

STATES OF JERSEY



DRAFT EU LEGISLATION (AQUATIC ANIMAL HEALTH) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 29th February 2016
by the Minister for the Environment

STATES GREFFE



Jersey

DRAFT EU LEGISLATION (AQUATIC ANIMAL HEALTH) (JERSEY) REGULATIONS 201-

REPORT

Background

Council Directive 2006/88/EC lays down the rules on the animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals.

Commission Regulation (EC) No 1251/2008 lays down the conditions and health certification requirements for the placing on the market, and import into the European Community, of aquaculture animals and products. It also lists where scientific data or practical experience substantiates, that species other than susceptible species, listed in Directive 2006/88/EC, may be responsible for the transmission of a specific listed disease by acting as vector species.

Council Directive 2006/88/EC and Commission Regulation (EC) No 1251/2008 –

- regulate the import or export of aquatic animals, and require consignments to be accompanied with a valid health certificate or notification for movements which take place from/to member States and the UK. Compliance is a pre-requisite for trade;
- maintain Jersey's official disease-free status for a number of diseases of fish and shellfish;
- control the measures to be applied in the event of a suspicion of, or an outbreak of, certain notifiable diseases;
- regulate certain activities which have been authorised by the Minister, such as aquaculture production businesses, and processing of establishments. An authorisation is not required for an operation that keeps ornamental aquatic animals in a closed ornamental facility by a person who did not import the animals into Jersey;
- regulate certain activities such as aquaculture production businesses where aquatic animals are kept without the intention of being placed on the market, or 'put and take' fishery and specialist transport business, and where the Minister considers that an authorisation is not necessary, they may be registered with the Minister;
- transportation of aquaculture animals and the records to be kept.

These Regulations do not apply to an ornamental aquatic animal reared in a non-commercial aquarium, or an aquatic animal caught for the purpose of production of fish-meal, fish-feed, fish-oil or any similar product.

For completion

Commission Decision 2009/177/EC provides the model forms for surveillance and eradication programmes, and submissions for and declaration of disease-free status. The decision also lists those member States, zones and compartments subject to approved surveillance and eradication programs, and lists member States, zones and compartments that have been declared disease-free.

Jersey is listed as disease-free for –

- viral haemorrhagic septicaemia (VHS);
- infectious haematopoietic necrosis (IHN);
- infectious salmon anaemia (ISA);
- infection with *Marteilia refringens*; and
- infection with *Bonamia ostreae*.

Commission Decision 2010/221/EU approves national measures for limiting the impact of certain diseases in aquaculture animals and wild aquatic animals in permitting member States to take measures to prevent the introduction of or to control certain diseases, in accordance with Article 43 of Council Directive 2006/88/EC.

Jersey is listed as disease-free for –

- spring viraemia of carp (SVC);
- bacterial kidney disease (BKD); and
- infection with *Gyrodactylus salaris* (GS).

A draft Order has been prepared by the Law Draftsman's Office for consideration by the Minister once the Regulations come into force, to make infectious pancreatic necrosis (IPN) notifiable.

Conclusion

The Regulations provide the necessary legal framework to fulfil Jersey's obligation under Protocol 3 of the of the Act annexed to the Treaty concerning the Accession of new Member States to the European Economic Community, and the European Atomic Energy Community signed at Brussels on 22 January 1972, and Regulation (EEC) No 706/73 of the Council of 12 March 1973 concerning the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products (OJ L68, 15.3.1975, p.1–2), and enable Jersey aquaculture production businesses to trade with the rest of the EU and the UK in accordance with EU legislation.

Financial and manpower implications

For the Department of the Environment there will be work in administration and carrying out inspections, which will be part of routine duties. Conversely, work issuing import licences will no longer be necessary.

For an inspection, test or official examination and a certificate, approval, authorization or registration under these Regulations, a fee is payable.

Explanatory Note

These Regulations implement Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products of those animals, and on the prevention and control of certain diseases in aquatic animals (OJ L 328, 24.11.2006, p. 14). In doing so they also make provision to enforce the EU legislation that has been made to support that Directive, including in particular –

- (a) Commission Regulation (EC) No 1251/2008 of 12 December 2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species (OJ L 337, 16.12.2008, p. 1);
- (b) Commission Decision 2008/946/EC of 12 December 2008 implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals (OJ L 337, 16.12.2008, p. 94);
- (c) Commission Decision 2009/177/EC of 31 October 2008 implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments (OJ L 63, 7.3.2009, p. 15); and
- (d) Commission Decision 2010/221/EU of 15 April 2010 approving national measures for limiting the impact of certain diseases in aquaculture animals and wild aquatic animals in accordance with Article 43 of Council Directive 2006/88/EC (OJ L98, 20.4.2010, p. 7).

The Regulations require certain activities to be authorized (*Part 2*), while others must be registered (*Part 3*), though these requirements would only come into force after the rest of the Regulations (see note on *Regulation 41* below). The Regulations also impose restrictions on placing on the market (*Part 4*), particularly concerning health certification and transport. They designate notifiable diseases, and require them to be notified and allow for measures to be taken to control outbreaks (*Part 5*). They create offences in relation to aquatic animal health, and give enforcement powers equivalent to those in the legislation on health of other animals (*Part 6*). They also provide for review of decisions by the Minister, and allow for fees to be charged for related activities (*Part 7*). The Regulations replace the current regime in the Fish Health (Jersey) Regulations 1999, which are repealed (see *Regulation 40*).

Part 1 contains general interpretation, purpose and scope provisions.

Regulation 1 is the interpretation provision.

Paragraph (1) provides definitions. The “Minister” is defined as the Minister for the Environment. The implemented EU provisions are given shorter names as follows.

- (a) The European Directive that these Regulations primarily implement is referred to as “Directive 2006/88/EC” (its full title is Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals).
- (b) The key European Regulation implementing that Directive is referred to as “Commission Regulation 1251/2008” (its full title is Commission Regulation (EC) No 1251/2008 of 12 December 2008 implementing

Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species).

- (c) Other EU Regulations and Decisions that implement Directive 2006/88/EC, or are related to it, are referred to as “relevant EU instruments”. This includes in particular the Decisions numbered 2009/177/EC and 2010/221/EU. A key function of those Decisions is to provide updated lists of the geographical areas (for relevant diseases and species) for the purposes of the various regimes introduced under Directive 2006/88/EC in relation to diseases listed in Part II of Annex IV to that Directive and to other diseases subject to measures approved under Article 43 of that Directive. The list of relevant EU instruments also includes Regulation (EC) No 882/2004 (on official controls), to implement Article 7 of Council Directive 2006/88/EC.

Paragraph (2) of this Regulation provides that references to these EU provisions are ambulatory (to be read as including any subsequent amendments). Paragraph (3) provides that terms used in the EU provisions have the same meanings when used in these Regulations. In particular these Regulations rely on definitions in Article 1 of, and Annex I to, Directive 2006/88/EC, such as those of “aquatic animal”, “aquaculture animal”, “aquaculture production business”, “disease”, “mollusc farming area” and “put and take fishery”.

Regulation 2 provides for the purpose and scope of the Regulations. It implements Article 2 of Council Directive 2006/88/EC. It ensures that effect is given in Jersey to any aspects of the relevant EU Regulations and Decisions that do not otherwise already have direct effect through the arrangements made under Protocol 3 to the United Kingdom’s accession. It makes the Minister the competent authority for the purposes of the implemented EU provisions. It limits the scope of the Regulations so that they do not apply to ornamental animals reared in non-commercial aquaria, to aquatic animals caught to produce fishmeal or similar products, or to wild animals harvested for direct entry into the food chain. It also ensures that these Regulations do not detract from relevant Jersey legislation on sea fisheries or conservation of wildlife.

Part 2 provides for authorization of aquaculture production businesses and processing establishments. It implements Chapter II of Council Directive 2006/88/EC.

Regulation 3 makes it an offence to operate an unauthorized aquaculture production business or processing establishment. It implements Article 4 of Council Directive 2006/88/EC. It provides exemptions in paragraphs (2) and (3) in relation to closed ornamental facilities, and to non-market installations and put and take fisheries (unless the Minister serves notice requiring authorization to be obtained, in which case the operator is treated as authorized pending determination of its application).

