
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 103

AQUACULTURE

**The Alien and Locally Absent Species in
Aquaculture (Scotland) Regulations 2015**

<i>Made</i>	- - - -	<i>3rd March 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>5th March 2015</i>
<i>Coming into force</i>	- -	<i>3rd April 2015</i>

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⁽¹⁾ and all other powers enabling them to do so.

The 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 references to Annex IV of Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture⁽²⁾ to be construed as a reference to that Annex as amended from time to time.

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015 and come into force on 3rd April 2015.

(2) These Regulations extend to Scotland only.

(1) 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 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 the European Union (Amendment) Act 2008 (c.7), Schedule 1, Part 1. 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. Paragraph 1A was inserted by the 2006 Act, section 28.

(2) OJ L 168, 28.6.2007, p.1 as amended by Commission Regulation (EC) No 506/2008, OJ L 149, 7.6.2008, p.36 and Regulation (EU) No 304/2011 of the European Parliament and of the Council, OJ L 88, 4.4.2011, p.1

Status: Point in time view as at 03/04/2015.

Changes to legislation: There are currently no known outstanding effects for the The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015. (See end of Document for details)

Commencement Information

I1 [Reg. 1](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Interpretation

2.—(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 an open and a closed aquaculture facility;

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

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

“permit” means a permit applied for and issued under Council Regulation 708/2007; and

“Scotland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland.

(2) Expressions used in these Regulations which are also used in Council Regulation 708/2007 have the same meaning in these Regulations as they do in that Regulation.

(3) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000(3) which has been recorded in written form and is capable of being reproduced in that form.

Commencement Information

I2 [Reg. 2](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Competent authority

3. The Scottish Ministers are designated as the competent authority for the purposes of Article 5 of Council Regulation 708/2007.

Commencement Information

I3 [Reg. 3](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

PART 2 PERMITS

Permits

4.—(1) A permit—

(3) [2000 c.7](#), as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 ([c.21](#)).

- (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 movement is permitted;
 - (f) must specify the monitoring period where the competent authority considers that a monitoring period longer than the period of 2 years prescribed in Article 18(1) of Council Regulation 708/2007 is required; and
 - (g) may be made subject to such conditions as the competent authority considers appropriate.
- (2) Where the competent authority refuses to grant a permit, or grants it subject to conditions, it must—
- (a) notify the applicant in writing;
 - (b) send with the notification the reasons for its decision; and
 - (c) inform the applicant in writing of the right of appeal under regulation 8.

Commencement Information

I4 [Reg. 4](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Amendment of permit

- 5.**—(1) The competent authority may amend a permit or any condition imposed by a permit.
- (2) The amendment may be made—
- (a) on the initiative of the competent authority; or
 - (b) on the application in writing by the permit holder.
- (3) An application under paragraph (2)(b) must be in such form and contain such information as the competent authority may reasonably require.
- (4) The competent authority must serve written notice on the permit holder which must include—
- (a) the amendment or any decision not to make the amendment;
 - (b) the reasons for making the amendment or any decision not to make it;
 - (c) the date on which the amendment is to take effect; and
 - (d) information on the right of appeal under regulation 8.

Commencement Information

I5 [Reg. 5](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Suspension of permits

- 6.**—(1) The competent authority may suspend a permit by serving the permit holder with written notice where it considers that the permit holder has not complied with, is not complying with, or is not likely to comply with any condition of the permit or any provision of Council Regulation 708/2007 or these Regulations.
- (2) The notice must include—

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- (a) the date on which the suspension is to take place and its duration;
 - (b) the reasons for the suspension; and
 - (c) information on the right of appeal under regulation 8.
- (3) The notice may include a direction requiring the removal and disposal of any aquatic organism to which the permit relates in such manner as may be specified in the notice.

Commencement Information

I6 Reg. 6 in force at 3.4.2015, see [reg. 1\(1\)](#)

Revocation of permits

7.—(1) The competent authority may revoke a permit by serving the permit holder with written notice where it considers that the permit holder has not complied with, is not complying with, or is not likely to comply with any condition of the permit or any provision of Council Regulation 708/2007 or these Regulations.

(2) The notice must include—

- (a) the date on which the revocation is to take place;
- (b) the reasons for the revocation; and
- (c) information on the right of appeal under regulation 8.

