



FALKLAND ISLANDS

Fishery Products Ordinance 2006

(ORDINANCE No. 21 OF 2006)

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FALKLAND ISLANDS

Fishery Products Ordinance 2006

AN ORDINANCE To make provision for securing the quality of marine and other waters, and of water used for washing or otherwise processing fishery products; the designation of areas as suitable or unsuitable for the production, collection or relaying of shellfish; for securing the health of shellfish and aquaculture animals; for regulating the treatment, placing on the market, transport, despatch, export, import, introduction and movement of fishery products; and for connected purposes.

[DATE OF COMMENCEMENT: 7TH JUNE 2012¹]

PART 1 PRELIMINARY

1 Short title and commencement

(1) This Ordinance may be cited as the Fishery Products Ordinance 2006.

(2) This Ordinance shall come into force on a date or dates to be appointed by the Governor by Notice published in the Gazette, and different dates may be so appointed by one or more such Notices for different provisions and different purposes.

[Date of commencement: 7th June 2012.¹¹]

2 Interpretation

In this Ordinance-

"aquaculture animals" means live fish or shellfish coming from a farm, or coming from the wild and intended for a farm;

"aquaculture products" means products derived from aquaculture animals, whether intended for farming, such as eggs and gametes, or for human consumption;

"analysis", in relation to any matter, includes subjecting it or a sample of it to a test of any description;

"controlled waters" means inland waters or marine waters for the time being designated by an order under section 4;

"the Director" means the Director of Natural Resources;

[S. 4(2)/Ord. 9/12/w.e.f. 6/6/12.]

"eggs" means fertilized ova, including eyed ova and any associated fluid, of fish or shellfish;

"farm" means any establishment or, in general, any geographically defined installation in which fish, shellfish or crustaceans are reared or kept with a view to their being placed on the market;

"farmed", in relation to fish, shellfish or crustaceans, means at or from a farm; references to fish, shellfish or crustaceans are to fish, shellfish or crustaceans, as the case may be, at any stage of development;

"fishery products"-

(a) means all seawater or freshwater animals (whether wild or farmed), except-

(i) live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods;
and

(ii) mammals, reptiles and frogs; and

(b) also includes all edible forms, parts and products of such animals;

[S. 5/Ord. 2/14/w.e.f. 30/4/14.]

"food authority" means the Senior Veterinary Officer or any other public officer appointed by the Governor to be a food authority for the purposes of this Ordinance;

"gametes" means sperm or unfertilized ova and any associated fluid of fish or shellfish;

"inland waters" means waters which do not form part of the sea or of any creek, bay or estuary of any river as far as the tide flows;

"marine waters" means waters within the seaward limits of the territorial sea adjacent to the Falkland Islands, other than inland waters;

"notice" means a notice in writing;

"place on the market" means hold or display for sale, offer for sale, sell, deliver, transfer or place on the market in any other way, but does not include sell by retail;

"polluting matter" includes any toxic or objectionable compound, whether artificial or occurring naturally;

"premises" includes any place, farm, installation in which fish or shellfish are kept, vehicle, ship, vessel, boat, craft, hovercraft or aircraft;

"regulations" means regulations made by the Governor;

[S. 4(3)/Ord. 9/12/w.e.f. 6/6/12.]

"relevant Community legislation" . . .

[S. 4(3)/Ord. 9/12/w.e.f. 6/6/12.]

"relevant EU legislation" has the meaning given in the Schedule;

[S. 4(4)/Ord. 9/12/w.e.f. 6/6/12.]

"relaying", in relation to shellfish, means deposit or immersion in marine waters;

"shellfish" means any kind of mollusc;

"trade effluent" means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises;

"trade premises" means any premises used or intended to be used for carrying on any trade or industry (except agriculture, horticulture or the farming of seawater or freshwater animals);

"sewage effluent" means the contents of lavatories, water used for washing or cooking (except water used for the business of a laundry or for a business of preparing food or drink) and surface water;

"UK legislation" means legislation of the United Kingdom and includes-

- (a) legislation that has effect only in part of the United Kingdom;
- (b) legislation made by a devolved institution of the United Kingdom;
- (c) European Union legislation that either-
 - (i) is directly applicable in the United Kingdom; or
 - (ii) has direct effect in the United Kingdom.

[S. 4(5)/Ord. 9/12/w.e.f. 6/6/12.]

"vessel" means any ship or craft, or any structure capable of navigation;

"water quality objectives" has the meaning given by section 5(4); and

"wild", in relation to fish or shellfish, means not farmed.

3 [Repealed]

[S. 5/Ord. 9/12/w.e.f. 6/6/12.]

PART 2 WATER QUALITY

Quality of controlled waters

4 Designation of waters

(1) If it appears to the Governor that any marine waters need protection or improvement in order that they or any part of them may support fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a particular description, he may by order designate-

- (a) those waters, and
- (b) any inland waters (whether natural or artificial, or above or below ground) which discharge either directly or indirectly into those waters,

as controlled waters for the purpose of this Part.

(2) Before making an order under subsection (1) the Governor shall cause a notice of the proposal to be published in the Gazette-

- (a) specifying by reference to a map the marine waters proposed to be designated, and
- (b) stating that, within 28 days after the date of publication, representations or objections may be made in writing to the Governor with respect to the proposal;

(3) The Governor may cause an inquiry to be held into a proposal to make an order under subsection (1), and where he does so, he shall-

- (a) appoint a person to consider the proposal and to report thereon to him; and
- (b) consider the report and have regard to any recommendations made in it.

