



STATUTORY INSTRUMENTS.

S.I. No. 398 of 2010

EUROPEAN COMMUNITIES (HEALTH OF AQUACULTURE
ANIMALS AND PRODUCTS) (AMENDMENT) REGULATIONS 2010

(Prn. A10/1242)

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ANIMALS AND PRODUCTS) (AMENDMENT) REGULATIONS 2010

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving full effect to Commission Regulation (EC) No. 1251/2008 of 12 December 2008¹, Commission Regulation (EC) No. 1252/2008 of 12 December 2008², Commission Decision No. 2008/946/EC of 12 December 2008³, Commission Decision No. 2009/177/EC of 31 October 2008⁴ (as amended by Commission Decision No. 2010/171/EU of 22 March 2010), Commission Regulation (EC) No. 719/2009 of 6 August 2009⁵, Commission Regulation (EU) No. 175/2010 of 2 March 2010⁶, Commission Regulation (EU) No. 346/2010 of 15 April 2010⁷, and Commission Decision No. 2010/221/EU of 15 April 2010⁸, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Health of Aquaculture Animals and Products) (Amendment) Regulations 2010.

2. The European Communities (Health of Aquaculture Animals and Products) Regulations 2008 (S.I. No. 261 of 2008) are amended—

(a) in Regulation 2(1), by the substitution for the definition of “Commission Decision”, of—

“ ‘Commission Decision’ means Commission Decision No. 2010/221/EU of 15 April 2010;”,

(b) by the substitution for Regulation 3 of—

“3. (1) These Regulations do not apply to—

(a) ornamental aquatic animals reared in non-commercial aquaria,

(b) wild aquatic animals harvested or caught for direct entry into the food chain, or

¹O.J. L 337 of 16.12.2008, p. 41.

²O.J. L 337 of 16.12.2008, p.76.

³O.J. L 337 of 16.12.2008, p. 94.

⁴O.J. L 63 of 7.3.2009, p. 15.

⁵O.J. L 205 of 7.8.2009, p. 10.

⁶O.J. L 52 of 3.3.2010, p.1.

⁷O.J. L 104 of 24.4.2010, p. 1.

⁸O.J. L 98 of 20.4.2010, p.7.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 20th August, 2010.*

(c) aquatic animals caught for the production of fishmeal, fish feed, fish oil or similar products.

(2) Regulations 17, 19, 20, 22, 40 do not apply to ornamental fish kept in pet shops, garden centres, ponds, commercial aquaria or wholesale premises without direct contact with natural water or equipped with an effluent treatment system that reduces the risk of transmitting disease to natural waters to an acceptable level.”,

(c) by the insertion, in Regulation 4(1) after the second mention of “State” of “or in another Member State”,

(d) by the insertion after Regulation 7, of—

Import of ornamental fish

“7A. (1) A person shall not import an ornamental fish or cause or permit a person to import an ornamental fish unless details are entered in the register, (“ornamental fish importers register”).

(2) The Marine Institute may grant registration in the ornamental fish importers register, attach conditions to registration, revoke or vary a condition, revoke registration or refuse an application.

(3) An application for registration in the ornamental fish importers register shall be made in a form, be accompanied by any material and contain any particulars that the Marine Institute specifies.

(4) The Marine Institute shall not grant registration in the ornamental fish importers register and shall revoke registration in the ornamental fish importers register—

(a) if the application does not contain all the material and particulars sought by the Institute, or

(b) if, in the opinion of the Institute, import or transport of an ornamental fish constitutes a serious risk to human or animal health.