The authorization offence in paragraph (1) comes into force later than most of the rest of these Regulations (see note on *Regulation 41* below). Paragraphs (6) to (8) are transitional provisions, treating an existing business as authorized pending determination of its application, as long as the application was made before the commencement of paragraph (1).

Regulation 4 provides for applications for authorization. It implements elements of Articles 4 and 5 of Council Directive 2006/88/EC. It allows the Minister to require a form to be used and information to be provided. It is an offence to provide false information.

Regulation 5 provides for determination of applications for authorization. It implements elements of Articles 4 and 5 of Council Directive 2006/88/EC. A determination must be made with 90 days. The Minister must be satisfied there will not be an unacceptable risk of spreading disease. The Minister must give notice of the determination (giving information as to the right to apply for reconsideration where appropriate). Paragraphs (6) to (7) implement Article 6 of Council Directive 2006/88/EC, by requiring the Minister to maintain a publicly available register of authorized businesses.

Regulation 6 imposes standard conditions on authorizations, and allows the Minister to impose further conditions. It implements Articles 5, 8, 9 and 10 of, and Part B of Annex III to, Council Directive 2006/88/EC. The operator must follow good hygiene practice, keep records and cooperate with surveillance and inspections. The Minister may be required by the EU legislation to add further conditions in particular cases, and may add others where it would not be in breach of the EU legislation to do so.

Regulation 7 provides for amendment of an authorization. It implements elements of Articles 4 and 5 of Council Directive 2006/88/EC. Amendment can be of the authorization itself or of conditions (including by adding a new condition), and can be at the Minister's initiative or the operator's request. The Minister can grant or refuse the request, and can make a different amendment, but must give reasons (and information as to the right to apply for reconsideration) if not granting a request.

Regulation 8 provides for suspension of an authorization for contravention of a condition or of these Regulations or the EU legislation. It implements Article 60 of Council Directive 2006/88/EC in relation to Articles 4 and 5. The Minister must give notice and the operator can apply for reconsideration.

Regulation 9 makes similar provision for revocation of an authorization (again implementing Article 60 of Council Directive 2006/88/EC in relation to Articles 4 and 5).

Part 3 provides for registration of businesses that do not have to be authorized.

Regulation 10 provides for registration of non-market installations, put and take fisheries and specialist transport businesses. It implements Article 4(4) of Council Directive 2006/88/EC. The application must be in the form required by the Minister, and must contain information required by the Minister. Registration is different from authorization in that there are no grounds as such for refusing registration, and no conditions can be applied to it. However, there are offences of failing to register, failing to notify a material change in the information provided, and providing false information.

Part 4 makes provision in relation to placing on the market (defined by Article 3(1)(l) of Council Directive 2006/88/EC as "the sale, including offering for sale or any other form of transfer, whether free of charge or not, and any form of movement of aquaculture animals").

Regulation 11 provides an exemption from Part 4 for placing on the market for scientific purposes with the Minister's consent. It implements Article 11 of Council Directive 2006/88/EC.

Regulation 12 creates offences of contravening certain general health requirements in relation to placing on the market. It implements Article 15 of Council Directive 2006/88/EC.

Regulation 13 makes it an offence to contravene the animal health certification requirements of Commission Regulation 1251/2008 when introducing animals and products into Jersey. It implements Articles 14, 16 to 20, 22 and 24 of Council

Directive 2006/88/EC (particularly as they are in turn implemented by Commission Regulation 1251/2008). It is also an offence to make a false statement, or fail to disclose a material particular, in relation to an animal health certificate.

Regulation 14 provides additional certification requirements for certain susceptible or vector animals. For the purpose of animal health certification, it deems their place of introduction to be disease-free, if they are intended for put and take fisheries or for release into the wild. It implements Article 18 of Council Directive 2006/88/EC (and elements of Article 12).

Regulation 15 provides for additional certification for certain susceptible or vector animals that are wild and alive. For the purpose of animal health certification, they are nevertheless to be treated as aquaculture animals, if they are intended for put and take fisheries, for release into the wild or for further processing (as defined in paragraph (i) of Annex I to Council Directive 2006/88/EC). It implements Article 18 of Council Directive 2006/88/EC (and elements of Article 12).

Regulation 16 imposes disease prevention requirements in respect of transport. It implements Articles 12 and 13 of Council Directive 2006/88/EC. It is an offence to transport aquaculture animals in breach of the requirements (except in certain watertight and airtight containers). These requirements are in addition to those of the Community Provisions (Welfare of Animals during Transport) (Jersey) Regulations 2013 and the Animal Welfare (Jersey) Law 2004.

Regulation 17 makes it an offence not to transport imported aquaculture animals directly from the border inspection post to a quarantine facility, if they are intended for quarantine and imported from a third country. It implements Article 13 of Council Directive 2006/88/EC.

Regulation 18 requires persons transporting aquaculture animals to keep certain related records for 2 years. It implements Article 8 of Council Directive 2006/88/EC. It is an offence not to do so (unless the defence shows it was not practicable).

Part 5 provides for notification and control of disease outbreaks.

Regulation 19 provides for notifiable diseases. It implements Article 43 of, and Part II of Annex IV to, Council Directive 2006/88/EC (and elements of Decision 2010/221/EU).

The effect of the ambulatory provision in *Regulation 1(2)* (see note above) is that any future changes to the listings in the relevant EU instruments will take effect in Jersey immediately. The current notifiable diseases, as at the date of lodging these Regulations, are as follows.

The diseases listed in Part II of Annex IV to Directive 2006/88/EC, rendered notifiable by *Regulation 19(1)(a)*, are –

- (a) epizootic haematopoietic necrosis;
- (b) infection with *Bonamia exitiosa*;
- (c) infection with *Perkinsus marinus*;
- (d) infection with *Microcytos mackini*;
- (e) taura syndrome;
- (f) yellowhead disease;
- (g) viral haemorrhagic septicaemia (VHS);
- (h) infectious haematopoietic necrosis (IHN);

- (i) koi herpes virus (KHV) disease;
- (j) infectious salmon anaemia (ISA), in respect of infection with genotype HPR-deleted of the genus isavirus (ISAV);
- (k) infection with *Marteilia refringens*;
- (l) infection with *Bonamia ostreae*; and
- (m) white spot disease.

The diseases for which Jersey is listed in Annex I to Decision 2010/221/EU as having disease-free status, rendered notifiable by *Regulation 19(1)(b)*, are –

- (a) spring viraemia of carp (SVC);
- (b) bacterial kidney disease (BKD); and
- (c) infection with *Gyrodactylus salaris* (GS).

Jersey is not listed in Annex II or III to Decision 2010/221/EU as having any approved eradication or surveillance programmes for any disease.

The Minister is given power, by *Regulation 19(1)(c)*, to make an Order prescribing other diseases as supplementary notifiable diseases. The power is only exercisable if rendering the disease notifiable is permitted by Article 43 of Directive 2006/88/EC (without having to apply for approval) as a measure to control the disease. The Minister must have regard to whether the disease is specified in one of the Annexes to Decision 2010/221/EU in relation to a state or area other than Jersey. Only 2 other diseases are currently listed in the Annexes to Decision 2010/221/EU, in relation to states or areas other than Jersey, namely infectious pancreatic necrosis (IPN) and ostreid herpesvirus 1 μ var (OsHV-1 μ Var).

Regulation 20 imposes an obligation on relevant persons to notify the Minister in case of suspicion of a notifiable disease (defined by *Regulation 19*) or increased mortality (defined by paragraph (j) of Annex I to Council Directive 2006/88/EC). It implements Article 26 of Council Directive 2006/88/EC. It creates an offence of failure to notify in relation to a notifiable disease, and an offence of failure to notify in relation to increased mortality.

Regulation 21 provides for initial designation of an area to prevent or limit the spread of a suspected notifiable or emerging disease. It implements Articles 28 and 29 of Council Directive 2006/88/EC (along with Article 40 in respect of wild animals, and Articles 41 to 42 in respect of emerging diseases). The Minister must designate the appropriate area and undertake an epizootic investigation. It is an offence to move an aquatic animal into, out of or within the area, or to dispose of a dead aquatic animal from the area, without the Minister's consent (which can be given generally or individually).

