

The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2014

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Summary

- Comments are invited on the draft Alien and Locally Absent Species in Aquaculture Regulations which are due to be laid in Parliament towards the end of 2014.
- The deadline for comments is 05 November 2014.

Background

1. Council Regulation (EC) No 708/2007 places an obligation on Member States to ensure there is adequate protection of aquatic habitats from the risks associated with the use of alien and locally absent species in aquaculture, whilst contributing to the sustainable development of the aquaculture industry.
2. It does this by providing for a system of permits and environmental risk assessment. Permits are required for the introduction of alien species and for the translocation of locally absent species between Member States. Movements to closed aquaculture facilities are exempt but only where the species are transported under conditions which prevent the escape of those species and non-target species.
3. The EC Regulation exempts certain commonly used species, which are listed in Annex IV to the Regulation (Annex IV species) from the permitting requirements of the Regulation. However, Member States are able to place controls on the use of these species where they so wish.
4. Similarly, the translocation of locally absent species within Member States is exempt from the Regulation except where Member States can foresee environmental threats due to the translocation.

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5. The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations make provision for the enforcement of Council Regulation (EC) No 708/2007 and for the notification of both an intended movement of an Annex IV species and the translocation of a locally absent species from within the United Kingdom. The draft regulations are available as an additional document.
- 5. The Regulations do exempt from the notification requirements, movements of 2 of the Annex IV listed species – Crassostrea gigas (Pacific oyster) and Oncorhynchus mykiss (rainbow trout).**
6. For the other species listed, where measures are considered necessary to restrict the use of Annex IV species, the movement must be notified and may then be prohibited or allowed subject to any conditions by means of a notice or an environmental risk assessment may be requested.
7. In the case of a locally absent species, persons must also notify before the species is moved. They will then be advised by means of a notice if there are grounds for foreseeing threats to the environment due to the translocation. In such cases Council Regulation (EC) 708/2007 will apply and the individual must apply for a permit.

8. These Regulations allow for decisions concerning the grant of permits and notices concerning Annex IV species or locally absent species to be appealed. Permits (and notices in respect of Annex IV species) may also be amended or, where there is non-compliance, suspended or revoked. Enforcement notices may also be issued to require compliance.

Policy Objectives

9. Council Regulation (EC) No.708/2007 establishes a framework governing aquaculture practices in relation to alien and locally absent species. The main objective is to enable the economic growth of the aquaculture sector, whilst ensuring adequate protection for the aquatic environment from the risks associated with the use of alien and locally absent species.

10. The framework enables us to adopt a precautionary approach to the use of such species, whereby they are subject to appropriate risk assessment protocols before their use in proposed aquaculture developments. This approach is consistent with Government policy in relation to the regulation of non-native species, which recognises that preventing the introduction of potentially invasive species is more cost-effective than trying to apply controls retrospectively.

11. Alien species have been identified as one of the key causes for the loss of biodiversity in the EU and the world at large. They can have significant economic and social impacts, and could undermine the EU's sustainable development objectives. Aquaculture is a fast growing innovative industry, constantly looking for new outlets and markets. In order to fully adapt to market conditions and changes, it is essential that the industry diversifies the species it produces, but that this is balanced with appropriate safeguards for aquatic environments.

What to do next

12. Views and contributions are welcome from all individuals and organisations with an interest in aquaculture and in particular in the possible use of alien or locally absent species. Please:

- Read this consultation paper and associated draft regulations
- Submit your comments on the proposal to:

Lauren Ferrari
Scottish Government
Area 1B North
Victoria Quay
Leith
Edinburgh
EH6 6QQ
Or email: marinescotland@scotland.gsi.gov.uk

- If you would like an acknowledgement or a specific response on any points, please provide contact details

13. Your contributions must be received by 05 November 2014.

Handling your response

14. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form at Annex B, this will ensure that we treat your response appropriately. **Please note we will not accept any responses without a Respondent Information Form.**

15. The Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information including responses made to this consultation exercise.

Next steps

16. After the closing date, all responses will be analysed and considered and any amendments made to the draft legislation if appropriate.

Queries, comments and complaints

17. If you have any queries, comments or complaints about this consultation and how it has been conducted please contact:

Lauren Ferrari
Scottish Government
Area 1B North
Victoria Quay
Leith
Edinburgh
EH6 6QQ

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RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual	/	Group/Organisation
<input type="checkbox"/>	Please tick as appropriate	<input type="checkbox"/>

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Yes, make my response,
name and address all
available

or

Yes, make my response
available, but not my
name and address

or

Yes, make my response
and name available, but
not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

2014 No.

AQUACULTURE

**The Alien and Locally Absent Species in Aquaculture (Scotland)
Regulations 2014**

<i>Made</i>	- - - -	2014
<i>Laid before the Scottish Parliament</i>		2014
<i>Coming into force</i>	- -	2014

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and all other powers enabling them to do so.

The Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for any references to Annex IV of Council Regulation (EC) No. 708/2007(a) concerning use of alien and locally absent species in aquaculture to be construed as a reference to that Annex as amended from time to time.

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2014 and come into force on [] 2014.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

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

“aquaculture facility” includes an open and a closed aquaculture facility;

“Council Regulation 708/2007” means Council Regulation (EC) No. 708/2007 concerning use of alien and locally absent species in aquaculture, [as amended from time to time]; and

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

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

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

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

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

(3) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2007(a) which has been recorded in written form and is capable of being reproduced in that form.

Competent authority

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

PART 2

PERMITS

Permits

4.—(1) The competent authority may grant a permit subject to such conditions as it considers appropriate.

(2) A permit must be made in writing and contain the information in paragraph (3).

(3) The information is—

- (a) the unique reference number assigned to the permit;
- (b) the duration of the permit;
- (c) the species to which it applies;
- (d) the aquaculture facility into which the movement is permitted;
- (e) the monitoring period where the competent authority considers that a monitoring period longer than the period of 2 years prescribed in Article 18(1) of Council Regulation 708/2007 is required;
- (f) the conditions, if any, made under paragraph (1).

(4) Where the competent authority refuses to grant a permit, or grants it subject to conditions, it must—

- (a) notify the applicant in writing;
- (b) send with the notification the reasons for its decision; and
- (c) inform the applicant in writing of the right of appeal under regulation 8.

(5) It is an offence to make a statement in an application for a permit which the applicant knows, or suspects, is false.

Amendment of permit

5.—(1) The competent authority may amend the permit or any condition imposed by the permit.

(2) The amendment may be made—

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

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

Suspension of permit

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

- (2) The notice must include—
- (a) the date on which the suspension is to take place and its duration;
 - (b) the reasons for the suspension;
 - (c) information about the right of appeal under regulation 8.

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

Revocation of permit

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

- (2) The notice must include—
- (a) the date on which the revocation is to take place;
 - (b) the reasons for the revocation;
 - (c) information about the right of appeal under regulation 8.

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

Appeal of decision of the competent authority

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

- (a) a notice served under regulation 4(4) refusing to grant a permit or granting a permit subject to conditions;
- (b) a notice under regulation 5(4) amending or refusing to amend a permit;
- (c) a notice under regulation 6(2) suspending a permit;
- (d) a notice under regulation 7(2) revoking a permit.

- (2) The requirements are—
- (a) to make written representations to the competent authority; or

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

PART 3

MOVEMENT OF ANNEX IV SPECIES AND TRANSLOCATION OF LOCALLY ABSENT SPECIES

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

- 9.—**(1) This regulation applies to a proposal to—
- (a) move an Annex IV species;
 - (b) translocate a locally absent species within Scotland or to Scotland from another part of the United Kingdom.
- (2) A person proposing to undertake a movement must notify the competent authority in writing of the proposal.
- (3) An application for an authorisation to operate an aquaculture production business under the Aquatic Animal Health (Scotland) Regulations 2009^(a) in respect of an Annex IV species or a locally absent species or an application for the amendment of such an authorisation in so far as it relates to a proposal mentioned in paragraph (1)(a) or (b) is a notice for the purposes of paragraph (2).
- (4) Any person who notifies the competent authority in accordance with paragraph (2), or who is deemed to have done so in accordance with paragraph (3) in respect of the proposed movement of Annex IV species, must not undertake the proposed movement except under, and in accordance with the conditions of, a notice issued under regulation 11 or a notice which has been amended under regulation 13.
- (5) Paragraph (2) does not apply in respect of any subsequent movements of the same Annex IV species or translocations of the same locally absent species which are undertaken by the same person to the same aquaculture facility if—
- (a) the movements have previously been permitted by a notice issued under regulation 11(2)(b) or (3)(b); or

^(a) S.S.I. 2009/85 as amended by S.S.I. 2011/259, 2011/427, 2012/177.

- (b) the competent authority has previously issued a notice under regulation 12(2), that a permit is not required in respect of translocations. [*DN – should apply only where the same person is moving/ translocating and to the same aquaculture facility or do you prefer the broader “location” – see discussion for the permit regime parts.*]

(6) Failure to comply with paragraph (2) or (4) is an offence.

Exemption to regulation 9: rainbow trout and Pacific oysters

10.—(1) Regulation 9 does not apply to movements of a species mentioned in paragraph (2) where the movement is from an aquaculture facility which is operated by an authorised aquaculture production business to another aquaculture facility which is operated by an authorised aquaculture production business.