(3) The notice may include a direction requiring the removal and disposal of any aquatic organism to which the permit relates in such manner as may be specified in the notice.

Commencement Information

I7 Reg. 7 in force at 3.4.2015, see [reg. 1\(1\)](#)

Appeal of decision of the competent authority

8.—(1) A person (“the appellant”) may appeal to the competent authority against any of the following notices by complying with one of the requirements in paragraph (2) within 21 days from the date on which the notice was served:—

- (a) a notice served under regulation 4(2) (refusal of permit or grant of permit subject to conditions);
 - (b) a notice served under regulation 5(4) (amendment of permit);
 - (c) a notice served under regulation 6(1) (suspension of permit); or
 - (d) a notice served under regulation 7(1) (revocation of permit).
- (2) The requirements are—
- (a) to make written representations to the competent authority; or
 - (b) to serve on the competent authority written notice that the permit holder wishes to appear before and be heard by an independent person appointed by the competent authority.
- (3) Where paragraph (2)(a) applies—
- (a) the competent authority must appoint an independent person to consider the representations;

- (b) that person must consider the representations and provide a report to the competent authority; and
- (c) if the appellant requests the competent authority must provide a copy of that report.
- (4) Where paragraph (2)(b) applies—
 - (a) the competent authority must appoint an independent person to hear representations (“the appointed person”) and specify a time limit within which representations must be made;
 - (b) if the appellant requests, the hearing must be in public;
 - (c) the appointed person must consider the representations and provide a report to the competent authority; and
 - (d) if the appellant requests, the competent authority must provide a copy of the appointed person’s report.
- (5) The competent authority must serve the appellant with a written notice of its final decision and the reasons for reaching that decision.
- (6) Where an appeal is made against a notice specified in paragraph (1)(c) or (d), the notice has no effect until the final decision of the competent authority on the appeal or the withdrawal of the appeal.
- (7) But paragraph (6) does not apply where the notice subject to appeal includes a statement that, in the opinion of the competent authority, there is an imminent risk of adverse effects to biodiversity or an imminent threat to aquatic organisms, habitats or ecosystems.

Commencement Information

I8 [Reg. 8](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

PART 3

MOVEMENT OF ANNEX IV SPECIES AND TRANSLOCATION OF LOCALLY ABSENT SPECIES

Notification of movement of Annex IV species or translocation of locally absent species

- 9.—**(1) This regulation applies to a proposal to—
- (a) move an Annex IV species;
 - (b) translocate a locally absent species within Scotland or to Scotland from another part of the United Kingdom.
- (2) A person proposing to undertake a movement or translocation must notify the competent authority in writing of the proposal.
- (3) An application for an authorisation to operate an aquaculture production business under the Aquatic Animal Health (Scotland) Regulations 2009⁽⁴⁾ in respect of an Annex IV species or a locally absent species or an application for the amendment of such an authorisation in so far as it relates to a proposal mentioned in paragraph (1)(a) or (b) is a notification for the purposes of paragraph (2).
- (4) Any person who notifies the competent authority in accordance with paragraph (2), or who is deemed to have done so in accordance with paragraph (3), in respect of the proposed movement of Annex IV species, must not undertake the proposed movement except under, and in accordance

⁽⁴⁾ [S.S.I. 2009/85](#) as amended by [S.S.I. 2011/259](#), [S.S.I. 2011/427](#) and [S.S.I. 2012/177](#).

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with any conditions of, a notice served under regulation 11 or a notice which has been amended under regulation 12.

(5) Paragraph (2) does not apply in respect of any subsequent movement of the same Annex IV species or translocation of the same locally absent species which are undertaken by the same person to the same aquaculture facility if—

- (a) the movement has previously been permitted by a notice served under regulation 11(2)(b) or (3)(b); or
- (b) the competent authority has previously served a notice under regulation 15(3), that a permit is not required in respect of a translocation.

Commencement Information

I9 Reg. 9 in force at 3.4.2015, see **reg. 1(1)**

Exemption to regulation 9: rainbow trout and Pacific oysters

10. Regulation 9 does not apply to movements of—

- (a) *Crassostrea gigas* (Pacific cupped oyster);
- (b) *Oncorhynchus mykiss* (rainbow trout).

