



COMMUNITY PROVISIONS (MORTALITY IN OYSTERS) (JERSEY) REGULATIONS 2010

Arrangement

Regulation

- 1 Interpretation
- 2 Owner to give notice of increased mortality in *Crassostrea gigas* oysters
- 3 Sampling, testing and establishment of containment areas
- 4 Restriction on moving *Crassostrea gigas* from a containment area
- 5 Revocation of containment area
- 6 Animal health certificate needed for *Crassostrea gigas* oysters leaving former containment area
- 7 Powers of inspectors
- 8 Obstruction
- 9 Offences
- 10 Offences due to fault of another person and defence of due diligence
- 11 Citation, commencement and repeal



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Made 21st July 2010
Coming into force 21st July 2010

THE STATES, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996^[1], have made the following Regulations –

1 Interpretation

(1) In these Regulations, unless the context otherwise requires –

“Commission Regulation” means Commission Regulation (EU) No 175/2010 of 2 March 2010 implementing Council Directive 2006/88/EC as regards measures to control increased mortality in oysters of the species *Crassostrea gigas* in connection with the detection of Ostreid herpesvirus 1 μ var (OsHV-1 μ var) (OJ L 52, 3.3.2010, p.1)^[2];

“containment area” means an area established under Article 2 of the Commission Regulation;

“*Crassostrea gigas* oysters” means oysters of the species *Crassostrea gigas*;

“inspector” has the same meaning as in the Diseases of Animals (Jersey) Law 1956^[3];

“Member State” means a Member State of the European Community and includes another place in the British Islands;

“Minister” means the Minister for Planning and Environment.

- (2) Subject to paragraph (1) and unless the context otherwise requires, expressions used in these Regulations have the same meaning as in the Commission Regulation.

2 Owner to give notice of increased mortality in *Crassostrea gigas* oysters

If a person who owns, or is in charge of, *Crassostrea gigas* oysters in Jersey or its territorial sea becomes aware of increased mortality in those oysters, the person shall notify the Minister of that fact.

3 Sampling, testing and establishment of containment areas

- (1) For the purposes of Article 2 of the Commission Regulation, the competent authority in respect of Jersey and its territorial sea shall be the Minister.
- (2) For the purposes of Article 2(2) of the Commission Regulation, a containment area in respect of Jersey or its territorial sea shall be established by notice published –
 - (a) in the Jersey Gazette; or
 - (b) in such other way or ways as the Minister considers likely to bring the establishment of the containment area to the attention of those persons who are affected by it.

4 Restriction on moving *Crassostrea gigas* from a containment area

A person who moves *Crassostrea gigas* oysters out of a containment area in contravention of Article 3 of the Commission Regulation shall be guilty of an offence.

5 Revocation of containment area

- (1) For the purposes of Article 4 of the Commission Regulation, the competent authority in respect of Jersey and its territorial sea shall be the Minister.
- (2) For the purposes of Article 4 of the Commission Regulation, the lifting of control measures, and of placing on the market restrictions, in respect of Jersey or its territorial sea shall be by notice published –
 - (a) in the Jersey Gazette; or
 - (b) in such other way or ways as the Minister considers likely to bring the lifting of those measures and restrictions to the attention of those persons who are affected by it.

6 Animal health certificate needed for *Crassostrea gigas* oysters leaving former containment area

A person who places on the market *Crassostrea gigas* oysters to which Article 5 of the Commission Regulation applies shall be guilty of an offence if the requirements of that Article are not met in relation to the oysters.