(5) Without prejudice to the generality of paragraph (2), the Marine Institute may refuse an application or revoke registration in the ornamental fish importers register if—

(a) the applicant or person to whom registration is granted has been convicted of, or committed, an offence, whether he or she has been convicted or not, a contravention of an act of an institution of the European Communities or Regulations made under the European Communities Act 1972 that relates to fish health, animal health or the environment,

- (b) the applicant or person to whom ornamental fish import registration is granted has failed to comply with a condition attached to registration,
- (c) the applicant or person to whom registration in the ornamental fish importers register is granted is not, in the opinion of the Marine Institute, a fit and proper person to hold registration,
- (d) in relation to the application, information required has not been furnished or information that is, in the opinion of the Marine Institute, false or misleading has been furnished, or
- (e) it is, in the opinion of the Marine Institute—
 - (i) necessary to prevent the risk or spread of human disease or a disease of fish,
 - (ii) necessary to eradicate human disease or a disease of fish, or
 - (iii) necessary, incidental, supplementary or consequential for the purposes of giving effect to an act of the institutions of the European Communities, relating to human disease, a disease of fish or the environment.

(8) Without prejudice to the generality of paragraph (2), the Marine Institute shall refuse an application or revoke registration in the ornamental fish importers register if the applicant or person to whom a licence is granted is convicted, on indictment, of an offence under an enactment relating to fish health, animal health or the environment.

(9) Other than in the case of paragraph (8) or (10), if the Marine Institute proposes to revoke registration in the ornamental fish importers register or to refuse an application, the Institute shall—

- (a) notify the person concerned in writing of the proposal and of the reasons for the proposal, and that he or she may make representations to the Marine Institute in relation to the proposal within 14 days of the notification,
- (b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and
- (c) notify the person concerned of the decision and the reasons for the decision.

(10) If the Marine Institute is of the opinion that it is necessary to prevent the risk of disease or to give effect to an act of an institution of the European Communities, the Institute may revoke registration in the ornamental fish importers register or refuse an application in accordance with paragraph (11).

(11) If the Marine Institute revokes registration in the ornamental fish importers register or refuses an application in accordance with this paragraph, he or she shall—

- (a) notify the person concerned in writing of the decision and the reasons for the decision, and that he or she may make representations to the Marine Institute in relation to the decision within 14 days from the date of the notification,
- (b) consider a representation made, and
- (c) confirm, modify or annul the decision and notify the person concerned of the decision and the reasons for the decision.

(12) A person to whom registration in the ornamental fish importers register is granted shall make such returns to the Marine Institute as and when, and in such form as, the Marine Institute may from time to time direct.

(13) The Marine Institute shall maintain and publish, in a manner that the Institute considers appropriate, a list of registrations in the ornamental fish importers register, divide the list into different classes having regard to the activity to which registration relates and include such information as the Institute considers appropriate on the list.

(14) If the Marine Institute revokes registration in the ornamental fish importers register or registration expires by the effluxion of time, an entry on the list maintained under paragraph (13) ceases to have effect and the Marine Institute shall, as soon as may be after revocation, remove details of the revoked licence from the list.

(15) In this Regulation “fish” includes “aquatic animal.”

(e) by the insertion after Regulation 11 of—

“11A. (1) Subject to paragraph (2), a person shall not relay any live molluscs, eggs or gametes from an area referred to in the Schedule (inserted by the European Communities (Health of Aquaculture Animals and Products) (Amendment) Regulations 2010) to another area except in accordance with an authorisation granted by the Marine Institute.

(2) In this Regulation “relaying” in relation to molluscs, eggs and gametes means the deposit or immersion of molluscs, eggs or gametes.

(3) Paragraph (1) does not apply to the relaying of live molluscs, eggs or gametes when they are re-laid in an approved storage centre and not subsequently re-laid elsewhere.”

(f) by the substitution for Regulation 12(1), of—

“12. (1) The Marine Institute shall declare—

- (a) an area around an infected premises, or
- (b) an area around a premises where the presence of Ostreid herpesvirus 1 uvar is confirmed in oysters (*Crassostrea gigas*),

to be a containment area.