Commencement Information

I10 Reg. 10 in force at 3.4.2015, see **reg. 1(1)**

Movement of Annex IV species

11.—(1) This regulation applies where the competent authority receives notification under regulation 9(2) of a proposal to move an Annex IV species or where notification is deemed to have been given by virtue of regulation 9(3).

(2) The competent authority must serve a written notice on the person proposing to undertake the movement—

- (a) prohibiting the movement;
- (b) permitting the movement and any subsequent movement of the same species undertaken by that person to the same aquaculture facility subject to any conditions stated in the notice; or
- (c) requiring the person, at that person's own cost, to submit an environmental risk assessment carried out in accordance with 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 proposing to undertake the movement—

- (a) prohibiting the movement; or
- (b) permitting the movement and any subsequent movement of the same species by that person to the same aquaculture facility subject to any conditions specified in the notice.

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

- (a) the unique reference number assigned to the notice;
- (b) the duration of the notice;

- (c) the species to which the notice applies; and
 - (d) the aquaculture facility into which the movement is permitted.
- (5) A notice served under paragraph (2)(a) or (b) or (3)(a) or (b) must include—
- (a) the reasons for that decision; and
 - (b) information on the right of appeal under regulation 16.

Commencement Information

I11 Reg. 11 in force at 3.4.2015, see [reg. 1\(1\)](#)

Amendment of notice issued under regulation 11

12.—(1) The competent authority may amend a notice, or any condition of a notice, served under regulation 11(2) or (3) (movement of Annex IV species).

- (2) The amendment may be made—
- (a) on the initiative of the competent authority; or
 - (b) on the application in writing by the notice holder.

(3) An application under paragraph (2)(b) must be in such form and contain such information as the competent authority may reasonably require.

- (4) The competent authority must serve written notice on the notice holder which must include—
- (a) the amendment or any decision not to make the amendment;
 - (b) the reasons for making the amendment or any decision not to make it;
 - (c) the date on which the amendment is to take effect; and
 - (d) information on the right of appeal under regulation 16.

Commencement Information

I12 Reg. 12 in force at 3.4.2015, see [reg. 1\(1\)](#)

Suspension of notice under regulation 11

13.—(1) The competent authority may suspend a notice served under regulation 11 by serving the notice holder with written notice where it considers that the notice holder has not complied with, is not complying with, or is not likely to comply with, any condition of the notice or any provision of Council Regulation 708/2007 or these Regulations.

- (2) The notice must include—
- (a) the date on which the suspension is to take place and its duration;
 - (b) the reasons for the suspension; and
 - (c) information on the right of appeal under regulation 16.

(3) The notice may include a direction requiring the removal and disposal of any aquatic organism to which the notice served under regulation 11 relates in such manner as may be specified in the notice served under paragraph (1).

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Commencement Information

I13 [Reg. 13](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Revocation of notice under regulation 11

14.—(1) The competent authority may revoke a notice served under regulation 11 by serving the notice holder with written notice where it considers that the notice holder has not complied with, is not complying with, or is not likely to comply with, any condition of the notice issued under regulation 11 or any provision of Council Regulation 708/2007 or these Regulations.

(2) The notice must include—

- (a) the date on which the revocation is to take place;
- (b) the reasons for the revocation; and
- (c) information on the right of appeal under regulation 16.

(3) The notice may include a direction requiring the removal and disposal of any aquatic organism to which the notice served under regulation 11 relates in such a manner as may be specified in the notice served under paragraph (1).

Commencement Information

I14 [Reg. 14](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Translocation of locally absent species

15.—(1) This regulation applies where the competent authority receives notification of a proposed translocation of a locally absent species under regulation 9(2) or where notification is deemed to have been given by virtue of regulation 9(3).

(2) The competent authority must serve written notice on the person proposing to undertake the translocation informing the person 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.

(3) A notice served under paragraph (2) must—

- (a) state whether a permit is, or is not, required for the translocation; and
- (b) if a permit is required—
 - (i) give reasons for the decision; and
 - (ii) inform the person on whom the notice is served of the right of appeal under regulation 16.

