

STATES OF JERSEY



Jersey

DRAFT EU LEGISLATION (WILD AQUATIC ANIMALS – FOOD AND FEED) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 18th September 2019
by the Minister for the Environment**

STATES GREFFE

REPORT

The Draft EU Legislation (Wild Aquatic Animals – Food and Feed) (Jersey) Regulations 201- (the “draft Regulations”), if passed, will make provision in relation to the application of European Union food and feed standards to fish, crustaceans and molluscs harvested or caught (rather than farmed) in Jersey and the territorial sea around Jersey.

Regulation 1 is the interpretation provision. Among other definitions, it defines a “wild aquatic animal” by reference to Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals.

The effect is to cover fish, crustaceans and molluscs that are not covered by EU legislation on farmed aquatic animals, which is given effect in Jersey by the [EU Legislation \(Aquatic Animal Health\) \(Jersey\) Regulations 2016](#).

Regulation 2 lists 11 EU Regulations, containing food and feed standards, which are “relevant EU provisions” for the purpose of these Regulations. It also enables the Minister to amend the list. The relevant EU provisions are given effect to the extent that they do not already have effect under the [European Union \(Jersey\) Law 1973](#) (and so they will continue to have effect after that Law is repealed).

Regulation 3 applies the [Sea Fisheries \(Jersey\) Law 1994](#), so that officers acting under that Law can also enforce these Regulations in the same way.

Regulation 4 enables the Minister to serve an enforcement notice on a person who has not complied with the relevant EU provisions. 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 5 creates offences of contravening a relevant EU provision. The master of a fishing boat commits an offence. Anyone else (apart from the Minister and agents of the Minister) who contravenes the relevant EU provisions, without reasonable excuse, also commits a lesser offence.

Regulation 6 gives the Minister power, until the end of 2020, to make Orders to cater for Brexit in relation to wild aquatic animals, equivalent to those given by the [European Union \(United Kingdom Exit – Animal Health and Welfare\) \(Jersey\) Regulations 2019](#) in relation to other animals.

Regulation 7 amends the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016 to ensure that the Minister’s power to make Orders to cater for Brexit in relation to farmed aquatic animals also covers food and feed standards.

Regulation 8 is the citation and commencement provision.

The Regulations would come into force 14 days after adoption by the States Assembly.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

EXPLANATORY NOTE

These Regulations if passed will make provision in relation to the application of European Union food and feed standards to fish, crustaceans and molluscs harvested or caught (rather than farmed) in Jersey and the territorial sea around Jersey.

Regulation 1 is the interpretation provision. Among other definitions, it defines a “wild aquatic animal” by reference to 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). The effect is to cover fish, crustaceans and molluscs that are not covered by EU legislation on farmed aquatic animals, which is given effect in Jersey by the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016. The Regulation also defines “Minister” as the Minister for the Environment.

Regulation 2 lists the EU Regulations, containing food and feed standards, which are “relevant EU provisions” for the purpose of these Regulations. It also enables the Minister to amend the list. The relevant EU provisions are given effect to the extent that they do not already have effect under the European Union (Jersey) Law 1973 (and so they will continue to have effect after that Law is repealed).

Regulation 3 applies the Sea Fisheries (Jersey) Law 1994, so that officers acting under that Law can also enforce these Regulations in the same way.

Regulation 4 enables the Minister 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). 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 5 creates offences of contravening a relevant EU provision. The master of a fishing boat commits an offence, carrying imprisonment for up to a year or a fine (with no maximum) or both, if the relevant EU provisions are contravened in relation to that boat. Anyone else (apart from the Minister and agents of the Minister) who contravenes the relevant EU provisions, 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. Provision is also made 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 6 gives the Minister power, until the end of 2020, to make Orders to cater for Brexit in relation to wild aquatic animals, equivalent to those given by the European Union (United Kingdom Exit – Animal Health and Welfare) (Jersey) Regulations 2019 in relation to other animals.

Regulation 7 amends the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016 to ensure that the Minister’s power to make Orders to cater for Brexit in relation to farmed aquatic animals also covers food and feed standards.