(1A) In declaring a containment area for the purposes of paragraph (1)(b), the Marine Institute shall have regard to Part C of Annex I to Commission Regulation (EU) No. 175/2010 of 2 March 2010.”

(g) by the deletion, in Regulation 17(7) of “or suspend”,

(h) by the substitution, in Regulation 17(12), for “Foyle Fisheries Commission” of “Foyle, Carlingford and Irish Lights Commission being the Body referred to in section 32 of the British-Irish Agreement Act 1999”,

(i) by the substitution, for Regulation 19(1), of—

“19. (1) A person shall not use a vessel, vehicle or aircraft specially designed or adapted wholly for that purpose to transport an aquaculture animal unless his or her name and details of the means of transport are entered in a register, (“aquaculture animal transport register”) maintained by the Marine Institute or the competent authority of another member state.”,

(j) by the insertion, after Regulation 22(3), of—

“(3A) A person who sells or supplies an aquaculture animal or product shall maintain such records as are directed to be kept by the Marine Institute.”,

(k) by the substitution, for Regulation 37(1), of—

“37. (1) A person who—

- (a) imports fish of the family *Cyprinidae* in contravention of Article 1 of Commission Regulation No. 1252/2008 of 12 December 2008,
- (b) has in his or her possession or under his or her control, sells or supplies a fish that has been imported in contravention of Article 1 of Commission Regulation No. 1252/2008 of 12 December 2008, or
- (c) contravenes or aids or abets a contravention of Regulation 4, 5, 6(1), (2), 7(1), (2), 7A, 9, 10(4), 11(2), (5), 11A(1), 12(4), 13(1), (4), 16(1), 17(1), (6), 19(1), 20, 21, 22, 23(1), (3), (6),

24(1), (5), 26, 27, 29(2), 30(3), 31(7), 33 or 34 of these Regulations,

commits an offence.

(1A) A person who—

- (a) moves an ornamental aquatic animal in contravention of Article 4,
- (b) moves an aquaculture animal in contravention of Article 5,
- (c) moves an aquaculture animal or product intended for further processing before human consumption in contravention of Article 6,
- (d) moves live molluscs or crustaceans in contravention of Article 7,
- (e) moves an aquaculture animal or product from a member state, zone or compartment subject to disease control measures in contravention of Article 8,
- (f) moves an aquaculture animal intended for farming, a relaying area, a put and take fishery, an open ornamental facility or restocking that is not accompanied by a certificate, in contravention of Article 8a,
- (g) introduces a live aquaculture animal or mollusc in contravention of Article 9,
- (h) imports an aquaculture animal intended for a farm, relaying area, put and take fishery or open ornamental facility in contravention of Article 10,
- (i) imports an ornamental fish intended for a closed ornamental system other than in accordance with Article 11,
- (j) imports an aquaculture animal or product intended for human consumption in contravention of Article 12,
- (k) transports an aquaculture animal in contravention of Article 14,
- (l) handles or releases an aquaculture animal in contravention of Article 15,
- (m) deals with transport water in contravention of Article 15(3),
- (n) deals with a consignment in transit in contravention of Article 16,

(o) otherwise contravenes a provision (cited in this paragraph),

of Commission Regulation (EC) No. 1251/2008 of 12 December 2008 (as amended by Commission Regulation (EC) No. 719/2009 of 6 August 2009 and Commission Regulation (EU) No. 346/2010 of 15 April 2010) commits an offence.

(1B) A person who—

(a) moves oysters (*Crassostrea gigas*) from a containment area in contravention of Article 3, or

(b) places oysters obtained from a containment area on the market in contravention of Article 5,

of Commission Regulation (EU) No. 175/2010 of 2 March 2010, commits an offence.

