdrawal of initial designation) becomes paragraph (1) of that regulation and after paragraph (1) insert—

“(2) Where the initial designation area comprises the whole of Scotland, the competent authority may only withdraw the initial designation in the circumstances described in paragraph (1)(a) or (b) in respect of that part or those parts of Scotland where the suspected disease is not present or likely to become present, or which has or have been designated under the following regulation.”.

(5) Regulation 31 (withdrawal of a confirmed designation) becomes paragraph (1) of that regulation and after paragraph (1) insert—

“(2) Where the confirmed designation area comprises the whole of Scotland, the competent authority may only withdraw the confirmed designation in the circumstances described in paragraph (1) in respect of that part or those parts of Scotland where the disease is not present.”.

(6) After regulation 31 insert—

“PART 4A

PROVISION OF INFORMATION, RECORD KEEPING AND NOTIFICATIONS

Interpretation of Part 4A and Schedules 1A and 1B

31A.—(1) In this Part and in Schedules 1A and 1B—

“fish” does not include shellfish but otherwise means fish of any kind;

(a) S.S.I. 2009/85 as amended by S.S.I. 2011/259.

(b) Regulation (EC) No 853/2004 as last amended by Commission Regulation (EU) No 150/2011 (O.J. L 46, 19.2.2011, p.14).

(c) Council Directive 2006/88/EC as last amended by Commission Directive 2008/53/EC (O.J. L 117, 1.5.2008, p.117).

“fish farm” means any place used for the purposes of fish farming;

“fish farming” means the keeping of fish with a view to their sale or to their transfer to other waters; but only where the business involved in that activity is authorised as an aquaculture production business under regulation 6;

“shellfish” includes crustaceans and molluscs of any kind and any brood, ware, half-ware, spat or spawn of shellfish;

“shellfish farm” means any place used for the purposes of shellfish farming;

“shellfish farming” means the cultivation or propagation of shellfish with a view to their sale or transfer to other waters or land; but only where such activity is authorised as an aquaculture production business under regulation 6;

“year” means a period of 12 months ending on 30th November.

(2) Any reference to fish or shellfish, other than an express reference to a dead fish or dead shellfish, is a reference to a live fish or live shellfish.

Provision of information

31B.—(1) Not later than 31st December each year, the operator of—

- (a) an aquaculture production business authorised under regulation 6; or
- (b) a processing establishment authorised under regulation 7,

must provide the Scottish Ministers with the information specified in paragraph (2) in respect of the previous year.

(2) The information specified for the purposes of paragraph (1) is—

- (a) in the case of an aquaculture production business comprising a—
 - (i) fish farm, the information specified in Part 1 of Schedule 1A in respect of each site at which fish are farmed in the course of the business;
 - (ii) shellfish farm, the information specified in Part 2 of Schedule 1A in respect of each site at which shellfish are farmed in the course of the business; and
- (b) in the case of a processing establishment, the information specified in Part 3 of Schedule 1A in respect of each site at which the business operates.

Records

31C.—(1) The operator of a business mentioned in regulation 31B(1) must compile a record—

- (a) in the case of an aquaculture production business comprising a—
 - (i) fish farm, of the particulars specified in Part 1 of Schedule 1B in respect of each site at which fish are farmed in the course of the business;
 - (ii) shellfish farm, of the particulars specified in Part 2 of Schedule 1B in respect of each site at which shellfish are farmed in the course of the business; and
- (b) in the case of a processing establishment, of the particulars specified in Part 3 of Schedule 1B in respect of each site at which the business operates.

(2) The particulars referred to in paragraph (1) must be entered in the record within 24 hours of the movement or observation, as the case may be, the particulars relate to.

(3) The record compiled under paragraph (1) must be retained by the operator of the business the record relates to for not less than 4 years from the date of the last entry.

Escapes from fish farms

31D.—(1) The operator of an aquaculture production business comprising a fish farm authorised under regulation 6 must immediately notify the Scottish Ministers of the circumstances on, or in the vicinity of, the fish farm which—

- (a) are believed by that person to have caused an escape of fish; or
- (b) gave rise to a significant risk of an escape of fish.