7 Powers of inspectors

- (1) An inspector may make such enquiries and carry out such investigations as the inspector considers necessary for any purpose connected with the administration or enforcement of the Commission Regulation.
- (2) For a purpose mentioned in paragraph (1) an inspector may, on producing, if required by the occupier to do so, proof of the inspector's appointment, enter any premises (excluding premises used only as a dwelling) at any reasonable time.
- (3) After entering premises in accordance with paragraph (2), an inspector may, for a purpose mentioned in paragraph (1) –
 - (a) ascertain whether any *Crassostrea gigas* oysters are or have been kept on the premises;
 - (b) inspect and examine any *Crassostrea gigas* oysters there;
 - (c) make such tests and take such samples from any *Crassostrea gigas* oysters there as the inspector considers necessary;
 - (d) mark any *Crassostrea gigas* oysters there for identification purposes;
 - (e) serve on a person a notice to restrict or prohibit the movement of any *Crassostrea gigas* oysters, where the person is the occupier of premises entered by an inspector under this Regulation, any of the occupier's employees or any person on the premises who is or has been in possession or charge of any *Crassostrea gigas* oysters that are or have been on the premises;
 - (f) seize any *Crassostrea gigas* oysters there;
 - (g) examine and take copies of any record, including any computer record, that the inspector finds there; or
 - (h) search for and seize anything there that may reasonably be suspected of being evidence of a contravention of these Regulations.
- (4) A person (being the occupier of premises entered by an inspector under this Regulation, any of the occupier's employees or any person on the premises who is or has been in possession or charge of any *Crassostrea gigas* oysters that are or have been on the premises) shall –

- (a) provide on the premises such reasonable facilities and reasonable assistance to the inspector and comply with such reasonable requirements as the inspector considers necessary for any purpose connected with the administration or enforcement of the Commission Regulation; and
 - (b) if required by an inspector, give such information as he or she possesses as to –
 - (i) any *Crassostrea gigas* oysters that are or have been on the premises, or
 - (ii) the location, transport and movement of any *Crassostrea gigas* oysters that are or have been in his or her possession or charge.
- (5) Nothing in paragraph (4)(b) shall be construed as requiring a person to answer any question or give any information if to do so might incriminate the person.
- (6) An inspector entering any premises by virtue of this Regulation may be accompanied by such other persons as the inspector considers necessary to give adequate assistance.
- (7) If such premises are unoccupied the inspector shall leave them as effectively secured against unauthorized entry as they were immediately before to the inspector's entry.

8 Obstruction

A person shall not –

- (a) intentionally obstruct an inspector acting in the execution of these Regulations;
- (b) without reasonable cause, fail to comply with a notice served under Regulation 7(3)(e) on the person; or
- (c) furnish to an inspector acting in the execution of these Regulations any information that the person knows to be false or misleading in a material particular.

9 Offences

- (1) A person who contravenes Regulation 2, 7(4) or 8 shall be guilty of an offence and shall be liable to imprisonment for 2 years and to a fine.
- (2) A person who is guilty of an offence against Regulation 4 or 6 shall be liable to imprisonment for 2 years and to a fine.

- (3) Where an offence under these Regulations committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

10 Offences due to fault of another person and defence of due diligence

- (1) If the commission by any person of an offence under these Regulations is due to the act or default of some other person, the other person shall also be guilty of the offence.
- (2) A person may be charged with and convicted of the offence by virtue of paragraph (1) whether or not proceedings are taken against another person.
- (3) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (4), be a defence for the person charged with the offence to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence personally or by a person under his or her control.
- (4) If in any case the defence provided by paragraph (3) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless –
 - (a) at least 7 clear days before the hearing; and
 - (b) where he or she has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance,

the person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

- (5) In paragraph (4) any reference to appearing before a court shall be construed as including a reference to being brought before a court.

11 Citation, commencement and repeal

- (1) These Regulations may be cited as the Community Provisions (Mortality in Oysters) (Jersey) Regulations 2010.
- (2) These Regulations shall come into force forthwith.
- (3) These Regulations shall expire on 1st January 2011.

M.N. DE LA HAYE

Greffier of the States

^[1]*chapter 17.245*

^[2]*EUR-Lex - CELEX: 32010R0175 - EN*

^[3]*chapter 02.400*