(1C) A person who, with respect to spring viraemia of carp (SVC), bacterial kidney disease (BKD), infectious pancreatic necrosis virus (IPN), koi herpes virus (KHV) or infection with *Gyrodactylus salaricus* (GS), introduces or attempts to introduce—

(a) an aquaculture animal intended for farming, a relaying area, a put and take fishery, an open ornamental facility or restocking in contravention of the marketing, import or transit and storage requirements specified in Article 2(2)(a), or

(b) an ornamental aquatic animal intended for a closed ornamental facility in contravention of the import or transit and storage requirements specified in Article 2(2)(b),

of the Commission Decision, commits an offence.

(1D) A person convicted of an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both, or

(b) on conviction on indictment—

(i) in the case of a first offence, to a fine not exceeding €100,000, or to imprisonment for a term not exceeding 1 year, or to both, or

(ii) in the case of a second or subsequent offence to a fine not exceeding €250,000, or to imprisonment for a term not exceeding 3 years, or to both.”, and

(l) by the insertion, after Regulation 43, of—

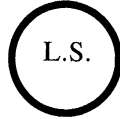
Regulation 11A

Schedule

1. That part of Cork Harbour bounded by the high water mark and enclosed by a line drawn in a westerly direction from the most westerly point of the high water mark at Roches Point in the townland of Trabolgan barony of Imokilly, County of Cork E.R. to the most easterly high water mark at Weaver Point in the townland of Crosshavenhill barony of Kerrycurrihy, County of Cork E.R.
2. That part of Galway Bay bounded by the high water mark and enclosed by a line drawn in a northerly direction from the most northerly point of the high water mark at Black Head in the townland of Murroughtoohey North, barony of Burren, County of Clare to the most southerly point of the high water mark of the townland of Spiddle Middle, barony of Moycullen, County of Galway.
3. That part of Clew Bay bounded by the high water mark and enclosed by a line drawn in a northerly direction from the most northerly point of the high water mark at Old Head in the townland of Oldhead, barony of Murrisk, County of Mayo to the most easterly point of the high water mark at Gubbaun Point in the townland of Dooghbeg barony of Burrishoole, County of Mayo.
4. That part of Ballynakill Harbour bounded by the high water mark and enclosed by a line drawn in a southerly direction from the most westerly point of the high watermark at Tonabinnia Head in the townland of Letter More, barony of Ballynahinch, County of Galway to the most northerly point of the high water mark at the boundary of the townlands of Ardkyle and Ross both in the barony of Ballynahinch, County of Galway.
5. That part of Tullaghan Bay, Bellacragher Bay and Achill Sound bounded by the high water mark and enclosed by a line drawn from the most northerly point of the high water mark at Ridge Point in the townland of Tonatannally and terminating at the most southerly point of the high water mark of the townland of Doohooma and by a line drawn due east from the most easterly point of the high water mark at Darby's Point in the townland of Cloghmore and terminating at the high water mark of the townland of Gubnahardia.
6. That part of Blacksod Bay bounded by a point near Portmore beach on the southern tip of the Erris peninsula to the northwest corner of Achill Island known as Gubroenacoragh incorporating the three islands of Duvillaun More, Duvillaun Beag and Gaghta that are located at the mouth of the bay.
7. That part of Lough Swilly bounded by the high water mark and enclosed by a line drawn in an easterly direction from the easterly

point of the high water mark at Fanad Head in the townland of Arryheernabin, barony of Kilmacrenan, County of Donegal to the most westerly point of the high water mark at Dunaff Head in the townland of Dunaff, barony of Inishowen East, County Donegal.

8. That part of Lough Foyle that lies within the jurisdiction of the State and is bounded by the high water mark and enclosed by a line drawn between the most northerly point of the high water mark of Greencastle Fort in the County of Donegal and the most northerly part of the high water mark at Martello Tower at Magilligan Point in the County of Londonderry in Northern Ireland.



GIVEN under my Official Seal,
11 August 2010.

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation).

These Regulations amend the European Communities (Health of Aquaculture Animals and Products) Regulations 2008 (S.I. No. 261 of 2008), to take account of developments at European Union level.

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