(2) The species are—

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

(3) In paragraph (1) “authorised” means authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009.

Movement of Annex IV species

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

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

- (a) prohibiting the movement;
- (b) permitting the movement, and any subsequent movement of the same species undertaken by that person to the same aquaculture facility subject to any conditions stated in the notice; or
- (c) requiring the person, at their own cost, to submit an environmental risk assessment carried out in accordance with Article 9(1) of Council Regulation 708/2007.

(3) After considering any environmental risk assessment required under paragraph (2)(c) the competent authority must serve a written notice on the person proposing to undertake the movement—

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

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

- (a) the unique reference number assigned to the notice;
- (b) the duration of the notice;
- (c) the species to which it applies;
- (d) the aquaculture facility into which the movement is permitted;

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

- (a) give reasons for that decision; and
- (b) inform the person on whom the notice is served of the right of appeal under regulation 16.

Translocation of locally absent species

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

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

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

- (a) state whether a permit is required for the translocation; and
- (b) if a permit is required—
 - (i) give reasons for the decision; and
 - (ii) inform the person on whom the notice is served of the right of appeal under regulation 16.

Amendment of a notice issued under regulation 11

13.—(1) The competent authority may amend a notice issued under regulation 11(2) or (3) (movement of Annex IV species).

(2) The amendment may be made—

- (a) on the initiative of the competent authority; or
- (b) on the application in writing by the notice holder.

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

(4) The competent authority must give written notice to the notice holder which must include—

- (a) the amendment or any decision not to make the amendment;
- (b) the reasons for making the amendment or any decision not to make it; and
- (c) the date on which the amendment is to take effect;
- (d) information about the right of appeal under regulation 16.

Suspension of notice under regulation 11

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

(2) The notice must include—

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

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

Revocation of notice under regulation 11

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

(2) The notice must include—

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

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

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

16.—(1) A person upon whom a relevant notice is served may appeal to the competent authority against a relevant notice by complying with one of the requirements in paragraph (3).

(2) A relevant notice is—

- (a) a notice served under regulation 11(2)(a), (2)(b) or (3) (movement of Annex IV species);
- (b) a notice served under regulation 12(2) (translocation of locally absent species);
- (c) a notice served under regulation 13(1) (amendment of notice);
- (d) a notice served under regulation 14(1) (suspension of notice);
- (e) a notice served under regulation 15(1) (revocation of notice).

(3) The requirements are—

- (a) to make written representations to the competent authority;
- (b) to serve on the competent authority notice that the appellant wishes to appear before and be heard by an independent person appointed by the competent authority.

(4) Where paragraph (3)(a) applies, the competent authority must appoint an independent person to consider the representations and provide a report to the authority.

(5) Where paragraph (3)(b) applies—

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

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

PART 4

MONITORING AND RISK ASSESSMENT

Environmental risk assessment

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

Contingency plan

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

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

(3) A person who fails to implement a contingency plan as required by Article 17 of Council Regulation 708/2007, commits an offence.

Monitoring

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

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

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

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

PART 5

ENFORCEMENT

Entry and inspection of land and premises

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

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

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

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

- (a) for 1 month; or
- (b) until the purpose for which it is issued has been fulfilled,

whichever is the sooner.

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

- (a) such persons, vehicles, equipment or materials as the inspector considers necessary; and
- (b) a representative of the European commission acting for the purposes of Council Regulation 708/2007.

(6) An inspector entering any premises which are unoccupied, or from which the occupier is temporarily absent, must leave them as effectively secured against unauthorised entry as the inspector found them.

(7) In this regulation "premises" includes any land or place and, in particular, includes—

- (a) any vessel, vehicle or trailer;
- (b) any installation, container or receptacle.

Enforcement powers: general

21. The powers conferred by regulations 22, 23 and 24 may only be exercised-

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

Search and examination of items on land and premises

- 22.** An inspector entering any land or premises under regulation 20 may—
- (a) search the land or premises for any item, including any aquatic organism or water;
 - (b) examine anything that is—
 - (i) on the land or premises;
 - (ii) attached to, or otherwise forms part of the land or premises.

Production of documents

- 23.** An inspector entering any land or premises under regulation 20 may require any person—
- (a) to produce any document or record that is in that person's possession or control;
 - (b) to render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.