(4) A person appointed under subsection (3)(a) shall give-

- (a) the Director, and
- (b) every person by whom a representation or objection was duly made in accordance with the notice under subsection (2)(b), an opportunity of being heard by him.

5 Water quality objectives

(1) The Governor may by regulations (which shall have regard to the relevant EU legislation) prescribe a system of classifying the quality of any description of controlled waters according to their compliance with criteria specified in the regulations.

[S. 4/Ord. 2/14/w.e.f. 30/4/14.]

(2) For the purposes of any such classification, regulations may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

(3) For the purpose of protecting or improving any marine waters in order that they or any part of them may support fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a specified description, the Governor may by order specify the water quality objectives for-

- (a) any controlled waters, or
- (b) controlled waters of a description specified in the order,

by reference to one or more of the classifications prescribed under subsection (1).

(4) The water quality objectives for controlled waters of any prescribed description are that the quality of those waters shall satisfy the criteria for controlled waters of that description in order to achieve the classification required of the waters by regulations under subsection (1).

(5) Before making regulations or an order under this section, the Governor shall consult such persons concerned in taking, processing or supplying fish, shellfish or crustaceans in the Falkland Islands, or such body or bodies appearing him to be representative of those persons, as appear to him appropriate.

6 Monitoring of pollution

The Director shall monitor the extent of pollution in controlled waters and shall provide to the food authority such information as the food authority may require in relation to such monitoring and its results.

7 Offences of polluting controlled waters

(1) No person shall cause or knowingly permit-

- (a) any poisonous, noxious or polluting matter, or
- (b) any solid waste matter,

to enter any controlled waters.

(2) No person shall cause or knowingly permit any trade effluent to be discharged into any controlled waters, either directly or through any drain or sewer.

(3) No person shall cause or knowingly permit any effluent or other matter to enter or be discharged into any controlled waters, either directly or through any drain or sewer, in contravention of a prohibition imposed under section 9.

(4) No person shall cause or knowingly permit any matter whatever to enter any inland waters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading, or likely to lead, to a substantial aggravation of-

- (a) pollution of controlled waters due to other causes, or
- (b) the consequences of such pollution.

(5) No person shall contravene or fail to comply with a condition of a consent under section 10.

(6) Any person who contravenes subsection (1), (2), (3), (4) or (5) commits an offence and is liable to a fine not exceeding the maximum of level 10 on the standard scale.

(7) Subsection (2) does not, for a period of 3 years from the commencement of this section, apply to the discharge from any premises from which any trade effluent was discharged at any time within a period of 12 months ending on such commencement, of trade effluent of the same description as was discharged in that period, at rates and in quantities not exceeding the rates at which and the quantities in which it was discharged during that period.

8 Authority for discharges

(1) A person does not contravene section 7(1) or (2) in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of any act or omission under and in accordance with,-

- (a) a consent under section 10; or
- (b) a licence under Part II of the Food and Environment Protection Act 1985, as it has effect in the Falkland Islands.

(2) A person does not contravene section 7(1), (2), (3), (4) or (5) in respect of the entry of any matter into any waters or any discharge if-

- (a) the entry is caused or permitted, or the discharge is made, in an emergency in order to avoid danger to life or health; and
- (b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and
- (c) particulars of the entry or discharge are furnished in writing to the Director as soon as reasonably practicable after it occurs.

(3) A person does not contravene section 7(1) or (2) by reason of his causing or permitting any discharge of trade effluent or sewage effluent from a vessel.

9 Prohibition of certain discharges

(1) For the purpose of achieving the water quality objectives established for any controlled waters, the Governor may by regulations prohibit the entry or discharge into those or any other controlled waters, either directly or through any drain or sewer, of any effluent or other matter which-

- (a) contains a prescribed substance or a prescribed concentration of such a substance; or
- (b) derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

(2) For the purpose of achieving the water quality objectives established for any controlled waters, the Governor may by notice to any person prohibit him from causing or permitting any effluent or other matter of a description specified in the notice to enter or be discharged into those or any other controlled waters so specified, either directly or through any drain or sewer, and either absolutely, or without complying with any conditions so specified, after the expiry of such period as is so specified.

(3) The period specified in a notice under subsection (2) shall not be less than 3 months beginning with the day on which the notice is given, except where the Governor is satisfied that there is an emergency which requires the prohibition in question to come into force within a shorter period.

(4) Where-

- (a) apart from this subsection, a prohibition contained in a notice under subsection (2) and relating to the discharge of trade effluent or sewage effluent into controlled waters would come into force at the expiry of a period of 3 months or more beginning with the day on which the notice is given, and
- (b) before the notice comes into force an application is made for a consent under section 10 relating to the discharge in question,

the prohibition shall not come into force until the application is determined by the grant or refusal of such a consent.

(5) Regulations under subsection (1), and a notice under subsection (2), may not prohibit any discharge of trade effluent or sewage effluent from a vessel.

10 Consent for discharges

(1) The Governor may, on an application for the purpose, issue a consent to the discharge of trade effluent or sewage effluent into controlled waters for such minimum term and subject to such conditions as he thinks fit.

(2) An application for a consent under this section shall be made in writing and shall be accompanied by all such information as the Governor may reasonably require.