Regulation 22 provides for the contents and publication of an initial designation. It implements Article 28 of Council Directive 2006/88/EC. The designation must contain information about the designated area and the relevant offences, and can impose further requirements on transport (breach of which is an offence). The designation notice must be served on those likely to be materially affected, and published appropriately.

Regulation 23 confers powers on inspectors to take action in initial designation areas. It implements Article 28 of Council Directive 2006/88/EC. An inspector can take samples, slaughter aquatic animals, serve notice requiring a person to take steps to eradicate or limit the disease, and prohibit entry to farms and mollusc farming areas. It

is an offence not to take the steps in the notice (unless there is a reasonable excuse), and the inspector can take the steps at the person's expense.

Regulation 24 allows the Minister to issue further notices amending, suspending or withdrawing an initial designation. It implements Article 30 (and Article 28) of Council Directive 2006/88/EC. The Minister must withdraw the initial designation once satisfied the disease is not present (or likely), or on publishing a confirmed designation.

Regulation 25 provides for confirmed designations. It implements Articles 31 to 36, 38 and 39 of Council Directive 2006/88/EC. Once the disease is confirmed to be present, the Minister must designate the appropriate area, to prevent or limit its spread. There are offences, equivalent to those for the initial designation, of unauthorized movement or disposal of aquatic animals.

Regulation 26 provides for the contents and publication of a confirmed designation, matching that for the initial designation. It implements Articles 31 to 36, 38 and 39 of Council Directive 2006/88/EC.

Regulation 27 confers powers on inspectors to take action in confirmed designation areas, matching those for the initial designation. It implements Articles 31 to 36, 38 and 39 of Council Directive 2006/88/EC.

Regulation 28 confers power to amend, suspend or withdraw a confirmed designation, matching the equivalent power for the initial designation. It implements Article 37 (and Articles 32, 38 and 39) of Council Directive 2006/88/EC.

Regulation 29 prohibits vaccination, without the Minister's consent, against notifiable diseases. It implements Article 48 of Council Directive 2006/88/EC.

Regulation 30 allows the Minister, by Order, to take measures aimed at preventing the introduction of a disease. The measures are only those for which approval must be sought under Article 43(2) of Directive 2006/88/EC (which it implements), on the basis that they affect trade into Jersey. EU approval must be sought for the measures taken, and the Order lapses if approval is refused. The Minister must revoke the Order if the grounds for it are no longer met (which will include where EU approval is granted, leading to an amendment of Decision 2010/221/EU which renders the disease notifiable under *Regulation 19(1)(b)*, as well as applying health certificate requirements to the disease).

Part 6 contains enforcement provisions. It implements Article 60 of Council Directive 2006/88/EC.

These Regulations create various offences carrying liability for a fine up to level 4 on the standard scale. Currently, under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2000 and level 4 is £5000. The Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016 would substitute new levels, with the highest level being level 3 at £10,000. That Law has been sanctioned by Her Majesty in Council, but is not in force at the lodging of this draft Law, and will not come into force until the States pass an Act to appoint a day.

Regulation 31 provides for enforcement powers, by adapting those under Articles 34, 34A, 34B and 35 of the Diseases of Animals (Jersey) Law 1956, by treating fish and their diseases as if they fell within that Law and as if the requirements of these Regulations (and of the EU provisions) were requirements of that Law. Those powers are: a power of entry for inspectors, on reasonable grounds for supposing disease is present or there has been a breach of these Regulations; powers for inspectors to conduct enquiries and investigations; powers supplementary to the power of entry, including provision for inspectors to be accompanied by EU Commission officials; the

issuing of warrants for entry; the duties of inspectors and occupiers when the power of entry is exercised; powers to require the disposal or recall of prohibited substances; and powers to detain vessels and aircraft on being satisfied that there is a breach of these Regulations.

Regulation 32 provides for enforcement notices. A notice can be served if the Minister considers that a person is not complying (or has not complied, or is not likely to comply) with an authorization condition or with a requirement of these Regulations or of the EU legislation. The notice must set out the steps to be taken and the time-scale (and the right of reconsideration – see *Regulation 37*). It is an offence to fail to comply with the notice without reasonable excuse, and an inspector can take steps to ensure compliance or remedy non-compliance.

Regulation 33 provides for offences of obstruction. If someone is executing the Regulations (or the EU legislation), it is an offence to intentionally obstruct them, to fail (without reasonable cause) to give them reasonable assistance or information, or to knowingly or recklessly give them false or misleading information.

Regulation 34 gives the Minister power to make an Order amending Regulation 31, 32 or 33. The effect of such an amendment is limited to substituting enforcement provisions from other Jersey legislation on agriculture, or on health or transport or animals or plants, adapted to apply to aquatic animals. In particular drafting is under way to replace the Diseases of Animals (Jersey) Law 1956 with a new Law containing updated enforcement provisions. This power could be used to apply those provisions to aquatic animals as and when that Law might come into force, in a similar way to the way that Regulation 31 adapts the enforcement powers in the current Diseases of Animals (Jersey) Law 1956. Alternatively, it could be used to adapt powers in other relevant Jersey legislation such as the EU Legislation (Transmissible Spongiform Encephalopathies) (Jersey) Regulations 2015, the Community Provisions (Welfare of Animals during Transport) (Jersey) Regulations 2013, or the various Orders under the Diseases of Animals (Jersey) Law 1956 in respect of particular diseases. The Minister can also make consequential amendments to Regulation 1, and amend the definition of an inspector (which currently relies on the Diseases of Animals (Jersey) Law 1956).

Regulation 35 provides for other offences of contravening Commission Regulation 1251/2008 or a relevant EU instrument. The offence only applies where the contravention is not otherwise made an offence by another provision of these Regulations. There is a defence of reasonable excuse. The Minister, inspectors and EU institutions are not covered by the offence.

Regulation 36 makes the standard provision for the criminal liability of officers of a corporate or similar entity that commits an offence under these Regulations.

Part 7 makes miscellaneous provision as to reconsideration of decisions, prescribing of fees, electronic service of notices, repeals and commencement.

Regulation 37 provides for reconsideration of a decision of the Minister in relation to an authorization or enforcement notice. The Minister must appoint a person to review the decision, and must reconsider the decision on receiving that person's report. The reconsideration does not suspend the effect of the decision, unless the Minister provides otherwise in the notice of certain decisions.

Regulation 38 gives the Minister the power, by Order, to prescribe fees in relation to certificates, approvals, authorizations, registrations, inspections, tests and official examinations. The power to set fees is constrained by relevant EU legislation, particularly Regulation (EC) No 882/2004 on official controls performed to ensure the

verification of compliance with feed and food law, animal health and animal welfare rules.

Regulation 39 permits the Minister to serve notices by electronic communication.

Regulation 40 ensures Orders made under these Regulations can include supplementary, incidental, consequential, transitional, transitory or saving provision.

Regulation 41 repeals 3 enactments. These Regulations replace the current regime in the Fish Health (Jersey) Regulations 1999, which implemented the previous EU Directive, so those Regulations are repealed. These Regulations also remove the need for the Community Provisions (Mortality in Oysters) (Jersey) Regulations 2010 and the Diseases of Animals (Importation of Live Fish) (Jersey) Order 1984, which are also repealed accordingly.

Regulation 42 names the Regulations and would bring them into force in stages as follows. The majority of the Regulations would come into force 14 days after the passing of the Regulations. The requirement to be authorized under *Regulation 3(1)* would only come into force 6 weeks after the passing of the Regulations. The requirement to register under *Regulation 10(1)* would only come into force 13 weeks after the passing of the Regulations.



