

STATES OF JERSEY



Jersey

DRAFT EU LEGISLATION (MONITORING OF RESIDUES IN ANIMALS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 4th October 2019
by the Minister for the Environment**

STATES GREFFE

REPORT

The Draft EU Legislation (Monitoring of Residues in Animals) (Jersey) Regulations 201- (“the draft Regulations”) would, if passed make provision in relation to the application of relevant European Union residue provisions as they apply to farmed animals.

The effect is to be dynamically aligned to EU Legislation for the purpose of reducing the risk to human health from the presence, or potential for presence, of unwanted residues in farmed animals.

Farmed animals includes an aquaculture animal, within the meaning of the [EU Legislation \(Aquatic Animal Health\) \(Jersey\) Regulations 2016](#); and any other animal the meat or a product of which is intended for human consumption, within the meaning of each of those expressions in the Substances Directive.

Three ‘relevant’ EU provisions are given effect, to the extent, if any, that they do not have effect under Article 2 of the [European Union \(Jersey\) Law 1973](#).

They are –

- (1) Monitoring Directive (Council Directive 96/23/EC of 29 April 1996) on measures to monitor certain substances and residues thereof in live animals and animal products.
- (2) Sampling Decision (Commission Decision 97/747/EC of 27 October 1997) fixing the levels and frequencies of sampling provided for by Council Directive 96/23/EC for the monitoring of certain substances and residues thereof in certain animal products.
- (3) Substances Directive (Council Directive 96/22/EC of 29 April 1996) concerning the prohibition on the use in stockfarming (keeping livestock) of certain substances having a hormonal or thyrostatic action and of beta-agonists (medications that relax muscles in the airways).

The Regulations would be enforced by officers in the same way as those acting under the [Animal Health \(Surveillance\) \(Jersey\) Order 2017](#), with the Minister for the Environment able to serve an enforcement notice on a person who has not complied with the relevant EU provisions (or is not complying, or is not likely to comply). A person served with such a notice can apply to the Minister for reconsideration (but the application does not suspend the notice). Failure to comply with an enforcement notice and contravention of the relevant EU provisions will be an offence.

The Regulations will give the Minister power, until the end of 2020, to make Orders to cater for Brexit in relation to unwanted residues in farmed animals, and Orders to amend these Regulations or otherwise, as they relate to the subject matter of, or the implementation of, a relevant EU residue provision.

Financial and manpower implications

There is estimated a cost of £100,000 per annum for testing and a maximum of 0.5 FTE staff resource for collection, despatch and administering the process.

EXPLANATORY NOTE

These Regulations if passed will make provision in relation to the application to Jersey of European Union requirements for monitoring residues of veterinary medicines and other substances in farm animals and animal products.

Regulation 1 is the interpretation provision. Among other definitions, it defines a “farmed animal” as an aquaculture animal (farmed fish, crustaceans and molluscs) or any other animal the meat or a product of which is intended for human consumption. It also defines “relevant EU residues provision” as 2 Directives (96/22/EC and 96/23/EC) and a Decision (97/747/EC), as amended from time to time. “Minister” is defined as the Minister for the Environment.

Regulation 2 gives effect to the relevant EU residues provisions, to the extent that they do not already have effect under the European Union (Jersey) Law 1973 (so they will continue to have effect after that Law is repealed). In the case of the Directives, the effect is limited to any elements that have direct effect under EU law (unlike EU Regulations, EU Directives do not automatically have direct effect). The Minister is given power by Order to add other EU provisions that relate to unwanted residues in farmed animals (or to remove them).

Regulation 3 requires the Minister to draw up and publish an annual monitoring plan in accordance with Directive 96/23/EC.

Regulation 4 extends the surveillance powers under the Animal Health (Surveillance) (Jersey) Order 2017 to include surveillance for the purpose of implementing the relevant EU residues provisions and the annual monitoring plan, and generally to reduce the risk to human health from unwanted residues in farmed animals.

Regulation 5 requires the keepers of farmed animals (and any other domestic cattle, pigs, sheep or goats) to record veterinary drugs administered to the animals, keep the records for 5 years, and show them to authorised persons on demand. Failure to do so, without reasonable excuse, is made a criminal offence carrying a fine of up to level 3 on the standard scale (currently £10,000), with no imprisonment.

Regulation 6 enables the Minister to serve an enforcement notice on a person who has not complied (or is not complying, or is not likely to comply) with the relevant EU residues provisions or with the record-keeping requirements in *Regulation 5*, or who (without reasonable excuse) obstructs the implementation of the annual monitoring plan. The provisions are similar to those in the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016 for farmed aquatic animals. It is an offence to fail (without a reasonable excuse) to comply with an enforcement notice, carrying imprisonment for up to 12 months or a fine (with no maximum) or both, and an inspector can take steps to achieve compliance at the person’s expense. A person served with an enforcement notice can apply to the Minister for reconsideration (but the application does not suspend the notice).