Commencement Information

I15 [Reg. 15](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Appeal of notice under regulation 11, 12, 13, 14 or 15

16.—(1) A person (“the appellant”) may appeal to the competent authority against any of the following notices by complying with one of the requirements in paragraph (2) within 21 days from the date on which the notice was served:—

- (a) a notice served under regulation 11(2)(a) or (b) or (3) (movement of Annex IV species);
 - (b) a notice served under regulation 12(4) (amendment of notice);
 - (c) a notice served under regulation 13(1) (suspension of notice);
 - (d) a notice served under regulation 14(1) (revocation of notice); or
 - (e) a notice served under regulation 15(2) (translocation of locally absent species).
- (2) The requirements are—
- (a) to make written representations to the competent authority; or
 - (b) to serve on the competent authority written notice that the appellant wishes to appear before and be heard by an independent person appointed by the competent authority.
- (3) Where paragraph (2)(a) applies—
- (a) the competent authority must appoint an independent person to consider the representations;
 - (b) that person must consider the representations and provide a report to the competent authority; and
 - (c) if the appellant requests the competent authority must provide a copy of that report.
- (4) Where paragraph (2)(b) applies—
- (a) the competent authority must appoint an independent person to hear representations (“the appointed person”) and specify a time limit within which representations must be made;
 - (b) if the appellant requests, the hearing must be in public;
 - (c) the appointed person must consider the representations and provide a report to the competent authority; and
 - (d) if the appellant requests, the competent authority must provide a copy of the appointed person’s report.
- (5) The competent authority must serve the appellant with a written notice of its final decision and the reasons for making that decision.

Commencement Information

I16 [Reg. 16](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

PART 4

MONITORING AND RISK ASSESSMENT

Environmental risk assessment

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

Commencement Information

I17 [Reg. 17](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Status: Point in time view as at 03/04/2015.

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Contingency plan

18.—(1) A contingency plan drawn up under Article 17 of Council Regulation 708/2007 is to be produced at the applicant's own expense and must be approved by the competent authority.

(2) The applicant must implement the contingency plan on the occurrence of an event specified in that plan, as required by Article 17 of Council Regulation 708/2007.

Commencement Information

I18 [Reg. 18](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Monitoring

19.—(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 in writing.

Commencement Information

I19 [Reg. 19](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

PART 5

ENFORCEMENT

Entry and inspection of land and premises

20.—(1) An inspector may, on producing some duly authenticated document showing the inspector's authority if required, enter and inspect any land or premises at any reasonable time for the purposes of administering and enforcing Council Regulation 708/2007 or these Regulations.

(2) But an inspector may not enter any premises which are a dwelling unless a justice of the peace, or sheriff, has granted a warrant authorising the inspector to do so.

(3) A justice of the peace, or sheriff, may grant a warrant authorising an inspector to enter any land or premises if satisfied that the inspector will not be able to administer or enforce Council Regulation 708/2007 or these Regulations without the warrant.

(4) A warrant granted under paragraph (3) remains in force—

(a) for one month; or

(b) until the purpose for which it is issued has been fulfilled,

whichever is the sooner.

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

(a) such persons, vehicles, equipment or materials as the inspector considers necessary; and

- (b) a representative of the European Commission acting for the purposes of Council Regulation 708/2007.
- (6) 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 the inspector found them.
- (7) In this regulation “premises” includes any land or place and, in particular, includes—
 - (a) any vessel, vehicle or trailer; and
 - (b) any installation, container or receptacle.

Commencement Information

I20 Reg. 20 in force at 3.4.2015, see **reg. 1(1)**

Enforcement powers: general

- 21. The powers conferred by regulations 22, 23 and 24 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, document or record which an inspector reasonably believes to be evidence of the commission of an offence under these Regulations.

Commencement Information

I21 Reg. 21 in force at 3.4.2015, see **reg. 1(1)**

Search and examination of items on land and premises

- 22. An inspector entering any land or premises under regulation 20 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; or
 - (ii) attached to, or otherwise forms part of the land or premises.

Commencement Information

I22 Reg. 22 in force at 3.4.2015, see **reg. 1(1)**

Production of documents

- 23. An inspector entering any land or premises under regulation 20 may require any person—
 - (a) to produce any document or record that is in that person’s possession or control; or
 - (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.

Status: Point in time view as at 03/04/2015.

Changes to legislation: There are currently no known outstanding effects for the The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015. (See end of Document for details)

Commencement Information

I23 [Reg. 23](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Seizure of items

24.—(1) This regulation applies where an inspector exercises a power conferred by regulation 22 or 23.

(2) An inspector may—

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

(3) The power conferred by paragraph (2)(a) includes the power to take samples of any aquatic organism or water.