Jersey

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Arrangement

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DRAFT EU LEGISLATION (AQUATIC ANIMAL HEALTH) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 2 of the European Union Legislation (Implementation) (Jersey) Law 2014¹, have made the following Regulations –

PART 1 **GENERAL**

1 Interpretation

(1) In these Regulations, unless the context otherwise requires –

“Commission Regulation 1251/2008” means Commission Regulation (EC) No 1251/2008 of 12 December 2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species (OJ L 337, 16.12.2008, p. 1);

“confirmed designation” means a designation made by the Minister under Regulation 25;

“confirmed designation area” means the area in respect of which a confirmed designation has been made;

“Decision 2008/946/EC on quarantine” means Commission Decision 2008/946/EC of 12 December 2008 implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals (OJ L 337, 16.12.2008, p. 94);

“Directive 2006/88/EC” means Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (OJ L 328, 24.11.2006, p. 14);

“initial designation” means a designation made by the Minister under Regulation 21;

“initial designation area” means the area in respect of which an initial designation has been made;

“inspector” has the same meaning as in the Diseases of Animals (Jersey) Law 1956²;

“Jersey” includes the territorial sea adjacent to Jersey;

“Minister” means the Minister for the Environment;

“non-market installation” means an aquaculture production business in which aquatic animals are kept with no intention of placing them on the market;

“notifiable disease” has the meaning given by Regulation 19;

“operator” means any person who is responsible for the management of a business, establishment, installation, fishery or similar concern;

“processing establishment” means a food business that processes aquaculture animals for food purposes under an approval or registration under Article 4 of Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55);

“relevant EU instrument” means –

- (a) Commission Decision 2008/946/EC on quarantine;
 - (b) Commission Decision 2009/177/EC of 31 October 2008 implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartments (OJ L 63, 7.3.2009, p. 15);
 - (c) Commission Decision 2010/221/EU of 15 April 2010 approving national measures for limiting the impact of certain diseases in aquaculture animals and wild aquatic animals in accordance with Article 43 of Council Directive 2006/88/EC (OJ L 98, 20.4.2010, p. 7);
 - (d) any other Decision or Regulation (other than Commission Regulation 1251/2008) –
 - (i) that is an implementing act or delegated act (within the meaning of Articles 290 and 291 of the Treaty on the Functioning of the European Union) in relation to Directive 2006/88/EC or Commission Regulation 1251/2008, or
 - (ii) for which the legal basis otherwise is or includes Directive 2006/88/EC, Commission Regulation 1251/2008 or a Directive repealed by Directive 2006/88/EC; and
 - (e) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1), to the extent that that Regulation applies in relation to the health of aquaculture animals.
- (2) In these Regulations, a reference to an EU provision is to be read as a reference to that EU provision as it may be amended, substituted, extended or applied from time to time by any other EU provision, or as it

otherwise has effect in the EU from time to time by virtue of any judgment of the European Court.

- (3) Without prejudice to the generality of Article 5 of the European Union Legislation (Implementation) (Jersey) Law 2014³, unless the context otherwise requires –
- (a) the following expressions have the same meaning as in Directive 2006/88/EC –
- (i) aquaculture animal,
 - (ii) aquaculture production business,
 - (iii) aquatic animal,
 - (iv) disease,
 - (v) emerging disease,
 - (vi) epidemiological unit,
 - (vii) farm,
 - (viii) increased mortality,
 - (ix) mollusc farming area,
 - (x) ornamental aquatic animal,
 - (xi) placing on the market,
 - (xii) put and take fishery;
- (b) any other expression used but not defined in these Regulations, that is also used in Directive 2006/88/EC, has the same meaning as in Directive 2006/88/EC; and
- (c) any other expression used but not defined in these Regulations, that is not used in Directive 2006/88/EC, but is used in Commission Regulation 1251/2008, has the same meaning as in Commission Regulation 1251/2008.

2 Purpose and scope

- (1) The purpose of these Regulations is to implement Directive 2006/88/EC, and these Regulations are to be construed accordingly.
- (2) Commission Regulation 1251/2008 and the relevant EU instruments have effect in Jersey, to the extent, if any, that they do not have effect under Article 2 of the European Union (Jersey) Law 1973⁴.
- (3) The Minister is the competent authority in respect of Jersey for the purposes of Directive 2006/88/EC, Commission Regulation 1251/2008 and the relevant EU instruments.
- (4) These Regulations do not apply to –
- (a) an ornamental aquatic animal reared in a non-commercial aquarium;
 - (b) an aquatic animal caught for the purpose of production of fishmeal, fish feed, fish oil or any similar product.

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- (5) Nothing in these Regulations, other than Regulation 15 (as it applies for the purposes of Regulations 13 and 14), applies to an aquatic animal that –
 - (a) is not an aquaculture animal; and
 - (b) is harvested or caught for direct entry into the food chain.
 - (6) The obligations imposed by these Regulations are in addition to and not in derogation from the obligations imposed by and under –
 - (a) Article 15 of the Conservation of Wildlife (Jersey) Law 2000⁵; and
 - (b) the Sea Fisheries (Fisheries) (Jersey) Regulations 2010⁶.

PART 2

AUTHORIZATION REQUIREMENTS

3 Offence of unauthorized operation

- (1) A person is guilty of an offence and liable to a fine of level 4 on the standard scale if –
 - (a) the person operates an aquaculture production business or a processing establishment; and
 - (b) the business or establishment is not authorized by the Minister.
- (2) Paragraph (1) does not apply to a person to the extent that the person's operation consists of the keeping –
 - (a) of an ornamental aquatic animal;
 - (b) in a closed ornamental facility (within the meaning of Commission Regulation 1251/2008); and
 - (c) by a person who did not introduce the animal to Jersey.
- (3) Paragraph (1) does not apply to a person to the extent that the person operates a non-market installation or a put and take fishery, unless the Minister –
 - (a) considers that authorization of that non-market installation or put and take fishery is necessary to prevent or limit the spread of disease; and
 - (b) serves the operator with a written notice to that effect.
- (4) If the operator is served with a notice under paragraph (3)(b), the operator must, within 28 days of the service, apply under Regulation 4(1) for authorization.
- (5) If the operator complies with paragraph (4), the operator is to be treated as having an interim authorization, to carry on the activity to which the application relates, from the date of the application until the final determination date in relation to that application.
- (6) For the purposes of paragraphs (5), (7) and (8) –
 - (a) the “relevant commencement date” is the date on which paragraph (1) comes into force; and

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- (b) the “final determination date”, in relation to an application, is whichever is the earliest of the following dates –
 - (i) the date on which the application is withdrawn,
 - (ii) the date on which the Minister grants an authorization under Regulation 5,
 - (iii) if the Minister refuses to grant an authorization under Regulation 5 and the applicant does not apply for reconsideration under Regulation 37, the date on which the right to apply for reconsideration lapses under that Regulation,
 - (iv) if the Minister refuses to grant an authorization under Regulation 5 and the applicant does apply for reconsideration under Regulation 37, the date on which that application for reconsideration is withdrawn or the Minister serves notice under Regulation 37(6).
 - (7) Paragraph (8) applies to an operator who –
 - (a) operates an aquaculture production business or a processing establishment on the date on which these Regulations (other than paragraph (1) and Regulation 10(1)) come into force; and
 - (b) makes an application –
 - (i) that is an application for authorization and complies with Regulation 4(1),
 - (ii) that is made before the relevant commencement date, and
 - (iii) in relation to which the final determination date is not earlier than the relevant commencement date.
 - (8) The operator is to be treated as having an interim authorization, to carry on the activity to which the application relates, from the relevant commencement date until the final determination date in relation to the application.

4 Application for an authorization

- (1) An application for an authorization must be in such form and contain such information as the Minister may reasonably require.
- (2) A person is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine if –
 - (a) the person provides any information in an application for an authorization;
 - (b) the information is false; and
 - (c) the person knows or suspects that the information is false.

5 Determination

- (1) The Minister must –

- (a) determine an application for authorization within 90 days of receiving it; and
 - (b) serve the applicant with a written notice of the determination as soon as is practicable after making it.
- (2) The Minister may grant an authorization to an aquaculture production business or processing establishment if the Minister is satisfied that the operation of the business or establishment will not lead to an unacceptable risk of spreading disease.
- (3) The Minister may grant one authorization in relation to 2 or more aquaculture production businesses, to each of which an authorization may be granted under paragraph (2), if the businesses –
 - (a) are situated in one mollusc farming area;
 - (b) relate exclusively to molluscs; and
 - (c) do not include a dispatch centre, purification centre or similar business.
- (4) If the Minister grants an authorization, the notice of the determination must –
 - (a) specify –
 - (i) the duration of the authorization, and
 - (ii) an authorization number; and
 - (b) contain information as to –
 - (i) the conditions to which the authorization is subject under Regulation 6(1) or (2), and
 - (ii) any condition attached to the authorization under Regulation 6(3), and the right to apply for reconsideration under Regulation 37 of the decision to impose that condition.
- (5) If the Minister refuses to grant an authorization, the Minister must –
 - (a) give reasons for the refusal; and
 - (b) inform the applicant of the right to apply for reconsideration under Regulation 37.
- (6) The Minister must establish and maintain –
 - (a) a record of every aquaculture production business authorized under this Regulation, containing the information set out in Part I of Annex II to Directive 2006/88/EC; and
 - (b) a record of every processing establishment authorized under this Regulation, containing the information set out in Part II of that Annex.
- (7) The Minister must make arrangements –
 - (a) for publication of the record on the internet;
 - (b) for inspection of the record in paper form by the public –
 - (i) free of charge,
 - (ii) at all reasonable times, and

- (iii) at such place as determined by the Minister; and
- (c) for the provision, on request by any person and subject to payment of any reasonable fee demanded by the Minister, of a paper copy of an entry in the record.