Seizure of items

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

- (2) An inspector may—
 - (a) seize, detain or remove any item which is on the land or premises;
 - (b) take copies of, or extracts from, any document or record found on the land or premises.
- (3) The power conferred by paragraph (2)(a) includes the power to take samples of any aquatic organism or water.
- (4) An inspector to whom any document or record has been produced in accordance with a requirement imposed under regulation 23 may—
 - (a) seize, detain or remove that document or record;
 - (b) take copies of, or extracts from, that document or record.
- (5) If, in the opinion of the inspector, it is not for the time being practicable for the inspector to seize and remove any item, the inspector may require any person on the land or premises to secure that the item is not removed or otherwise interfered with until such time as the inspector may seize and remove it.
- (6) Any item seized by an inspector may be retained for so long as is considered necessary by the inspector in the circumstances.
- (7) Any aquatic organism or water seized by an inspector may be disposed of as the inspector sees fit.

Seizure of items: offences

25.—(1) A person commits an offence if the person refuses or fails to comply with any requirement imposed on the person by an inspector under regulation 24(5).

(2) It is a defence for a person charged with an offence to show that the person had a reasonable excuse for failing to comply.

Enforcement notices

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

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

- (a) Council Regulation 708/2007;
 - (b) these Regulations;
 - (c) any condition of a permit (including a permit amended under regulation 5) or a notice issued under regulation 11(2)(a) or (b) or (3) (movement of Annex IV species).
- (3) An enforcement notice must state—
- (a) the matters which constitute the contravention or failure to comply;
 - (b) the steps which the person on whom it is served must take or is prohibited from taking;
 - (c) the date by which the steps must be taken;
 - (d) the reasons for the service of the notice and for the requirements in it;
 - (e) that there is a right of appeal under regulation 16.
- (4) An enforcement notice may require the person on whom it is served to—
- (a) remove and dispose of any aquatic organism in a manner and within a period specified in the notice;
 - (b) take such steps as are required to ensure that the aquaculture facility is, so far as possible, restored to its condition prior to the contravention or failure to comply with a requirement mentioned in paragraph (1) or (2).
- (5) Where an enforcement notice is not complied with the competent authority may—
- (a) take such steps as it considers necessary (including the removal and disposal of any aquatic organisms) to—
 - (i) ensure compliance with the requirements of the notice; or
 - (ii) remedy the consequences of the failure to carry them out; and
 - (b) recover any expenses reasonably incurred in so doing from the person who has failed to comply with the notice.
- (6) The competent authority may remove and dispose of any aquatic organisms without serving an enforcement notice—
- (a) in an emergency; and
 - (b) at the cost of the person or operator mentioned in paragraph (1) or (2).
- (7) In this regulation “operator” means any person who is responsible for the management of the aquaculture facility.

Enforcement notices: offence

27.—(1) A person commits an offence if the person fails to comply with an enforcement notice issued under regulation 26.

(2) It is a defence for a person charged with an offence to show that the person had a reasonable excuse for failing to comply.

Appeals: enforcement notices

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

(2) The requirements are—

- (a) to make written representations to the competent authority;
- (b) to serve on the competent authority notice that the person wishes to appear before and be heard by an independent person appointed by the competent authority.

(3) Where paragraph (2)(a) applies the competent authority must appoint an independent person to consider the representations and provide a report to the authority.

(4) Where paragraph (2)(b) applies—

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

Obstruction

29. It is an offence to—

- (a) intentionally obstruct an inspector acting in the execution of these Regulations;
- (b) fail without reasonable cause to give to an inspector any assistance or information which that inspector may reasonably require for the purposes of the inspector’s functions under these Regulations; or
- (c) knowingly or recklessly give false or misleading information to an inspector.

Abandonment and escape of aquatic organisms

30.—(1) A person commits an offence if the person abandons, releases or allows to escape any aquatic organism, the movement of which took place under a permit or under a notice issued under regulation 11(2)(b) or (3)(b) (movement of Annex IV species).

(2) It is a defence for a person charged with an offence under paragraph (1) to show that the person had a reasonable excuse for abandoning, releasing or allowing to escape the aquatic organism.

Offences by bodies corporate or Scottish partnerships

31.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) a person purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence as is liable to be proceeded against and punished accordingly.

(2) In paragraph (3), “relevant individual” means—

- (a) in relation to a body corporate—

- (i) a director, manager, secretary or other similar officer of the body;
- (ii) where the affairs of the body are managed by its members, a member; and
- (b) in relation to a Scottish partnership, a partner; and
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Penalties

32. A person who is guilty of an offence under these Regulations is liable –

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

Service of notices

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

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

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

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

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

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

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

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

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
[] 2010

(a) 1978 c.30.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

Part 4 makes provision for monitoring and risk assessment. Enforcement powers are given to inspectors under Part 5. A person found guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine.

The Regulatory Impact Assessment relating to these Regulations is available from Marine Scotland, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY.



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