Regulation 7 creates offences of contravening a prohibition in Directive 96/22/EC. The keeper or importer of a farmed animal commits an offence, carrying imprisonment for up to a year or a fine (with no maximum) or both, if that keeper or importer contravenes a prohibition in that Directive in relation to that farmed animal. Anyone else (apart from the Minister and agents of the Minister) who contravenes such a prohibition, without reasonable excuse, also commits a lesser offence carrying a fine of up to level 3 on the standard scale (currently £10,000), with no imprisonment. Goods must not be imported or exported in contravention of a prohibition required by a relevant EU residues

provision. An importer or exporter may commit an offence under the Customs and Excise (Jersey) Law 1999 if the import or export is prohibited by this Regulation.

Regulation 8 provides for criminal liability of directors and other officers when a corporate body (or some forms of partnership) commits an offence under these Regulations through the officer's consent or connivance (or neglect, where the body's offence can be committed by neglect).

Regulation 9 gives the Minister power, until the end of 2020, to make Orders to cater for Brexit in relation to unwanted residues in farmed animals, equivalent to those given by the European Union (United Kingdom Exit – Animal Health and Welfare) (Jersey) Regulations 2019 in relation to animal health and welfare.

Regulation 10 is the citation and commencement provision. The Regulations would come into force 14 days after being passed by the Assembly.



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DRAFT EU LEGISLATION (MONITORING OF RESIDUES IN ANIMALS) (JERSEY) REGULATIONS 201-

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DRAFT EU LEGISLATION (MONITORING OF RESIDUES IN ANIMALS) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES make these Regulations under Articles 2, 5A and 5B of the European Union Legislation (Implementation) (Jersey) Law 2014¹ –

1 Interpretation

(1) In these Regulations –

“farmed animal” means –

- (a) an aquaculture animal, within the meaning of the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016²; and
- (b) any other animal the meat or a product of which is intended for human consumption, within the meaning of each of those expressions in the Substances Directive;

“keeper” has the meaning given by the Animal Health (Jersey) Law 2016³;

“Minister” means the Minister for the Environment;

“Monitoring Directive” means Council Directive 96/23/EC of 29 April 1996 (OJ L 125, 23.5.1996, p. 10) on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC;

“relevant EU residues provision” means the Monitoring Directive, the Substances Directive and the Sampling Decision;

“Sampling Decision” means Commission Decision 97/747/EC of 27 October 1997 fixing the levels and frequencies of sampling provided for by Council Directive 96/23/EC for the monitoring of certain substances and residues thereof in certain animal products (OJ L 303, 6.11.1997, p. 12);

“Substances Directive” means Council Directive 96/22/EC of 29 April 1996 (OJ L 125, 23.5.1996, p.3) concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC;

“unwanted residue” means a substance or residue, within the meaning of those terms in the Monitoring Directive, that is listed in Annex I to that Directive or in Annex II to the Substances Directive.

- (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.

2 Effect of EU residues provisions

- (1) The Sampling Decision has effect in Jersey, to the extent, if any, that it does not have effect under Article 2 of the European Union (Jersey) Law 1973⁴.
- (2) The Monitoring Directive and the Substances Directive have effect in Jersey to the extent, if any, that –
 - (a) under the law of the European Union, they have effect in member States of the European Union without further enactment by those member States; and
 - (b) they do not have that effect under Article 2 of the European Union (Jersey) Law 1973.
- (3) The Minister is the competent authority for the purpose of the relevant EU residues provisions.
- (4) The Minister may by Order amend this Regulation, and the definition “relevant EU residues provision” in Regulation 1(1), to remove a reference to an EU provision or to give effect to any other EU provision that relates to unwanted residues in farmed animals.
- (5) The obligations imposed by these Regulations are in addition to and not in derogation from the obligations imposed by and under –
 - (a) the Food Safety (Jersey) Law 1966⁵;
 - (b) the Animal Health (Jersey) Law 2016⁶;
 - (c) the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016⁷; and
 - (d) the EU Legislation (Wild Aquatic Animals – Food and Feed) (Jersey) Regulations 2019⁸.

3 Annual monitoring plan

- (1) The Minister must draw up for each year a plan that complies with the requirements of Articles 5 to 7 of the Monitoring Directive.
- (2) The Minister must publish the plan in a manner appearing to the Minister to be likely to bring it to the attention of the keepers of farmed animals.

4 Surveillance

- (1) A person exercising a power under Article 3 of the Animal Health (Surveillance) (Jersey) Order 2017⁹ may do so –

- (a) for the purpose of implementing a relevant EU residues provision or the plan published under Regulation 3; or
 - (b) otherwise for the purpose of reducing the risk to human health from the presence, or potential for presence, of unwanted residues in farmed animals.
- (2) Article 5 of the Animal Health (Surveillance) (Jersey) Order 2017 applies in relation to surveillance carried out under paragraph (1) as it does to surveillance carried out under that Order.