6 Authorization conditions

- (1) It is a condition of an authorization of an aquaculture production business that the operator must –
 - (a) follow good hygiene practice, as relevant for the activity concerned, to prevent the introduction and spreading of diseases;
 - (b) keep a record, in such form and manner as the Minister may specify, of –
 - (i) the movement of any aquaculture animal or any aquaculture animal product into or out of the premises of the business,
 - (ii) the number of any aquaculture animals that have died in each epidemiological unit within the premises,
 - (iii) the results of any surveillance carried out by the business, and
 - (iv) the results of any surveillance carried out by the Minister that have been notified to the business; and
 - (c) cooperate with any animal health surveillance scheme or inspection required or recommended by Article 10 of, or Part B of Annex III to, Directive 2006/88/EC, and comply with any other surveillance requirement imposed by the Minister.
- (2) It is a condition of an authorization of a processing establishment that the operator must –
 - (a) follow good hygiene practice, as relevant for the activity concerned, to prevent the introduction and spreading of diseases;
 - (b) keep a record, in such form and manner as the Minister may specify, of the movement of any aquaculture animal or any aquaculture animal product into or out of the premises of the establishment.
- (3) The Minister may, on granting an authorization, attach to the authorization any other condition that the Minister considers appropriate.

7 Amendment of an authorization

- (1) The Minister may amend an authorization.
- (2) The amendment may be by way of –
 - (a) varying the authorization itself;
 - (b) attaching to the authorization any condition that the Minister considers appropriate; or

- (c) varying or revoking a condition previously attached (whether on the grant of the authorization or subsequently) by the Minister to the authorization.
- (3) The amendment may be made –
 - (a) on the initiative of the Minister; or
 - (b) on application by the operator.
- (4) An application under paragraph (3)(b) must be in such form and contain such information as the Minister may reasonably require.
- (5) An application under paragraph (3)(b) does not prevent the Minister from making an amendment under paragraph (3)(a), whether instead of or as well as the amendment applied for under paragraph (3)(b).
- (6) The Minister must serve a written notice on the operator that –
 - (a) specifies the amendment or the decision not to make the amendment;
 - (b) gives the reason for the amendment or the decision not to make it; and
 - (c) informs the applicant of the right to apply for reconsideration under Regulation 37.
- (7) Paragraphs (6)(b) and (c) do not apply to an amendment made by way of granting an application under paragraph (3)(b).

8 Suspension of an authorization

- (1) The Minister may suspend an authorization, by serving the operator with a written notice, if the Minister considers that the authorized operation has not complied with, is not complying with, or is not likely to comply with –
 - (a) a condition of its authorization; or
 - (b) a requirement of these Regulations, of Commission Regulation 1251/2008 or of a relevant EU instrument.
- (2) In paragraph (1) “authorized operation” means the aquaculture production business, processing establishment, non-market installation or put and take fishery covered by the authorization.
- (3) The notice must –
 - (a) give the date on which the suspension is to take effect and its duration;
 - (b) give the reason for the suspension; and
 - (c) inform the operator of the right to apply for reconsideration under Regulation 37.

9 Revocation of an authorization

- (1) The Minister may revoke an authorization, by serving the operator with a written notice, if the Minister considers that the authorized operation has

-
- not complied with, is not complying with, or is not likely to comply with –
- (a) a condition of its authorization; or
 - (b) a requirement of these Regulations, of Commission Regulation 1251/2008 or of a relevant EU instrument.
- (2) In paragraph (1) “authorized operation” means the aquaculture production business, processing establishment, non-market installation or put and take fishery covered by the authorization.
- (3) The notice must –
- (a) give the date on which the revocation is to take effect;
 - (b) give the reason for the revocation; and
 - (c) inform the operator of the right to apply for reconsideration under Regulation 37.

PART 3

REGISTRATION REQUIREMENTS

10 Registration

- (1) A person is guilty of an offence and liable to a fine of level 4 on the standard scale if –
 - (a) the person operates –
 - (i) a non-market installation,
 - (ii) a put and take fishery, or
 - (iii) a specialist transport business, being a business or undertaking that wholly or mainly transports live aquaculture animals in a mode of transport specially designed or adapted for that purpose; and
 - (b) the non-market installation, put and take fishery or specialist transport business is not registered by the Minister.
- (2) Paragraph (1) does not apply –
 - (a) to a non-market installation or put and take fishery that is required to be authorized by virtue of a notice under Regulation 3(3)(b); or
 - (b) to a non-market installation, put and take fishery or specialist transport business, in relation to an ornamental aquatic animal falling within Regulation 3(2).
- (3) An application for registration must be in such form and contain such information as the Minister may reasonably require for the purpose of the Minister’s functions as the competent authority under Directive 2006/88/EC and Commission Regulation 1251/2008.
- (4) If the Minister receives that form and information, and is satisfied that registration is required under paragraph (1) as read with paragraph (2), the Minister must –

- (a) register the non-market installation, put and take fishery or specialist transport business; and
 - (b) serve the operator with a written notice of a registration number.
- (5) An operator is guilty of an offence and liable to a fine of level 4 on the standard scale if the operator fails to notify the Minister in writing of any material change in the information provided under paragraph (3) within 90 days of that change.
- (6) A person is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine if –
- (a) the person provides information to the Minister under paragraph (3) or (5);
 - (b) the information is false; and
 - (c) the person knows or suspects that the information is false.

PART 4

PLACING ON THE MARKET

11 Application of Part 4

- (1) This Part does not apply to a person who –
- (a) for scientific purposes places on the market an aquaculture animal or an aquaculture animal product; and
 - (b) has obtained the prior written consent of the Minister.
- (2) The Minister may grant consent for the purposes of paragraph (1)(b) subject to such conditions as the Minister considers appropriate, having regard to the risk of the spread of disease.

12 General health requirements

- (1) A person is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if that person –
- (a) introduces a live aquaculture animal into a farm or mollusc farming area after an inspection in contravention of Article 9 of Commission Regulation 1251/2008;
 - (b) handles an imported aquaculture animal, or an imported product of such an animal, in contravention of Article 15(1) of Commission Regulation 1251/2008;
 - (c) releases an aquaculture animal into the wild in contravention of Article 15(2) of Commission Regulation 1251/2008; or
 - (d) handles transport water in contravention of Article 15(3) of Commission Regulation 1251/2008.
- (2) A person is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if, without the prior written consent of the Minister, the person releases an ornamental aquatic animal, kept in a

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- closed ornamental facility (within the meaning of Article 2(a) of Commission Regulation 1251/2008), into –
- (a) an open ornamental facility (within the meaning of Article 2(b) of Commission Regulation 1251/2008);
 - (b) a farm;
 - (c) a mollusc farming area;
 - (d) a relaying area;
 - (e) a put and take fishery; or
 - (f) the wild.
- (3) A person is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if that person –
- (a) places a relevant aquaculture animal on the market for farming; or
 - (b) releases a relevant aquaculture animal –
 - (i) into the wild, or
 - (ii) into a put and take fishery.
- (4) A relevant aquaculture animal is any aquaculture animal other than one which –
- (a) is clinically healthy; and
 - (b) comes from a farm or mollusc farming area –
 - (i) where there is no increased mortality, or
 - (ii) where there is increased mortality, but paragraph (5) applies.
- (5) This paragraph applies if –
- (a) the aquaculture animal comes from a part of the farm or mollusc farming area that is independent of the epidemiological unit in which the increased mortality has occurred; and
 - (b) the Minister gives his or her prior written consent to the placing on the market or release.