(4) An inspector to whom any document or record has been produced in accordance with a requirement imposed under regulation 23 may—

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

(5) 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.

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

(7) Any aquatic organism or water seized by an inspector may be disposed of as the inspector sees fit.

Commencement Information

I24 [Reg. 24](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Enforcement notices

25.—(1) Where the competent authority considers that any person has not complied with, or is not complying with, Council Regulation 708/2007 or these Regulations it may serve an enforcement notice on that person.

(2) The competent authority may serve an enforcement notice on an operator of an aquaculture facility where it considers that aquatic organisms present in an aquaculture facility were introduced in contravention of—

- (a) Council Regulation 708/2007;
- (b) these Regulations; or
- (c) any condition of a permit (including a permit amended under regulation 5) or a notice served under regulation 11(2)(a) or (b) or (3) (movement of Annex IV species).

(3) An enforcement notice must state—

- (a) the matters which constitute the contravention or failure to comply;
- (b) the steps which the person on whom it is served must take or is prohibited from taking;

- (c) the date by which the steps must be taken;
 - (d) the reasons for the service of the notice and for the requirements in it; and
 - (e) that there is a right of appeal under regulation 26.
- (4) An enforcement notice may require the person on whom it is served to—
- (a) remove and dispose of any aquatic organism in a manner and within a period specified in the notice; and
 - (b) take such steps as are required to ensure that the aquaculture facility is, so far as possible, restored to its condition prior to the contravention.
- (5) Where 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 any aquatic organisms) to—
 - (i) ensure compliance with the requirements of the notice; or
 - (ii) remedy the consequences of the failure to carry them out; and
 - (b) recover any expenses reasonably incurred in so doing from the person who has failed to comply with the notice.
- (6) The competent authority may remove and dispose of any aquatic organisms without serving an enforcement notice—
- (a) in an emergency; and
 - (b) at the cost of the person or operator mentioned in paragraph (1) or (2).
- (7) In this regulation “operator” means any person who is responsible for the management of the aquaculture facility.

Commencement Information

I25 Reg. 25 in force at 3.4.2015, see **reg. 1(1)**

Appeals: enforcement notices

26.—(1) A person (“the appellant”) may appeal against an enforcement notice served under regulation 25 by complying with one of the requirements in paragraph (2) within 21 days from the date of the notice being served.

- (2) The requirements are—
- (a) to make written representations to the competent authority; or
 - (b) to serve on the competent authority notice that the person wishes to appear before and be heard by an independent person appointed by the competent authority.
- (3) Where paragraph (2)(a) applies—
- (a) the competent authority must appoint an independent person to consider the representations;
 - (b) that person must consider the representations and provide a report to the competent authority; and
 - (c) if the appellant requests the competent authority must provide a copy of that report.
- (4) Where paragraph (2)(b) applies—
- (a) the competent authority must appoint an independent person to hear representations (“the appointed person”) and specify a time limit within which representations must be made;

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- (b) if the appellant requests, the hearing must be in public;
 - (c) the appointed person must consider the representations and provide a report to the competent authority; and
 - (d) if the appellant requests, the competent authority must provide a copy of the appointed person's report.
- (5) Where the competent authority makes a decision on appeal it may—
- (a) confirm the notice;
 - (b) amend the notice; or
 - (c) withdraw the notice.
- (6) The competent authority must serve notice of its final decision and the reasons for reaching that decision on the appellant.
- (7) Where an appeal is made under paragraph (1) the enforcement notice will have no effect pending the final decision of the competent authority or the withdrawal of the appeal.
- (8) But paragraph (7) does not apply where the notice includes a statement that, in the opinion of the competent authority, there is an imminent risk of adverse effects to biodiversity or an imminent threat to aquatic organisms, habitats or ecosystems.