(2) A notification under this regulation is referred to in this Part and in Schedule 1C as an “initial notification” and must contain the information specified in the form in Schedule 1C.

Recovery of fish

31E.—(1) No later than 28 days after the day a person gives an initial notification under regulation 31D(1)(a), that person must notify the Scottish Ministers of—

- (a) the number of fish that are believed by that person to have escaped from the fish farm;
- (b) the details of any steps taken by that person to recover the fish;
- (c) the number of fish recovered following the escape; and
- (d) the details of the follow up action taken by that person following the escape.

(2) A notification under this regulation is referred to in Schedule 1D as a “final notification” and must contain the information specified in the form in Schedule 1D.”.

(7) After Schedule 1, insert—

“SCHEDULE 1A Regulation 31B(2)(a)(i)

Information to be provided annually

PART 1

Fish Farm

1. The number of, and the number of consignments of—

- (a) in the case of salmon—
 - (i) ova;
 - (ii) fry, parr or smolts; and
 - (iii) post smolts; and
- (b) in the case of each species of fish, other than salmon—
 - (i) ova;
 - (ii) fish weighing up to and equal to 5 grams; and
 - (iii) fish weighing more than 5 grams,

that were moved on to the site, and off the site for the purpose of stocking other waters.

2. A statement whether fish, dead or alive, have been moved on to the site to be eviscerated or processed.

PART 2

Regulation 31B(2)(a)(ii)

Shellfish Farm

1. In the case of shellfish moved on to the site—
 - (a) the number of consignments of each species which, respectively, have been obtained from hatcheries or nurseries, from shellfish farms, and from wild stocks; and
 - (b) the number or total weight of each species in each consignment which, respectively, have been obtained from hatcheries or nurseries, from shellfish farms, and from wild stocks.
2. In the case of shellfish moved off the site for the purpose of stocking other waters—
 - (a) the number of consignments of each species; and
 - (b) the number or total weight of each species.

PART 3

Regulation 31B(2)(b)

Processing establishment

1. In the case of fish—
 - (a) the number of, and the number of consignments of, each species of fish received at the processing establishment for processing; and
 - (b) in respect of each consignment, the authorised production business and the containment area* from which the fish came.
2. In the case of shellfish—
 - (a) the number or total weight of, and the number of consignments of, each species of shellfish received at the processing establishment for processing; and
 - (b) in respect of each consignment, the authorised production business and the containment area* from which the shellfish came.

* “Containment area” has the meaning given in paragraph (c) of Annex I (definitions) to Council Directive 2006/88/EC.

Particulars to be included in Records

PART 1

Fish Farm

1. In respect of each consignment, respectively, of fish, eggs or gametes moved on to the site—
 - (a) the date of the movement;
 - (b) the species;
 - (c) the number or weight;
 - (d) the size of fish;
 - (e) in the case of salmon, one or more statements (as the case may be) as to whether the consignment consisted of ova, fry, parr, smolts or post smolts;
 - (f) in the case of fish other than salmon, one or more statements (as the case may be) as to whether the consignment consisted of ova, fish weighing up to and including 5 grams or fish weighing more than 5 grams;
 - (g) the source;
 - (h) the suppliers; and
 - (i) the name of the carrier.
2. In respect of each consignment of, respectively, fish, eggs or gametes moved off the site—
 - (a) the date of the movement;
 - (b) the species;
 - (c) the number or weight;
 - (d) the size of fish;
 - (e) in the case of salmon, one or more statements (as the case may be) as to whether the consignment consisted of ova, fry, parr, smolts or post smolts;
 - (f) in the case of fish other than salmon, one or more statements (as the case may be) as to whether the consignment consisted of ova, fish weighing up to and including 5 grams or fish weighing more than 5 grams;
 - (g) the destination; and
 - (h) the name of the carrier.
- 3.—(1) Any increased mortality in respect of—
 - (a) the fish on the site; and
 - (b) any consignments of fish, eggs or gametes moved on to, or off, the site.