13 Certification requirements

- (1) A person is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if that person introduces into Jersey an aquaculture animal or aquaculture animal product that –
- (a) is required to be accompanied by an animal health certificate under Chapter III or IV of Commission Regulation 1251/2008; and
 - (b) is not accompanied by such a certificate completed in accordance with the relevant model specified in that Chapter.
- (2) A person is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine if, for the purpose of procuring the issue of an animal health certificate under Chapter III of Commission Regulation 1251/2008, that person –
- (a) makes a statement that is false and is known or suspected by that person to be false; or

- (b) intentionally fails to disclose any material particular.

14 Additional certification for susceptible and vector animals: place of introduction

- (1) This Regulation applies to an aquaculture animal that –
 - (a) is of a species specified, in Part II of Annex IV to Directive 2006/88/EC, as susceptible to a disease specified in that Part; or
 - (b) is to be regarded, by virtue of Article 3 of (and Annex I to) Commission Regulation 1251/2008, as a vector of such a disease.
- (2) Paragraph (3) applies, for the purpose of Regulation 13(1), if the animal is in a consignment intended for a put and take fishery or for release into the wild.
- (3) The place, at which the person introduces the animal, is to be treated as though that place has disease-free health status (being category I status under Part A of Annex III to Directive 2006/88/EC) in relation to the disease by virtue of which this Regulation applies to the animal.

15 Additional certification for susceptible and vector animals: wild animals

- (1) This Regulation applies to an animal, that is not an aquaculture animal, if –
 - (a) it is a live aquatic animal that can survive in the natural aquatic environment in Jersey; and
 - (b) it is –
 - (i) of a species specified, in Part II of Annex IV to Directive 2006/88/EC, as susceptible to a disease specified in that Part,
 - (ii) to be regarded, by virtue of Article 3 of (and Annex I to) Commission Regulation 1251/2008, as a vector of such a disease, or
 - (iii) of a species specified, in Part C of Annex II to Commission Regulation 1251/2008, as susceptible to a disease specified in that Part.
- (2) The animal is to be treated as though it is an aquaculture animal –
 - (a) for the purposes of Regulations 13(1) and 14, if it is in a consignment intended for a put and take fishery or for release into the wild; or
 - (b) for the purpose of Regulation 13(1), if it is in a consignment intended for further processing.

16 Disease prevention requirements in respect of transport

- (1) A person is guilty of an offence and liable to a fine if that person transports an aquaculture animal in breach of any of the requirements in paragraph (2).

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- (2) The requirements are that –
 - (a) the duration of the transport must be as short as reasonably possible;
 - (b) the means of transport must be cleaned and disinfected before dispatch;
 - (c) if the animal is transported overland in water –
 - (i) it must be transported in such a way that the water cannot escape from the means of transport, and
 - (ii) any water exchange is carried out only at a water station that the Minister has approved; and
 - (d) the conditions of transport must minimize the risk of spreading disease to –
 - (i) the animal being transported,
 - (ii) any aquatic animal at any place of transit,
 - (iii) any aquatic animal at the place of destination.
 - (3) This Regulation does not apply to transport by means of a container that –
 - (a) is watertight and airtight;
 - (b) is no larger than one cubic metre; and
 - (c) is accompanied by a label or document that lists its contents, place of origin, any place of transit and its place of destination.
 - (4) The obligations imposed by this Regulation are in addition to and not in derogation from the obligations imposed by and under the Community Provisions (Welfare of Animals during Transport) (Jersey) Regulations 2013⁷ and the Animal Welfare (Jersey) Law 2004⁸.

17 Transporting imported animals directly to quarantine

- (1) A person is guilty of an offence and liable to a fine if –
 - (a) the person imports from a third country an aquaculture animal that is intended for quarantine; and
 - (b) the animal is not transported directly from the border inspection post to a quarantine facility.
- (2) In paragraph (1)(b) –
 - (a) “border inspection post” means, in relation to a species of animal, a place for the time being designated and approved in relation to that species under Article 6 of Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries (OJ L 268, 24.9.1991, p. 56);
 - (b) “quarantine facility” has the meaning given in Article 2(1) of Commission Decision 2008/946/EC on quarantine.

18 Recording of information in respect of transport

- (1) A person who transports an aquaculture animal is guilty of an offence and liable to a fine of level 4 on the standard scale if that person fails to keep a record –
 - (a) of the information referred to in paragraph (2);
 - (b) in the form and manner, if any, specified under paragraph (3);
 - (c) for a period of 2 years beginning with the date on which the aquaculture animal reaches its place of destination.
- (2) The information is –
 - (a) the number of any animals that die in the course of transport;
 - (b) all facilities operating under an authorization or registration granted under Part 2 or 3 that are visited in the course of the transport;
 - (c) any water exchange in the course of the transport;
 - (d) the source of any water introduced into the means of transport; and
 - (e) the location at which any water from the means of transport is discharged.
- (3) The Minister may specify the form and manner in which the information referred to in paragraph (2) must be recorded.
- (4) It is a defence for a person charged with an offence in relation to paragraph (2)(a) to show that it was not practicable to keep such a record.
- (5) This Regulation does not apply to transport by means of a container that –
 - (a) is watertight and airtight;
 - (b) is no larger than one cubic metre; and
 - (c) is accompanied by a label or document that lists its contents, place of origin, any place of transit and its place of destination.

PART 5**NOTIFICATION AND CONTROL OF DISEASE OUTBREAKS, AND
INTERIM MEASURES****19 Notifiable diseases**

- (1) For the purposes of this Part, a disease is a notifiable disease if it is –
 - (a) a disease listed in Part II of Annex IV to Directive 2006/88/EC;
 - (b) a disease specified in an Annex to Decision 2010/221/EU as a disease for which Jersey –
 - (i) is regarded as being free of the disease,
 - (ii) has an approved eradication programme for the disease, or
 - (iii) has an approved surveillance programme for the disease; or
 - (c) a supplementary disease, prescribed under paragraph (2).

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- (2) The Minister may by Order prescribe a disease as a supplementary disease if, notwithstanding that the disease does not fall within paragraph (1)(a) or (b), the Minister considers –
 - (a) that it is appropriate and necessary to control the disease in Jersey by rendering it a notifiable disease, on the ground that the disease constitutes a significant risk to the health of aquaculture animals or wild aquatic animals in Jersey; and
 - (b) that the disease may be controlled in Jersey, by the measure of rendering it a notifiable disease, without –
 - (i) contravening Article 43(1) of Directive 2006/88/EC, or
 - (ii) requiring approval under Article 43(2) of that Directive.
 - (3) The Minister must, in considering whether to exercise the power conferred by paragraph (2), have regard to whether the disease is specified in any of the Annexes to Decision 2010/221/EU in relation to a state or area other than Jersey.
 - (4) For the purpose of this Regulation, “Decision 2010/221/EU” means Commission Decision 2010/221/EU of 15 April 2010 (OJ L 98, 20.4.2010, p. 7) approving national measures for limiting the impact of certain diseases in aquaculture animals and wild aquatic animals in accordance with Article 43 of Council Directive 2006/88/EC.

20 Obligation to notify in case of suspicion of a notifiable disease or increased mortality

- (1) A relevant person is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if that person –
 - (a) knows or suspects that a notifiable disease is present in aquatic animals; and
 - (b) fails immediately to notify the Minister of the information or other matter on which that knowledge or suspicion is based.
- (2) A relevant person is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if that person –
 - (a) knows or suspects that increased mortality has occurred or is occurring in aquaculture animals; and
 - (b) fails immediately to notify the Minister or a veterinarian of the information or other matter on which that knowledge or suspicion is based.
- (3) In this Regulation “a relevant person” means –
 - (a) the owner of, or any person attending, aquatic animals;
 - (b) a person accompanying aquaculture animals during transport;
 - (c) a veterinarian, or other professional, involved in aquatic animal health services; or
 - (d) any other person with an occupational relationship to aquatic animals of susceptible species or to products of such animals.