(3) The Governor may treat an application under subsection (2) which relates to proposed discharges at 2 or more places as separate applications for consents for discharges at each of those places.

(4) The Governor may require the applicant for a consent under this section to supply such information and permit such examinations and tests as in his opinion may be necessary or expedient to enable him to determine the application.

(5) The minimum term of a consent under this section shall not, without the agreement of the applicant, be less than 2 years beginning with the date on which it is issued.

(6) A consent under this section may include in particular conditions-

- (a) as to the places at which discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;
- (b) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which they may be made;
- (c) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;
- (d) as to the provision of facilities for taking samples of the matter discharged, and in particular as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;

- (e) as to the provision, maintenance and testing of meters for measuring or recording the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;
- (f) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and, in particular, of records of readings of meters and other recording apparatus provided in accordance with any other condition included in the consent; and
- (g) as to the making of returns and the giving of other information to the Director about the nature, origin, composition, temperature, volume and rate of the discharges.

(7) A consent for any discharges is not limited to discharges by a particular person and extends to discharges which are made by any person.

(8) Where automatic recording equipment is used in accordance with a provision included in a consent by virtue of subsection (6)(e), any record produced by means of the equipment shall, in any proceedings under this Ordinance, be evidence of the matters appearing from the record.

(9) The Governor shall give notice to the applicant of his decision on an application for a consent under this section; and the notice shall state-

- (a) the reasons for the Governor's decision; and
- (b) the right of appeal under section 12 and the time within which such an appeal may be brought.

(10) Regulations may make provision for the fees and charges to be paid in respect of an application for a consent under this section.

11 Review, revocation etc. of consents

(1) The Governor shall from time to time review all consents under section 10 and the conditions (if any) included in such consents.

(2) Where the Governor has reviewed a consent under this section, he may by a notice given to the person making a discharge in pursuance of the consent-

- (a) revoke the consent;
- (b) vary the conditions of the consent; or
- (c) in the case of an unconditional consent, provide that it shall include such conditions as may be specified in the notice;

and a notice under paragraph (b) or (c) shall specify a further minimum term of the consent (which shall not, without the agreement of the person making the discharge, be less than 2 years beginning with the date of the notice).

(3) Where the Governor reviews a consent under this section and it appears to him that no discharge has been made in pursuance of the consent at any time during the preceding 12 months, he may revoke the consent by notice given to the owner and (if different) the occupier of the land from which discharges would be made in pursuance of the consent.

(4) The powers conferred by subsection (2) may not, without the agreement of the person making the discharge, be exercised in relation to any consent within the minimum term specified under section 10(1) or, as the case may be, a further minimum term specified under subsection (2).

(5) Subsection (4) does not apply if, and to the extent that, it appears to the Governor appropriate to exercise those powers in order to give effect to any international agreement to which the United Kingdom is a party and which extends to the Falkland Islands.

(6) Before giving a notice under subsection (1) or (2) the Governor shall consult the person making the discharge, or the owner and (if different) the occupier of the land, as the case may be.

(7) Subject to section 12, a notice under subsection (2) or (3) shall-

- (a) state the reasons why it is given; and
- (b) take effect-
 - (i) if it is given with the agreement of every person to whom it is required to be given, on the date on which it is given to him or them (or, where it is given to different persons on different dates, on the last such date);
 - (ii) otherwise, on the expiration of 21 days beginning with that date.
- (c) unless paragraph (b)(i) applies, state the right of appeal under section 12 and the time within which such an appeal may be brought.

12 Appeals against refusal etc. of consent

(1) Before the expiration of 21 days beginning with the date on which notice of the Governor's decision on an application for a consent under section 10 is given, the applicant may appeal to the Supreme Court-

- (a) where the consent is refused, against the refusal;
- (b) where the consent is given, against any condition included in it.

(2) Before the date on which a notice under section 11(2) or (3) would, apart from this subsection, take effect, any person to which it was required to be given (other than a person with whose agreement it was given) may appeal to the Supreme Court against the notice; and in that case the notice shall not take effect until the appeal is dismissed or withdrawn.

(3) On an appeal under this section the Court may by order quash the decision or notice if it is satisfied that the Governor in refusing the consent or including the condition, as the case may be

- (a) erred in law; or
- (b) based his decision on any incorrect material fact; or
- (c) exercised his discretion in an unreasonable manner.

(4) Pending the determination of an appeal under this section the Court may give such directions and make such interim orders as it thinks just and appropriate.

Quality of water used for processing fishery products

13 Standards of purity

- (1) The Governor may by regulations specify the standards with which water used for washing or otherwise processing fishery products must comply.
- (2) Regulations under subsection (1) may in particular-
 - (a) prescribe specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
 - (b) prescribe specific requirements as to other characteristics of the water;
 - (c) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;
 - (d) enable the Governor-
 - (i) to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be prescribed;
 - (ii) to make any such authorisation subject to such conditions as may be prescribed; and
 - (iii) to modify or revoke any such authorisation or condition.

14 Compliance with standards

- (1) The Governor may by regulations require-
 - (a) the occupier of any premises where fishery products are washed or otherwise processed, and
 - (b) any person by whom fishery products are washed or otherwise processed, to take prescribed steps for the purpose of securing compliance with regulations under section 13(1).
- (2) Regulations under subsection (1) may in particular impose an obligation on a person mentioned in subsection (1)(a) or (b)-
 - (a) to take prescribed steps for monitoring and recording the quality of water from any source or combination of sources which is or may be used for washing or otherwise processing fishery products;
 - (b) to ensure that water from any source is not used for washing or otherwise processing fishery products until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;
 - (c) to comply with prescribed requirements with respect to the analysis of water samples.