(2) In sub-paragraph (1), “increased mortality” has the meaning given in paragraph (j) of Annex I (definitions) to Council Directive 2006/88/EC.

PART 2

Regulation 31C(1)(a)(ii)

Shellfish Farm

1. In respect of each consignment of shellfish moved on to the site and each consignment of shellfish moved off the site for the purpose of stocking other waters—

- (a) the date of the movement;
- (b) the species;
- (c) the number or weight;
- (d) the average size or weight;
- (e) the source; and
- (f) the name of the carrier.

2. Increased mortality (which has the meaning given in paragraph (j) of Annex I (definitions) to Council Directive 2006/88/EC).

PART 3

Regulation 31C(1)(b)

Processing establishment

1. In respect of each consignment of fish or shellfish received at the processing establishment—

- (a) the date of receipt;
- (b) the species;
- (c) the number or weight;
- (d) the supplier;
- (e) the name of the carrier; and
- (f) the destination of the fish or shellfish after processing.

SCHEDULE 1C

Regulation 31D(2)

Farmed Fish Escapes – Initial Notification

This form is to be submitted immediately following **any circumstance** which caused or might have caused an escape of fish from a fish farm site.

Please refer to “WHAT TO DO IN THE EVENT OF AN ESCAPE OF FISH FROM A FISH FARM” for further guidance on how to complete this form:
www.scotland.gov.uk/Topics/Fisheries/Fish-Shellfish

1. Please supply details of the authorised aquaculture production business (APB) and farm site:

Site Name:		Site No:	
APB Name:		APB No:	
Contact Name:		Telephone No:	
Fax No:		Email Address:	

2. Where fish have escaped, please supply the following details:

Date & time of incident (nearest estimate)		OS grid reference:	
Site location:		Estimated number of fish lost:	
Species:		Average weight:	
Age in months:		Growth stage:	
Please supply details of any treatments administered for which the fish are in withdrawal:			
Please confirm whether the fish were healthy at the time of the escape, or the nature of any disease:			
Please confirm mortality rates on site and the reasons for mortality:			

3. Please provide details of the circumstances surrounding the fish escape or potential escape (if necessary continue on a separate sheet):

Circumstances surrounding the escape or potential escape Consider: human error, predation, suspected foul play, failure or wear and tear of equipment (mooring, ropes, netting, cages or pens, boats), weather conditions (wave height, wind speed and tidal strength):		
Suspected primary reason for escape or potential escape:		
Suspected underlying cause or reason for escape or potential escape (if applicable):		
Completed by:		<p style="text-align: center;">The form should be sent to:</p> <p>Marine Scotland Tel: 0131 244 6226 Aquaculture Unit Fax: 0131 244 6512 Area 1B North Victoria Quay Edinburgh EH6 6QQ Email: escapes@scotland.gsi.gov.uk</p>
Position in organisation:		
Date:		

SCHEDULE 1D

Regulation 31E(2)

Farmed Fish Escapes – Final Notification

This form is to be submitted **not later than 28 days** following the submission of the initial notification of circumstances which caused the escape of fish from a fish farm site.

Please refer to “WHAT TO DO IN THE EVENT OF AN ESCAPE OF FISH FROM A FISH FARM” for further guidance on how to complete this form:
www.scotland.gov.uk/Topics/Fisheries/Fish-Shellfish

1. Please supply details of the business and the site:

Site Name:		Site No:	
APB Name:		APB No:	
Contact Name:		Telephone No:	
Fax No:		Email Address:	

2. Please provide final details of the escape:

Date of initial notification:		Total number of fish escaped *:	
Marine Scotland incident reference:		Number of fish recovered (if none please specify “none”):	
Action taken by business to recover fish:		Have site movement records been updated:	
Confirmed primary reason for escape			
Confirmed underlying cause of reason for escape (if applicable)			

3. Follow-up action:

What preventative measures have or will be taken to minimise the risk of a similar incident occurring on this or any of the business’ other sites (continue on a separate sheet if necessary):	
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		The form should be sent to:	
Completed by:		Marine Scotland	Tel: 0131 244 6226
Position in organisation:		Aquaculture Unit	Fax: 0131 244 6512
Date:		Area 1B North Victoria Quay Edinburgh EH6 6QQ	Email: escapes@scotland.gsi.gov.uk

** If the number of fish lost is unknown at this point, please submit a further final notification form, (in the same manner as the original final notification form) once that number has been established.”.*

Amendment of the Aquaculture and Fisheries (Scotland) Act 2007

3.—(1) The Aquaculture and Fisheries (Scotland) Act 2007(a) is amended in accordance with paragraphs (2) to (4).