Commencement Information

I26 Reg. 26 in force at 3.4.2015, see **reg. 1(1)**

PART 6

OFFENCES AND PENALTIES

Offences

27. A person commits an offence if that person—
- (a) for the purpose of procuring the grant or amendment of a permit—
 - (i) makes a statement which that person knows or suspects to be false or misleading in a material particular; or
 - (ii) intentionally fails to disclose any material particular;
 - (b) abandons, releases or allows to escape any aquatic organism, the movement of which took place under a permit or under a notice served under regulation 11(2) (movement of Annex IV species) unless that person can show that all reasonable steps were taken and due diligence exercised to avoid the abandonment or escape;
 - (c) refuses, or fails, to comply with a requirement under regulation 24(5) (seizure of items) unless that person can show that that person had a reasonable excuse for failing to comply or refusing to comply;
 - (d) refuses, or fails, to comply with an enforcement notice served under regulation 25(1) or (2) (enforcement notices) unless—
 - (i) that person can show that the person had a reasonable excuse for failing to comply; or
 - (ii) regulation 26(7) (appeals: enforcement notices) applies;

- (e) fails to comply with any direction requiring the disposal of aquatic organisms under regulation 6(3) (suspension of permit), 7(3) (revocation of permit), 13(3) (suspension of notice under regulation 11) or 14(3) (revocation of notice under regulation 11);
- (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;
- (h) knowingly gives false or misleading information to an inspector;
- (i) fails to comply with regulation 9(2) or (4) (notification of movement of Annex IV species or translocation of locally absent species); or
- (j) fails to immediately implement an approved contingency plan as required by Article 17 of Council Regulation 708/2007 when a contingency event in that plan occurs.

Commencement Information

I27 Reg. 27 in force at 3.4.2015, see [reg. 1\(1\)](#)

Penalties

28. 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.

Commencement Information

I28 Reg. 28 in force at 3.4.2015, see [reg. 1\(1\)](#)

Offences by bodies corporate or Scottish partnerships

- 29.—(1) Where—
- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) a person purporting to act in the capacity of a relevant individual,
- the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.
- (2) In paragraph (1), “relevant individual” means—
- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
 - (b) in relation to a Scottish partnership, a partner; and
 - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Status: Point in time view as at 03/04/2015.

Changes to legislation: There are currently no known outstanding effects for the The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015. (See end of Document for details)

Commencement Information

I29 [Reg. 29](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

PART 7

MISCELLANEOUS

Disclosure of information

30. The competent authority may disclose information to the equivalent authority in England and Wales or Northern Ireland for the purposes of—

- (a) Council Regulation 708/2007;
- (b) these Regulations;
- (c) the Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012⁽⁵⁾; or
- (d) the Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011⁽⁶⁾.

Commencement Information

I30 [Reg. 30](#) in force at 3.4.2015, see [reg. 1\(1\)](#)

Service of notices

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

- (a) delivering it to the person;
- (b) leaving it at the person's proper address or sending it by post to that address; or
- (c) transmitting it electronically.

(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⁽⁷⁾ (service of documents by post) in its application to this regulation, the proper address of any person to whom a notice is to be given is—

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

(4) If the name or address of any occupier of premises on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

⁽⁵⁾ [S.I. 2012/335](#).

⁽⁶⁾ [S.I. 2011/2292](#).

⁽⁷⁾ [1978 c.30](#).

- (5) 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 by electronic means and has provided an address suitable for that purpose; and
 - (b) the notice is sent to the address provided.

Commencement Information

I31 Reg. 31 in force at 3.4.2015, see **reg. 1(1)**

St Andrew’s House,
Edinburgh

AILEEN McLEOD
Authorised to sign by the Scottish Ministers

Status: Point in time view as at 03/04/2015.

Changes to legislation: There are currently no known outstanding effects for the The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015. (See end of Document for details)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Regulation (EC) No. 708/2007 concerning use of alien and locally absent species in aquaculture.

A permit is required for the introduction of alien species for their use in aquaculture. Part 2 of these Regulations makes provision regarding the issue of permits, their amendment, suspension and revocation.

Part 3 makes provision for the movement of those species listed in Annex IV to Council Regulation 708/2007 and the translocation of locally absent species within Scotland or to Scotland from another part of the United Kingdom.

Part 4 makes provision for monitoring and risk assessment. Enforcement powers are given to inspectors under Part 5. Part 6 makes provision for offences and penalties. 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 a fine.

Part 7 makes miscellaneous provisions concerning the disclosure of information between competent authorities in the United Kingdom and for the service of notices.

The Regulatory Impact Assessment relating to these Regulations is available from Marine Scotland, Victoria Quay, Edinburgh, EH6 6QQ.

Status:

Point in time view as at 03/04/2015.

Changes to legislation:

There are currently no known outstanding effects for the The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015.