15 Use of processes and substances

(1) The Governor may by regulations make provision with respect to the use of such processes and substances, and of products that contain or are made with such substances and materials, as he considers may affect the quality of any water which is or may be used for washing or otherwise processing fishery products.

(2) Regulations under subsection (1) may in particular-

- (a) forbid the use of processes, substances and products which have not been approved under the regulations or which contravene the regulations;
- (b) for the purposes of provision made under paragraph (a), require processes, substances and products to conform to such standards as may be prescribed by or approved under the regulations;
- (c) impose such other requirements as may be prescribed with respect to the use of prescribed processes, substances and products;
- (d) provide for giving, refusal and revocation by prescribed persons of approvals required for the purposes of the regulations, for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition.

16 Regulations: supplementary

(1) Regulations under section 13, 14 or 15 may apply to water which is or may be used for washing or otherwise processing-

- (a) fishery products generally, or
- (b) fishery products of a specified description.

(2) Any person who contravenes, or fails to comply with, a provision of regulations under section 13, 14 or 15, contravention of or non-compliance with which is declared by the regulations to be an offence, is liable to a fine not exceeding a prescribed maximum (which shall not exceed level 6 on the standard scale).

PART 3 HEALTH OF SHELLFISH ETC.

Introductory

17 Interpretation of Part 3

In this Part-

"approved", in relation to any matter, means approved by the Governor as meeting the requirements of any relevant EU legislation;

[S. 4/Ord. 2/14/w.e.f. 30/4/14.]

"health inspection" means a visit by a food authority for the purpose of conducting health checks on a farm or zone;

"movement document" means a document in a prescribed form, complying with prescribed requirements and duly completed.

Designation of production areas etc.

18 Designation of production areas

(1) The Governor shall by order designate marine waters from which shellfish or crustaceans, or shellfish or crustaceans of a specified description, may be taken in accordance with requirements specified under subsection (2).

(2) An order under subsection (1) shall specify, as respects each area of water designated by it-

(a) the requirements which must be satisfied-

(i) for shellfish or crustaceans, or shellfish or crustaceans of a specified description, to be gathered in that area, or

(ii) for shellfish or crustaceans, or shellfish or crustaceans of a specified description, gathered there to be placed on the market; and

(b) such further limitations, conditions or restrictions as to-

(i) the gathering of shellfish or crustaceans, or shellfish or crustaceans of a specified description, in that area, or

(ii) the placing on the market of shellfish or crustaceans, or shellfish or crustaceans of a specified description, gathered there,

as appear to the Governor to be called for by any relevant EU legislation.

[S. 4/Ord. 2/14/w.e.f. 30/4/14.]

(3) The Governor may by order designate as a relaying area any area which appears to him to be suitable for the relaying of shellfish, or shellfish of a specified description.

(4) An order under subsection (3) shall specify, as respects each area designated by it, such limitations, conditions or restrictions as to the relaying there of shellfish, or shellfish of a specified description, as appear to the Governor to be called for by any relevant EU legislation.

[S. 4/Ord. 2/14/w.e.f. 30/4/14.]

19 Designation of prohibited areas for shellfish or crustaceans production

The Governor may by order designate any area as an area unsuitable, for health reasons, for the production or collection of shellfish or crustaceans, or shellfish or crustaceans of a specified description.

20 Amendment etc of designation order

(1) The Governor may by order at any time amend an order under section 18 or 19 so as-

- (a) to vary the boundary of any area designated by the order;
- (b) to impose a new requirement, limitation, restriction or condition of a kind referred to in section 18(2) or (4) in relation to any area designated under section 18;
- (c) to vary or cancel any requirement, limitation, restriction or condition imposed under section 18(2) or (4), or under paragraph (b), in relation to any such area;
- (d) to restrict the application of the order to shellfish or crustaceans of a specified description;
- (e) to vary the description of shellfish or crustaceans to which the order applies.

(2) The Governor may by order revoke an order under section 18 if it appears to him that the area designated by it is no longer suitable for the gathering or relaying of shellfish or crustaceans, or of shellfish or crustaceans of the description specified in the order, as the case may be.

(3) The Governor may by order revoke an order under section 19.

21 Temporary prohibition orders concerning production areas

(1) Subject to subsection (4), a food authority may, if he is satisfied that the consumption of live shellfish or crustaceans taken from any marine waters is likely to cause a risk to public health, make a temporary prohibition order prohibiting the collecting of any live shellfish or crustaceans from those waters.

(2) A temporary prohibition order shall cease to have effect at the expiration of a period of 28 days after it was made, unless it is sooner revoked by a further order made by a food authority.

(3) Forthwith after making temporary prohibition order a food authority shall refer the matter to the Governor, who if he sees fit, revoke the temporary prohibition order.

(4) Forthwith after making temporary prohibition order, or an order under subsection (2) revoking such an order, a food authority take such steps as may be prescribed for bringing the order to the notice of persons who may be affected by the order.

(5) A food authority shall not without the Governor's consent make a temporary prohibition order in respect of any production area if such an order has been made in respect of that area within the preceding 28 days.