(2) In section 12 (interpretation: Part 1)—

- (a) for the definition of “fish farming” substitute ““fish farming” means the keeping of live fish with a view to their sale or to their transfer to other waters; but only where the business involved in that activity is authorised as an aquaculture production business under regulation 6 of the 2009 Regulations;”; and
- (b) for the definition of “shellfish farming” substitute ““shellfish farming” means the cultivation or propagation of shellfish with a view to their sale or transfer to other waters or land; but only where the business involved in that activity is authorised as an aquaculture production business under regulation 6 of the 2009 Regulations;”.

(3) In section 37(6) (definitions for the purposes of that section)—

- (a) for the definition of “fish farming” substitute ““fish farming” has the same meaning as in Part 1, except that businesses involved in such activity need not be authorised as an aquaculture production business under regulation 6 of the 2009 Regulations;”; and
- (b) for the definition of “shellfish farming” substitute ““shellfish farming” has the same meaning as in Part 1, except that businesses involved in such activity need not be authorised as an aquaculture production business under regulation 6 of the 2009 Regulations.”.

(4) In section 44 (interpretation: general), at the end, insert—

““the 2009 Regulations” means the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85).”.

(a) 2007 asp 12.

Revocation of the Shellfish and Specified Fish (Third Country Imports) Order 1992.

4. The Shellfish and Specified Fish (Third Country Imports) Order 1992^(a) is revoked.

St Andrew's House,
Edinburgh
Date

Authorised to sign by the Scottish Ministers

^(a) S.S.I. 1992/3301.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Aquatic Animal Health (Scotland) Regulations 2009 (“the 2009 Regulations”) and make provision relating to Council Directive 2006/88/EC (O.J. L 238, 24.11.2006, p.14) on animal health requirements for aquaculture animals and products thereof and on the prevention and control of certain diseases in aquatic animals.

Regulation 2(2) provides a new definition of “processing establishment” clarifying the businesses to which the 2009 Regulations apply.

Paragraphs (4) and (5) of regulation 2 amend, respectively, regulations 27 and 31 of the 2009 Regulations to clarify that where an initial designation notice or a confirmed designation notice is made in respect of an area comprising the whole of Scotland, the competent authority may withdraw the notice as regards only a part or parts, of Scotland. Any such withdrawal does not have an effect on the validity of the notice as regards its remaining provisions.

Regulation 2(6) inserts a new Part 4A into the 2009 Regulations which imposes an obligation on operators of authorised production businesses and processing establishments to provide information to the competent authority, to compile records and to notify escapes of fish.

Regulation 3 amends the Aquaculture and Fisheries (Scotland) Act 2007 to update the definitions of “fish farming” and “shellfish farming” for the purposes of Part 1 and sections 37 and 38 of that Act. The previous definitions were linked to registration requirements for fish farming and shellfish farming activities under section 7 of the Diseases of Fish Act 1983 (c.30) (“the 1983 Act”). The 1983 Act was repealed by the 2009 Regulations and the registration requirements of the 1983 Act were superseded by a requirement for aquaculture production businesses to be authorised under regulation 6 of those Regulations. The new definitions reflect this change in regulatory regime.

Regulation 4 revokes the Shellfish and Specified Fish (Third Country Imports) Order 1992.

A Business Regulatory Impact Assessment (“BRIA”) was produced in relation to the 2009 Regulations and owing to the negligible consequences of the provisions of these Regulations, no new BRIA has been produced. Copies of the BRIA associated with the 2009 Regulations are available from Marine Scotland, Victoria Quay, Leith, Edinburgh, EH6 6QQ.

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