21 Initial designation

- (1) If the Minister suspects that a notifiable disease or an emerging disease is present, or may become present, in aquatic animals in Jersey, the Minister must designate the area that he or she considers appropriate to prevent or limit the spread of that disease.
- (2) The Minister must, in relation to an initial designation –
 - (a) take samples of any water or aquatic animals that the Minister suspects are infected;
 - (b) examine the samples in a laboratory designated by the Minister under Article 57 of Directive 2006/88/EC; and
 - (c) undertake an epizootic investigation in accordance with Article 29 of Directive 2006/88/EC.
- (3) A person is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if, without the prior consent of the Minister, that person –
 - (a) moves an aquatic animal into, out of or within an initial designation area; or
 - (b) disposes of a dead aquatic animal that comes from that area.
- (4) The Minister may give consent for the purpose of paragraph (3) –
 - (a) to a particular person, in writing; or
 - (b) generally, to all persons or to a description of persons, by notice published by the Minister in a manner appearing to the Minister likely to bring it to the attention of those persons.

22 Contents and publication of an initial designation

- (1) An initial designation must –
 - (a) be in the form of a written notice;
 - (b) describe the initial designation area; and
 - (c) describe the circumstances in which a person commits an offence under Regulation 21(3).
- (2) An initial designation may specify that –
 - (a) any equipment, material or substance liable to transmit disease must not be moved into, out of or within the initial designation area or any part of that area;
 - (b) any means of transport liable to transmit disease must not be moved into, out of or within that area or any part of that area.
- (3) The Minister –
 - (a) must serve a copy of an initial designation on any person the Minister considers likely to be materially affected by the making of the designation; and
 - (b) must also publish the initial designation in such manner as the Minister considers appropriate.

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- (4) A person who contravenes a restriction imposed under paragraph (2) is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.

23 Actions by an inspector in respect of an initial designation

- (1) This Regulation applies if the Minister has made an initial designation.
- (2) An inspector may –
- (a) take samples of any aquatic animal or water in the initial designation area;
 - (b) slaughter, destroy or dispose of any such animal.
- (3) An inspector may by written notice direct any person to –
- (a) take steps to secure the slaughter, destruction or disposal of any aquatic animal in the initial designation area;
 - (b) operate a disinfection facility at the entrance to, and exit from, any farm or mollusc farming area in that area;
 - (c) disinfect any means of transport in that area;
 - (d) take any other steps that the inspector considers necessary to eradicate the disease or to prevent or limit the spread of the disease to other aquatic animals.
- (4) An inspector may by written notice prohibit any person from entering any farm or mollusc farming area within the initial designation area.
- (5) Where an inspector considers that a requirement under paragraph (3) has not been complied with, the inspector may –
- (a) enter any place within the initial designation area;
 - (b) take or cause to be taken such steps as the inspector considers necessary to –
 - (i) ensure compliance with the requirement, or
 - (ii) remedy the consequences of the failure to carry it out;
 - (c) recover any expenses reasonably incurred in so doing from any person who has failed to comply with the requirement.
- (6) A person who, without reasonable excuse, contravenes a requirement imposed under paragraph (3) or (4) is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.

24 Amendment, suspension and withdrawal of initial designation

- (1) The Minister may, by further written notice served in accordance with Regulation 22(3), amend, suspend or withdraw an initial designation.
- (2) The Minister must withdraw an initial designation when the Minister –
- (a) is satisfied that the suspected disease is not present, or is not likely to become present, in the initial designation area; or
 - (b) publishes a confirmed designation in respect of that area under Regulation 26(3).

25 Confirmed designation

- (1) If the Minister has confirmed that a notifiable disease or an emerging disease is present in aquatic animals in Jersey, the Minister must designate the area that he or she considers appropriate to prevent or limit the spread of that disease.
- (2) A person commits an offence and is liable to imprisonment for a term of 6 months and to a fine if, without the prior consent of the Minister, that person –
 - (a) moves an aquatic animal into, out of or within a confirmed designation area; or
 - (b) disposes of a dead aquatic animal that comes from that area.
- (3) The Minister may give consent for the purpose of paragraph (2) –
 - (a) to a particular person, in writing; or
 - (b) generally, to all persons or to a description of persons, by notice published by the Minister in a manner appearing to the Minister likely to bring it to the attention of those persons.

26 Contents and publication of a confirmed designation

- (1) A confirmed designation must –
 - (a) be in the form of a written notice;
 - (b) describe the confirmed designation area; and
 - (c) describe the circumstances in which a person commits an offence under Regulation 25(2).
- (2) A confirmed designation may specify either or both of the following restrictions –
 - (a) that any equipment, material or substance liable to transmit disease must not be moved into, out of or within the confirmed designation area or any part of that area;
 - (b) that any means of transport liable to transmit disease must not be moved into, out of or within that area or any part of that area.
- (3) The Minister must –
 - (a) publish a confirmed designation in such manner as the Minister considers appropriate; and
 - (b) serve a copy of a confirmed designation on any person the Minister considers likely to be materially affected by the making of the designation.
- (4) A person who contravenes a restriction imposed under paragraph (2) is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.

27 Actions by an inspector in respect of a confirmed designation

- (1) This Regulation applies if the Minister has made a confirmed designation.
- (2) An inspector may –

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- (a) take samples of any aquatic animal or water in the confirmed designation area; or
 - (b) slaughter, destroy or dispose of any such animal.
- (3) An inspector may by written notice direct any person to –
- (a) take steps to secure the slaughter, destruction or disposal of any aquatic animal in the confirmed designation area;
 - (b) operate a disinfection facility at the entrance to, and exit from, any farm or mollusc farming area in that area;
 - (c) disinfect any means of transport in that area; or
 - (d) take any other steps that the inspector considers necessary to eradicate the disease or to prevent or limit the spread of the disease to other aquatic animals.
- (4) An inspector may by written notice prohibit any person from entering any farm or mollusc farming area within the confirmed designation area.
- (5) If an inspector considers that a requirement under paragraph (3) has not been complied with, the inspector may –
- (a) enter any place within the confirmed designation area;
 - (b) take or cause to be taken such steps as the inspector considers necessary to –
 - (i) ensure compliance with the requirement, or
 - (ii) remedy the consequences of the failure to carry it out; and
 - (c) recover any expenses reasonably incurred in so doing from any person who has failed to comply with the requirement.
- (6) A person who, without reasonable excuse, contravenes a requirement imposed under paragraph (3) or (4) is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.

28 Amendment, suspension and withdrawal of confirmed designation

- (1) The Minister may, by further written notice published and served in accordance with Regulation 26(3), amend, suspend or withdraw a confirmed designation.
- (2) The Minister must withdraw a confirmed designation when the Minister is satisfied that the notifiable disease or the emerging disease is not present in the confirmed designation area.

29 Vaccination

A person is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine if, without the prior written consent of the Minister, that person vaccinates an aquatic animal against a notifiable disease.

30 Order pending approval under Article 43 of Directive 2006/88/EC

- (1) Paragraph (2) applies, in relation to a disease, other than a disease that is notifiable under Regulation 19(1)(a) or (b), if the Minister –
 - (a) considers that the disease should be subject in Jersey to a measure that requires approval under Article 43(2) of Directive 2006/88/EC;
 - (b) has applied for that approval for that measure, or intends to do so promptly; and
 - (c) considers that there are reasonable grounds for believing that the approval should be given.
- (2) The Minister may by Order –
 - (a) designate that disease for the purpose of this Regulation; and
 - (b) make such provision to give effect to that measure in relation to that disease as is permitted by Article 43 of Directive 2006/88/EC.
- (3) An Order made under this Regulation ceases to have effect if approval under Article 43(2) of Directive 2006/88/EC is refused or withdrawn.
- (4) Without prejudice to the generality of Article 11 of the Interpretation (Jersey) Law 1954⁹, the Minister must revoke an Order made under this Regulation if the Minister considers that the requirements of paragraph (1) are no longer met.

PART 6**ENFORCEMENT****31 Powers of enforcement under Diseases of Animals (Jersey) Law 1956**

Articles 34, 34A, 34B and 35 of the Diseases of Animals (Jersey) Law 1956¹⁰ apply to and in relation to an aquaculture animal as if –

- (a) Parts 2 to 5 of these Regulations, Commission Regulation 1251/2008 and every relevant EU instrument were provisions of that Law;
- (b) an Order had been made under Articles 1(1) and 1(3) of that Law, for the purposes of Articles 34, 34A, 34B and 35 of that Law –
 - (i) extending the definition “animals”, in Article 1(1) of that Law, to include aquaculture animals, and
 - (ii) extending the definition “disease”, in Article 1(3) of that Law, to include notifiable diseases; and
- (c) Article 34A(7) of that Law was modified to include provision that the inspector may be accompanied by a representative of the European Commission acting for the purposes of Directive 2006/88/EC.