22 Restriction on collection etc. of shellfish or crustaceans

(1) No person shall, in the course of a business, gather shellfish or crustaceans of any description-

- (a) from marine waters other than waters designated by an order under section 18(1) as those from which shellfish or crustaceans of that description may be taken;
- (b) otherwise than in accordance with the requirements imposed under section 18(2)(a) in relation to shellfish or crustaceans of that description;
- (c) in contravention of any limitation, condition or restriction imposed under section 18(2)(b) in relation to shellfish or crustaceans of that description.

(2) No person shall place on the market shellfish or crustaceans of any description-

- (a) gathered from marine waters other than waters designated by an order under section 18(1) as those from which shellfish or crustaceans of that description may be taken; or
- (b) otherwise than in accordance with the requirements imposed under section 18(2)(a) in relation to shellfish or crustaceans of that description;
- (c) in contravention of any limitation, condition or restriction imposed under section 18(2)(b) in relation to shellfish or crustaceans of that description.

(3) No person shall relay shellfish or crustaceans of any description-

- (a) in marine waters other than waters designated by an order under section 18(3) as those in which shellfish or crustaceans of that description may be relaid; or
- (b) in contravention of any limitation, condition or restriction imposed under section 18(4) in relation to shellfish or crustaceans of that description.

(4) Any person who contravenes subsection (1), (2) or (3) commits an offence and liable to a fine not exceeding the maximum of level 8 on the standard scale.

23 Collecting or marketing shellfish or crustaceans from prohibited areas

(1) Where an area is for the time being designated under section 19 as unsuitable for the production or collection of shellfish or crustaceans, or shellfish or crustaceans of a specified description, no person shall collect shellfish or crustaceans, or shellfish or crustaceans of that description, as the case may be, from that area.

(2) Where a temporary prohibition order under section 21 is in force in respect of any waters, no person shall collect shellfish or crustaceans from those waters.

(3) No person shall place on the market shellfish or crustaceans of any description collected in contravention of subsection (1) or (2).

Aquaculture animals and products

24 Placing on the market of aquaculture animals and products

(1) No person shall place aquaculture animals on the market for human consumption unless they meet the prescribed requirements.

(2) No person shall place aquaculture products for breeding purposes on the market unless they originate from aquaculture animals which meet the prescribed requirements.

(3) No person shall place aquaculture products for human consumption on the market unless they originate from aquaculture animals which meet the prescribed requirements.

25 Transport of aquaculture animals

No person shall transport aquaculture animals unless the prescribed requirements are met.

26 Identification of aquaculture animals and aquaculture products

No person shall despatch aquaculture animals or aquaculture products unless prescribed information is provided in the prescribed manner.

27 Export to European Union of aquaculture animals and aquaculture products

Regulations may make provision for securing that aquaculture animals or aquaculture products are not exported from the Falkland Islands to any part of the European Union, unless-

- (a) it meets the requirements of the relevant EU legislation;
- (b) it is despatched in accordance with those requirements; and
- (c) it is accompanied by the documents required by the relevant EU legislation.

[S. 6/Ord. 2/14/w.e.f. 30/4/14.]

Controls on movement of fish etc

28 Introduction of live fish etc

(1) Regulations may prohibit the introduction into the Falkland Islands, or any prescribed zone within the Falkland Islands, or subsequently move within the Falkland Islands or such a zone, any live fish, shellfish, crustaceans, eggs or gametes of a prescribed description unless they are accompanied by valid movement documents confirming that-

- (a) they come from an area free from a prescribed disease; or
- (b) where a movement document does not require that they come from an area free from a prescribed disease, they fulfil the conditions set out in that movement document.

(2) Regulations may prohibit the relaying in any zone within the Falkland Islands of any live fish, shellfish, crustaceans, eggs or gametes of a prescribed description from outside that zone unless they are accompanied by valid movement documents confirming that-

- (a) they come from an area free from a prescribed disease; or

- (b) where a movement document does not require that they come from an area free from a prescribed disease, they fulfil the conditions set out in that movement document.
- (3) Regulations may prohibit the relaying of any live fish, shellfish, crustaceans, eggs or gametes from a prescribed area-
- (a) in another prescribed area; or
 - (b) outside prescribed areas;

unless they have been authorised to do so in writing by a food authority.

29 Quarantine requirements

No person shall introduce into an approved zone or an approved farm any wild fish, shellfish or crustaceans, or their eggs or gametes, which have been caught in the deep sea and which are to be used for breeding purposes unless those fish, shellfish, crustaceans, eggs or gametes are first placed in quarantine in suitable facilities and in appropriate conditions to be determined by a food authority.

Control of disease

30 Notification of disease

- (1) Any person who-
- (a) knows of any observed abnormal mortality amongst shellfish or crustaceans in marine waters, farms, farming areas, harvested natural beds, or purification centres or storage tanks which discharge water into the sea;
 - (b) knows of any symptom amongst fish, shellfish or crustaceans which might constitute grounds for suspecting the presence of a prescribed disease;
 - (c) has any reason for suspecting the presence amongst fish, shellfish or crustaceans, of a prescribed disease;

shall notify a food authority as quickly as possible.

(2) Any person who has in his possession or under his charge an infected item, or an item which he suspects is an infected item, shall detain it until-

- (a) it has been examined by a food authority; or
- (b) a food authority has instructed him to dispose of it.