Regulation 8 is the citation and commencement provision. The Regulations would come into force 14 days after being made by the Assembly.



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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 –
 - “Animal Health Law” means the Animal Health (Jersey) Law 2016²;
 - “Jersey” includes the territorial sea adjacent to Jersey;
 - “Minister” means the Minister for the Environment;
 - “relevant EU provision” means an EU provision listed in Regulation 2(3);
 - “Sea Fisheries Law” means the Sea Fisheries (Jersey) Law 1994³;
 - “wild aquatic animal” has the meaning given by Article 3 of 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).
- (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 food and feed provisions in relation to wild aquatic animals

- (1) The EU provisions listed in paragraph (3) 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.
- (2) The Minister is the competent authority for the purpose of the relevant EU provisions.

- (3) The EU provisions referred to in paragraph (1) are, to the extent that each relates to a wild aquatic animal –
- (a) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1);
 - (b) Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1);
 - (c) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55);
 - (d) Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139, 30.4.2004, p. 206);
 - (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);
 - (f) Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food (OJ L 338, 13.11.2004, p. 4);
 - (g) Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene (OJ L 35, 8.2.2005, p. 1);
 - (h) Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1);
 - (i) Commission Regulation (EC) No 2074/2005 of 5 December 2005 laying down implementing measures for certain products and for the organisation of official controls (OJ L 338, 22.12.2005, p. 27);
 - (j) Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5);
 - (k) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (OJ L 304, 22.11.2011, p. 18).
- (4) The Minister may by Order amend paragraph (3) to remove an EU provision or to substitute or add an EU provision that relates to food standards in relation to wild aquatic 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 Law;

- (c) the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016⁶;
- (d) the Sea Fisheries Law; and
- (e) the Conservation of Wildlife (Jersey) Law 2000⁷.

3 Enforcement: application of Sea Fisheries Law

The Sea Fisheries Law is to be read as applying, in relation to a wild aquatic animal, as if –

- (a) these Regulations were Regulations referred to in Article 10(1) of that Law; and
- (b) the reference in Article 16(1) of that Law to the purposes of enforcing that Law included the purpose of enforcing these Regulations.

4 Enforcement: service of notices

- (1) The Minister may serve a person with a notice (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 requirement of a relevant EU provision.
- (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 Law 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 Law, 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.

5 Enforcement: offences

- (1) A master of a fishing boat, within the meaning of those terms in the Sea Fisheries Law, commits an offence, and is liable to imprisonment for a term of 12 months and to a fine, if a relevant EU provision is contravened in relation to that fishing boat.
- (2) Paragraph (3) 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 (1).
- (3) 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 a prohibition in or requirement of a relevant EU provision.
- (4) In this paragraph and paragraphs (5) and (6) –

“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.
- (5) 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.
- (6) 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.

6 Orders to deal with deficiencies, arising from withdrawal of UK from EU, in food standards for aquatic animals

- (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 2014⁸; and
 - (b) either –
 - (i) relates to the subject matter of, or the implementation of, a relevant EU provision, or
 - (ii) otherwise provides for food or feed standards in relation to wild aquatic animals.
- (2) No Order may be made under paragraph (1) after 2020.

7 Amendment of EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016

In Regulation 39A(1)(b) of the EU Legislation (Aquatic Animal Health) (Jersey) Regulations 2016⁹, after clause (i) there is inserted –

“(ia) food or feed standards in relation to aquaculture animals,”.

8 Citation and commencement

These Regulations may be cited as the EU Legislation (Wild Aquatic Animals – Food and Feed) (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 02.020</i>
<i>3</i>	<i>chapter 14.825</i>
<i>4</i>	<i>chapter 17.210</i>
<i>5</i>	<i>chapter 20.225</i>
<i>6</i>	<i>chapter 17.245.61</i>
<i>7</i>	<i>chapter 22.450</i>
<i>8</i>	<i>chapter 17.245</i>
<i>9</i>	<i>chapter 17.245.61</i>