5 Keeper to record administration of veterinary drugs

- (1) This Regulation applies to an animal that –
- (a) is a domestic animal of the bovine, porcine, ovine or caprine species; or
 - (b) is otherwise a farmed animal.
- (2) The keeper of the animal must –
- (a) after a veterinary drug, within the meaning of the Medicines (Jersey) Law 1995¹⁰, is administered to that animal, record –
 - (i) the name and quantity of the drug,
 - (ii) the date and method of administration, and
 - (iii) the withdrawal period observed, within the meaning of that expression in the Monitoring Directive;
 - (b) retain that record for at least 5 years; and
 - (c) permit the Minister, or a person authorised by the Minister, to inspect on demand any or all records so retained.
- (3) A person who, without reasonable excuse, contravenes paragraph (2) commits an offence and is liable to a fine of level 3 on the standard scale.

6 Enforcement notices

- (1) The Minister may serve a person with a notice (an “enforcement notice”) if the Minister considers that the person –
- (a) has not complied with, is not complying with, or is not likely to comply with a requirement (whether taking the form of an obligation or a prohibition or otherwise) of a relevant EU residues provision;
 - (b) without reasonable excuse, has obstructed or is obstructing the implementation of the plan published under Regulation 3; or
 - (c) has not complied with, is not complying with, or is not likely to comply with Regulation 5(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 paragraph (6).

- (3) A person who, without reasonable excuse, fails to comply with a requirement in an enforcement notice commits an offence, and is liable to imprisonment for a term of 12 months and to a fine.
- (4) Paragraphs (1) to (7) and (10) of Article 23 of the Animal Health (Jersey) Law 2016¹¹ apply to a notice under this Regulation as they apply to a notice under the “relevant legislation” for the purpose of that Law.
- (5) If an inspector, within the meaning of the Animal Health (Jersey) Law 2016, 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.
- (6) A person served with an enforcement notice may, within 21 days after that service, apply for reconsideration of the decision to serve the notice, by making written representations about that decision to a person appointed for the purpose by the Minister.
- (7) The Minister may make written submissions concerning the decision to the person appointed.
- (8) The person appointed must review the decision and report in writing to the Minister on the decision, the representations and any submissions.
- (9) The Minister must –
 - (a) reconsider the decision, having regard to the report;
 - (b) make a final determination; and
 - (c) serve written notice of the final determination, giving reasons, on the person who made the representations.
- (10) An application for reconsideration does not suspend the effect of the enforcement notice.

7 Prohibitions and offences

- (1) A person must not do an act in relation to a farmed animal, if member States are required by the Substances Directive to prohibit that act.
- (2) The keeper or importer of a farmed animal commits an offence, and is liable to imprisonment for a term of 12 months and to a fine, if that keeper or importer contravenes paragraph (1) in relation to that animal.
- (3) Paragraph (4) applies to a person other than –
 - (a) the competent authority;
 - (b) an agent of the competent authority; or
 - (c) a person who commits an offence under paragraph (2).
- (4) The person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person, without reasonable excuse, contravenes paragraph (1).

- (5) A person must not import or export any goods in circumstances in which member States are required by a relevant EU residues provision to prohibit the import or export of those goods.
- (6) Nothing in this Regulation limits the application of any offence under the Customs and Excise (Jersey) Law 1999¹², including an offence constituted wholly or partly by a contravention of paragraph (1) or (5).
- (7) In paragraph (1) “act” does not include an omission.

8 Criminal liability of directors 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.
- (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.

9 Orders to deal with deficiencies, arising from withdrawal of UK from EU, in residue standards

- (1) The Minister may, by Order, make any provision, whether by amendment (including an amendment to these Regulations) or otherwise, that –
 - (a) may be made by Regulations under Article 2, 5A or 5B of the European Union Legislation (Implementation) (Jersey) Law 2014¹³; and
 - (b) either –
 - (i) relates to the subject matter of, or the implementation of, a relevant EU residue provision, or
 - (ii) otherwise relates to unwanted residues in farmed animals.
- (2) No Order may be made under paragraph (1) after 2020.

10 Citation and commencement

These Regulations may be cited as the EU Legislation (Monitoring of Residues in Animals) (Jersey) Regulations 201- and come into force 14 days after they are made.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 17.245</i>
<i>2</i>	<i>chapter 17.245.61</i>
<i>3</i>	<i>chapter 02.020</i>
<i>4</i>	<i>chapter 17.210</i>
<i>5</i>	<i>chapter20.225</i>
<i>6</i>	<i>chapter 02.020</i>
<i>7</i>	<i>chapter 17.245.61</i>
<i>8</i>	<i>R&O.89/2019</i>
<i>9</i>	<i>chapter 02.020.86</i>
<i>10</i>	<i>chapter 20.625</i>
<i>11</i>	<i>chapter 02.020</i>
<i>12</i>	<i>chapter 24.660</i>
<i>13</i>	<i>chapter 17.245</i>