(3) A food authority may take such samples of or from fish or shellfish as may be necessary to establish whether a prescribed disease is present amongst fish or shellfish.

(4) For the purposes of this section-

"infected item" means a fish, crustacean or shellfish or the carcase or part of the carcase of the same which is infected with a prescribed disease; and

"observed abnormal mortality" means sudden mortality of a prescribed description.

31 Powers to control diseases of fish, shellfish etc.

(1) If a food authority has reasonable grounds for suspecting amongst fish, shellfish or crustaceans the presence of a prescribed disease he may-

- (a) by notice in writing given to the person appearing to have charge of any fish shellfish or crustaceans kept on such premises as are specified in the notice, prohibit the movement of any fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a specified description, on to or off such premises, except under the written authority of a food authority; or
- (b) by notice in writing given to any person appearing to him to be appropriate, prohibit the taking of any fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a specified description, from any area specified in the notice except under the written authority of a food authority.

(2) A notice given under paragraph (1) shall remain in force until withdrawn by a further notice in writing given by a food authority to the person to whom the initial notice was given.

(3) If the result of a test for the presence of a prescribed disease is positive, a food authority may, by notice in writing given to the person appearing to have charge of any fish, shellfish, crustaceans, facilities or equipment-

- (a) require the destruction of all infected or contaminated fish, shellfish or crustaceans, or fish, shellfish or crustaceans of a specified description; and
- (b) require the disinfection of facilities and equipment.

32 Control of disease: further measures

(1) Regulations made by the Governor under this subsection may enable the Governor, if he has reasonable grounds for suspecting or believing that fish, shellfish or crustaceans in any inland waters or marine waters are or may become infected with a prescribed disease, by order to designate those waters, and any land or waters adjacent to them, for the purpose of the regulations.

(2) Regulations under subsection (1) may also, for the purpose of preventing, eliminating, or controlling or preventing the spread of, that disease-

- (a) prohibit, restrict or regulate any prescribed activity within any waters or land so designated, and
- (b) prescribe measures of control-
 - (i) which are to be taken by any person of a description specified in the regulations, or
 - (ii) which a food authority may by notice to any such person require him to take, within any waters or land so designated.

33 Default powers

(1) If any person fails to comply with the requirements of a notice given under this Part then, without prejudice to any proceedings consequent upon the failure, a food authority may-

- (a) enter on any premises to which such notice relates, and
- (b) take or cause to be taken such steps as appear to him to be necessary either to ensure compliance with the requirements of the notice or to remedy the consequences of the failure to carry them out.

(2) All reasonable costs of taking such steps shall be recoverable by the food authority from the person to whom the notice was given.

34 Offences

(1) Any person who contravenes, or fails to comply with-

- (a) a provision of this Part, or
- (b) a provision or requirement of a notice given under this Part,

commits an offence.

(2) Any person who, for the purposes of procuring the approval of any matter for the purposes of this Part or the issue of a movement document-

- (a) makes a statement which he knows to be false in a material particular;
- (b) recklessly make a statement which is false in a material particular; or
- (c) intentionally fails to disclose any material particular, commits an offence.

(3) A person who commits an offence under subsection (1) or (2) is liable to a fine not exceeding level 8 on the standard scale.

(4) Any person who contravenes, or fails to comply with, a provision of regulations under this Part, contravention of or non-compliance with which is declared by the regulations to be an offence, is liable to a fine not exceeding a prescribed maximum (which shall not exceed level 8 on the standard scale).

PART 4 HYGIENE

35 Designation of vessels, establishments and installations

(1) The Governor may by order designate (for the purposes of relevant EU legislation and regulations made under section 36) vessels, establishments and installations of prescribed descriptions.

(2) The Governor may not designate a vessel, establishment or installation unless it has been approved for the purpose by the food authority in accordance with regulations made under section 36.

[S. 7/Ord. 2/14/w.e.f. 30/4/14.]

36 Regulation of designated vessels etc.

(1) Regulations may provide for-

- (a) the persons to whom and the manner in which applications may be made for approval of vessels, establishments and installations to which section 35 applies;
- (b) the procedures to be followed by applicants for approvals;
- (c) the standards of hygiene which shall apply to such vessels, establishments and installations;
- (d) the obligations to be observed by-
 - (i) the owner, charterer or operator of a vessel, and
 - (ii) the owner, lessee or operator of an establishment or installation, to which section 35 applies;
- (e) laying down health conditions for the production, processing and placing on the market of fishery products for human consumption, in particular the harvesting, handling, storage, transport and distribution of live fishery products;
- (f) securing the hygienic handling of fishery products at all stages of production and during storage, transport and distribution;
- (g) the fees and charges to be paid in respect of-
 - (i) an application for an approval or a variation of an approval;
 - (ii) the issue of any certificate by or on behalf of a food authority;
 - (iii) an inspection of any vessel, establishment or installation to which section 35 applies; and
 - (iv) time reasonably spent by a food authority in connection with the carrying out of his powers and duties;
- (h) the forms to be used for the purposes of this Part;
- (i) the powers which may be exercised by a food authority.

(2) Any person who contravenes, or fails to comply with, a provision of regulations under subsection (1), contravention of or non-compliance with which is declared by the regulations to be an offence, is liable to a fine not exceeding a prescribed maximum (which shall not exceed level 10 on the standard scale).