32 Enforcement notices

- (1) The Minister may serve a person with an enforcement notice if the Minister considers that the person has not complied with, is not complying with, or is not likely to comply with –
 - (a) a requirement of these Regulations, of Commission Regulation 1251/2008, or of a relevant EU instrument; or
 - (b) a condition of an authorization under Part 2.
- (2) An enforcement notice must state –
 - (a) the steps that the person must take;
 - (b) the date by which the steps must be taken;
 - (c) the reason for the service of the notice and for the requirements in it; and
 - (d) that there is a right to apply for reconsideration under Regulation 37.
- (3) If an inspector considers that a requirement of an enforcement notice has not been complied with, the inspector may –
 - (a) take such steps as the inspector considers necessary –
 - (i) to ensure compliance with the requirements of the notice, or
 - (ii) to remedy the consequences of the failure to take the steps required by the notice; and
 - (b) recover any expenses reasonably incurred in so doing from any person who has failed to comply with the notice.
- (4) A person who, without reasonable excuse, fails to comply with an enforcement notice commits an offence, and is liable to imprisonment for a term of 6 months and to a fine.

33 Obstruction

- (1) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if that person –
 - (a) intentionally obstructs another person who performs a relevant function;
 - (b) fails without reasonable cause to give to another person, who performs a relevant function, any assistance or information which that other person reasonably requires for the purpose of that function; or
 - (c) knowingly or recklessly gives false or misleading information to another person who performs a relevant function.
- (2) For the purpose of paragraph (1) a person performs a relevant function if that person acts in the execution of these Regulations, of Commission Regulation 1251/2008 or of a relevant EU instrument.

34 Enforcement under other enactments

The Minister may by Order amend –

- (a) Regulation 31, 32 or 33 to apply, in relation to an aquaculture animal and subject to any modification appearing to the Minister to be required for such application, any provision of any other enactment relating to agriculture or to the health or transport of animals or plants, being a provision that appears appropriate to the Minister for the enforcement of duties under these Regulations, under Commission Regulation 1251/2008 or under a relevant EU instrument; and
- (b) Regulation 1 to make any amendment consequential on an amendment under paragraph (a), or to amend the definition “inspector”.

35 Other offences of contravening Commission Regulation or EU instrument

A person, other than the Minister, an inspector or an EU institution, commits an offence and is liable to a fine of level 4 on the standard scale if the person, without reasonable excuse, contravenes a provision of Commission Regulation 1251/2008 or of a relevant EU instrument, the contravention of which is not an offence under any other provision of these Regulations.

36 Offences by bodies corporate and others

(1) In this Regulation –

“relevant offence” means an offence under these Regulations that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;

“relevant person” means –

- (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
- (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –
 - (i) a general partner, or
 - (ii) a limited partner who is participating in the management of the partnership;
- (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
 - (i) a director, manager, secretary or other similar officer of the body corporate, and
 - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member’s functions of management; and
- (d) a person purporting to act in any capacity described in subparagraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.

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- (2) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) If a relevant offence –
- (a) is an offence that may be committed by neglect; and
 - (b) is proved to be attributable to any neglect on the part of a relevant person,
- that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

PART 7

MISCELLANEOUS

37 Reconsideration of Minister's decision

- (1) This Regulation applies to a decision of the Minister to do any of the following –
- (a) to refuse to grant an authorization under Regulation 5;
 - (b) to attach a condition to an authorization under Regulation 6(3);
 - (c) to amend an authorization on the Minister's initiative under Regulation 7(3)(a);
 - (d) to refuse an application under Regulation 7(3)(b) for an amendment to an authorization;
 - (e) to suspend an authorization under Regulation 8;
 - (f) to revoke an authorization under Regulation 9;
 - (g) to serve an enforcement notice under Regulation 32.
- (2) The person served with notice of the decision may, within 21 days after that service, apply for reconsideration of the decision by making written representations about the decision to a person appointed for the purpose by the Minister.
- (3) The Minister may make written submissions concerning the decision to the person appointed.
- (4) The person appointed must review the decision and report in writing to the Minister on the decision, the representations and any submissions.
- (5) The Minister must reconsider the decision, having regard to the report, and make a final determination.
- (6) The Minister must serve written notice of the final determination, giving reasons, on the person who made the representations.
- (7) An application for reconsideration of a decision does not suspend the effect of that decision, unless the Minister provides otherwise under paragraph (8).

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- (8) The Minister may, in the notice of a decision falling within paragraph (1)(c), (e) or (f), provide that the decision does not take effect until –
- (a) if the person served does not apply for reconsideration within the period for doing so under paragraph (2), the expiry of that period; or
 - (b) if that person does apply for reconsideration within that period, the date on which that application is withdrawn or the Minister serves notice under paragraph (6).

38 Power to prescribe fees

- (1) The Minister may, by Order, prescribe a fee for –
- (a) an application for, or the grant or issue of, a certificate, approval, authorization or registration under these Regulations, under Commission Regulation 1251/2008 or under a relevant EU instrument; or
 - (b) an inspection, test or official examination carried out –
 - (i) under these Regulations, Commission Regulation 1251/2008 or a relevant EU instrument,
 - (ii) under a condition imposed, by or under Regulation 6 (including such a condition amended under Regulation 7), on an authorization under Part 2, or
 - (iii) for the purpose of determining an application mentioned in sub-paragraph (a).
- (2) If a fee is prescribed under paragraph (1), without prejudice to any other method of recovery –
- (a) the fee is recoverable as a civil debt; and
 - (b) the Minister or an inspector may, if the fee is for or in respect of the exercise of a function by the Minister or by the inspector, refuse to exercise that function until the fee has been paid.
- (3) In exercising the powers conferred by this Regulation, the Minister must comply with any restriction contained in Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1), irrespective of whether that restriction has effect in Jersey by virtue of Regulation 2(2) or by virtue of the European Union (Jersey) Law 1973¹¹.
- (4) Paragraph (3) is without prejudice to any other restriction on the power of the Minister under this Regulation, whether that restriction arises under these Regulations, under Directive 2006/88/EC, under Commission Regulation 1251/2008, under a relevant EU instrument, or otherwise.

39 Electronic communication of notices

Article 11 of the Electronic Communications (Jersey) Law 2000¹² applies to any requirement of these Regulations for the Minister to serve a written notice, as it applies to a requirement to give information in writing.

40 Orders – supplementary and other provisions

Each power under these Regulations to make an Order includes power to make any supplementary, incidental, consequential, transitional, transitory or saving provision that appears to the Minister to be necessary or expedient for the purpose of the Order.

41 Repeal

- (1) The Fish Health (Jersey) Regulations 1999¹³ are repealed.
- (2) The Community Provisions (Mortality in Oysters) (Jersey) Regulations 2010¹⁴ are repealed.
- (3) The Diseases of Animals (Importation of Live Fish) (Jersey) Order 1984¹⁵ is revoked.

42 Citation and commencement

These Regulations may be cited as the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 201-, and come into force 2 weeks after they are made, except for –

- (a) Regulation 3(1), which comes into force 6 weeks after these Regulations are made; and
- (b) Regulation 10(1), which comes into force 13 weeks after these Regulations are made.

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- 1 *chapter 17.245*
 - 2 *chapter 02.400*
 - 3 *chapter 17.245*
 - 4 *chapter 17.210*
 - 5 *chapter 22.450*
 - 6 *chapter 14.825.24*
 - 7 *chapter 17.245.98*
 - 8 *chapter 02.050*
 - 9 *chapter 15.360*
 - 10 *chapter 02.400*
 - 11 *chapter 17.210*
 - 12 *chapter 04.280*
 - 13 *R&O.9463 (chapter 17.245.60)*
 - 14 *R&O.81/2010 (chapter 17.245.12)*
 - 15 *R&O.7253 (chapter 02.400.18)*