PART 5
SUPPLEMENTARY

Regulations, orders, directions and codes of practice

37 Power to make regulations

(1) The Governor may make regulations-

- (a) for prescribing anything which is to be prescribed under this Ordinance, and
- (b) otherwise for the better carrying into effect of the purposes of this Ordinance.

(2) Any power to make regulations conferred by any other provision of this Ordinance is without prejudice to the general power conferred by subsection (1).

38 Application of UK legislation

(1) The Governor may by order apply, subject to such modifications and exceptions as he considers necessary, to or in relation to-

- (a) the quality of marine waters or waters referred to in section 4(1)(b);
- (b) the quality of water used for washing or otherwise processing fishery products;
- (c) the suitability or otherwise of areas for the production, collection or relaying of shellfish;
- (d) the health of shellfish and aquaculture animals;
- (e) the harvesting, handling, placing on the market, storage, transport, despatch, export, import, distribution, introduction, movement or labelling of fishery products;
- (f) vessels, establishments and installations to which section 35 applies,

any UK legislation appearing to him to give effect to any relevant EU legislation in relation to any of those matters, or any matter appearing to him to be connected with any of those matters.

[S. 4/Ord. 2/14/w.e.f. 30/4/14.]

(2) The Governor may by order revoke any order made under subsection (1).

39 Power to give directions

(1) The Governor acting in his discretion may give any public body or public officer such directions of a general or specific character as the Governor considers appropriate to secure that, in exercising its or his functions under this Ordinance, that body or officer gives effect to the requirements of-

- (a) any relevant EU legislation, or

[S. 4/Ord. 2/14/w.e.f. 30/4/14.]

- (b) any international agreement to which the United Kingdom is for the time being a party and which extends to the Falkland Islands;

and it is the duty of the body or officer to comply with any such direction.

(2) In determining any appeal against or review of a decision under this Ordinance, the court or tribunal making the determination shall be bound by any direction given under this section to the same extent as the public body or public officer to whom it was given.

40 Codes of practice

(1) For any purpose of Part 2, Part 3 or Part 4 the Governor may-

- (a) issue a code of practice, or
- (b) by order apply, subject to such modifications and exceptions, if any, as are specified in the order, any code of practice in force in any part of the United Kingdom under by virtue of or for the purposes of any UK legislation.

(2) A failure on the part of any person to observe any provision of a code of practice issued or applied under this section shall not of itself render him liable to any proceedings, but in any proceedings before a court or tribunal-

- (a) any such code shall be admissible in evidence, and
- (b) any provision of the code which appears to the court or tribunal to be relevant to the question arising in the proceedings shall be taken into account in determining that question.

41 Transfer of functions

(1) The Governor may by order transfer to a public officer specified in the order any function conferred on the Governor by any of the following provisions of this Ordinance-

- (a) section 9(2) or (3);
- (b) section 10;
- (c) section 11;
- (d) section 13(2)(d).

(2) The Governor may by order revoke any order made under subsection (1).

(3) An order under subsection (1) or (2) may-

- (a) amend or repeal any provision of this Ordinance, or of any regulations made under it, appearing to the Governor to be inconsistent with, or to be unnecessary or to require modification in consequence of, the order; and
- (b) make such supplemental, consequential and transitional provision as the Governor considers necessary or appropriate for the purposes of the order.

Enforcement

42 Offences by bodies corporate

(1) Where an offence under this Ordinance or any regulation made pursuant to any power conferred by this Ordinance has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of-

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in such capacity,

he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) For the purposes of subsection (1) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

43 Powers of entry

(1) A food authority shall, on producing, if required to do so, some duly authenticated document showing his authority, have the right at all reasonable hours to enter any land or premises for the purposes of ascertaining whether there is or has been on the premises any contravention of this Ordinance.

(2) A food authority may carry out all checks and examinations necessary for the enforcement of this Ordinance, and in particular may-

- (a) carry out inspections of any premises;
- (b) take samples of or from fishery products;
- (c) examine relevant documentary or computer material.

(3) A food authority may make such inspections and take such samples as may be necessary to carry out the health inspections, sampling plans and diagnostic methods required by any relevant EU legislation.

[S. 4/Ord. 2/14/w.e.f. 30/4/14.]

(4) A food authority entering any premises under this section may take with him such persons, equipment and vehicles as are necessary for the purpose of facilitating the exercise of his powers under this Ordinance.

44 Obstruction

(1) No person shall-

- (a) intentionally obstruct any person acting in the execution of this Ordinance;
- (b) without reasonable cause, fail to give to any person acting in the execution of this Ordinance any assistance or information which that person may reasonably require of him for the purposes of his functions under this Part; or

- (c) furnish to any person acting in the execution of this Ordinance any information which he knows to be false or misleading.

(2) Nothing in subsection (1)(b) shall be construed as requiring any person to answer or give any information if to do so might incriminate him.

(3) Any person who contravenes subsection (1) commits an offence and liable to a fine not exceeding the maximum of level 8 on the standard scale.

45 Procurement of samples

(1) A food authority may-

- (a) take a sample of any fishery product which-
 - (i) appears to him to be intended for human consumption; or
 - (ii) is found by him on or in any premises which he is authorised to enter by or under section 43; or
- (b) take a sample of any article or substance which is found by him on or in any such premises and which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Ordinance or of regulations under it.

46 Analysis etc of samples

(1) A food authority who has procured a sample under section 45 and considers that the sample should be analysed or examined, submit it to be analysed or examined, as the case may be, by or under the direction of-

- (a) such person as the Governor may direct, either generally or in the particular case, or
- (b) if no such direction is given, such person as appears to the food authority to be suitably qualified to carry out the analysis or examination.

(2) In any proceedings under this Ordinance the production by one of the parties of a document purporting to be a certificate given by a person referred to in subsection (1)(a) or (b) specifying the result of an analysis or examination shall be sufficient evidence of the facts stated in it.

47 Regulation of sampling and analysis etc

(1) The Governor may by regulations make provision for supplementing or modifying the provisions of section 45 or 46.

(2) Without prejudice to the generality of subsection (1), regulations under that subsection may make provision with respect to-

- (a) the manner of procuring samples, including the steps to be taken in order to ensure that any samples procured are fair samples;
- (b) the method of dealing with samples, including (where appropriate) their division into parts;

- (c) the persons to whom parts of samples are to be given and the persons by whom such parts are to be retained;
- (d) the notices which are to be given to, and the information which is to be furnished by, the persons in charge of any fishery product, article or substance of or from which samples are procured;
- (e) the methods which are to be used in analysing or examining samples, or parts of samples, or in classifying the results of analyses or examinations;
- (f) the circumstances in which an analyst or examiner is to be precluded, by reason of a conflict of interest, from analysing or examining a particular sample or part of a sample; and
- (g) the circumstances in which samples, or parts of samples, are to be or may be submitted for analysis or examination to a prescribed person, or a person of a prescribed description.

Registers

48 Registers of orders etc.

- (1) The Director shall prepare and maintain a register of orders under section 4 indicating by reference to maps at a suitable scale all waters for the time being designated under that section.
- (2) The Director shall prepare and maintain a register of orders under sections 18 to 21 indicating by reference to maps at a suitable scale-
 - (a) every area for the time being designated under section 18 or 19;
 - (b) where appropriate, the description of shellfish to which the designation relates;
 - (c) any requirement, limitation, restriction or condition for the time being in force under section 18(2) or (4) or 20(1)(b) in relation to any designated area;
 - (d) every prohibition for the time being in force under section 21.
- (3) The Director shall keep a register containing prescribed information about-
 - (a) any approval of any matter by the Governor for the purposes of Part 3;
 - (b) any prohibition imposed pursuant to regulations under section 27; and
 - (c) any notice given under section 31.
- (4) Regulations may provide for the making, amendment and cancellation of entries in the register.
- (5) The Director shall-
 - (a) make every register kept under this section, together with any related maps, available for inspection by any person at his office at all reasonable times, and

- (b) supply a copy of any entry in it, and a copy of any related map, to any person on payment of such reasonable charge as he may determine.

(6) A register or map may be kept otherwise than in documentary form; and where it is so kept, the requirement of subsection (5)(a) is satisfied if the Director makes any part of the register or map which any person wishes to inspect available for inspection in visible and legible form.

Repeal

49 Powers for the Governor to repeal Fishery Products (Hygiene) Ordinance and to make transitional provision

(1) The Governor may by order repeal the Fishery Products (Hygiene) Ordinance (No. 7 of 1998).

(2) The Governor may make more than one order under subsection (1) repealing different provisions on different dates.

(3) The Governor may make regulations making transitional provisions consequent on the repeal of the Fishery Products (Hygiene) Ordinance and the bringing into force of this Ordinance.

[S. 6/Ord. 9/12/w.e.f. 6/6/12.]

SCHEDULE DEFINITION OF "RELEVANT EU LEGISLATION" (AND POWER FOR THE GOVERNOR TO AMEND THAT DEFINITION)

[S. 7/Ord. 9/12/w.e.f. 6/6/12; S.R. & O. 15/21/w.e.f. 3/8/21.]

1 Definition of "relevant EU legislation"

In this Ordinance, "relevant EU legislation"-

- (a) means the following legislation (to the extent that it relates to fishery products)-
- (i) Regulation (EC) 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;
 - (ii) Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC;
 - (iii) Regulation (EC) 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs;

- (iv) Regulation (EC) 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin;
- (v) Regulation (EC) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products;

[S.R. & O. 15/21/w.e.f. 3/8/21.]

- (vi) ...

[S.R. & O. 15/21/w.e.f. 3/8/21.]

- (vii) Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs;
- (viii) Commission Regulation (EC) No 2074/2005 of 5 December 2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No 854/2004 of the European Parliament and of the Council and Regulation (EC) No 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004; and
- (ix) Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs;

(b) also means-

- (i) in relation to Part 2-

- (aa) Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption;

[S.R. & O. 15/21/w.e.f. 3/8/21.]

- (bb) Directive (EU) 2000/60 of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy;

[S.R. & O. 15/21/w.e.f. 3/8/21.]

- (ii) in relation to Part 3, 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;

(c) includes European Union legislation that-

- (i) amends or replaces legislation covered by this definition;
- (ii) gives effect to legislation covered by this definition; or
- (iii) relates in some other way to the subject matter of legislation covered by this definition.

2 Power for the Governor to amend definition of "relevant EU legislation"

The Governor may by order amend paragraph 1 to update the definition of "relevant EU legislation".

ⁱ See Gazette 7 of 6th June 2012.

ⁱⁱ See Gazette Extraordinary 7 of 2012.