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STATUTORY INSTRUMENTS

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**2002 No. 284**

**RIVER, ENGLAND AND WALES  
SALMON AND FRESHWATER FISHERIES  
SEA FISHERIES**

**The Diseases of Fish (Control) (Amendment)  
(England and Wales) Regulations 2002**

<i>Made</i>	- - - -	<i>11th February 2002</i>
<i>Laid before Parliament</i>		<i>12th February 2002</i>
<i>Coming into force</i>	- -	<i>10th March 2002</i>

The Secretary of State for Environment, Food and Rural Affairs, being designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on her by that section, and of all other powers enabling her in that behalf, makes the following Regulations:

**Title, commencement and extent**

1. These Regulations may be cited as the Diseases of Fish (Control) (Amendment) (England and Wales) Regulations 2002, extend to England and Wales and come into force on 10th March 2002.

**Amendment of the Diseases of Fish (Control) Regulations 1994**

2. In so far as they extend to England and Wales, the Diseases of Fish (Control) Regulations 1994<sup>(3)</sup> are amended in accordance with the Schedule to these Regulations.

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(1) S.I.1972/1811.

(2) 1972 c. 68.

(3) S.I. 1994/1447, amended in relation to Scotland by S.I. 2000/330.

11th February 2002

*Elliot Morley*  
Parliamentary Under Secretary of State,  
Department for Environment, Food and Rural  
Affairs

## SCHEDULE

Regulation 2

### Amendments to the Diseases of Fish (Control) Regulations 1994

1. For regulations 2 to 8 there are substituted the following regulations 2 to 6—

#### **“Interpretation**

- 2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Diseases of Fish Act 1937<sup>(4)</sup>;

“confirmed”, in relation to a disease listed in Schedule 3, means confirmed by or on behalf of the Secretary of State as a result of laboratory examination or, in the case of Infectious Salmon Anaemia, as a result of clinical examination and a post mortem examination;

“Directive 93/53” means Council Directive [93/53/EEC](#) introducing minimum Community measures for the control of certain diseases<sup>(5)</sup>;

“farm” means any establishment or, in general, any geographically defined installation in which aquaculture animals are reared or kept with a view to their being placed on the market, whether the waters of that farm are inland waters or marine waters;

“farm suspected of being infected” means a farm containing fish suspected of being infected;

“Fish Health Regulations” mean the Fish Health Regulations 1997<sup>(6)</sup>;

“fish suspected of being infected” means fish showing clinical signs or post mortem lesions or dubious reactions in laboratory tests giving rise to reasonable suspicion of the presence of a disease which is listed in Schedule 3;

“inland waters” means waters within England and Wales which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows;

“inspector” means a person appointed by the Secretary of State for the purposes of these Regulations;

“marine waters” means waters (other than inland waters) within the seaward limits of the territorial sea adjacent to England and Wales;

“occupier”, in relation to a fish farm the waters of which are inland waters, has the meaning given to it in the Act and in relation to a fish farm the waters of which are marine waters, means the person upon whom a notice may be served under section 2A or 4A of the Act;

“scheme” means the scheme for the withdrawal of all fish in English and Welsh farms infected with infectious salmon anaemia submitted by the United Kingdom pursuant to Article 6 of Directive 93/53 and approved under Decision [2001/872/EC](#)<sup>(7)</sup>;

“Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs and includes the Minister of Agriculture, Fisheries and Food;

“section 4 or 4A notice” means a notice served under section 4 or, as the case may be, section 4A of the Act;

“section 2 order” means an order made under section 2 of the Act; and

(4) [1937 c. 33](#) as amended by the Diseases of Fish Act 1983 (c. 30).

(5) OJ No. L175, 19.7.1993, p. 23 as last amended by Council Directive [2000/27/EC](#) (OJ No. L114, 13.5.2000, p. 28).

(6) S.I. [1997/1881](#).

(7) OJ No. L325, 8.12.2001, p. 33.

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“waters” means any waters (including the waters of any farm) frequented by or used for keeping live fish, live eggs of fish, or foodstuffs for fish, and includes the banks or margins of any such waters and any buildings used in connection therewith.

(2) All other expressions in these Regulations have the meaning they bear in the Fish Health Regulations.

(3) Any reference in these Regulations to a Directive is a reference to it as amended immediately before the making of the Diseases of Fish (Control) (Amendment) (England and Wales) Regulations 2002.

(4) All notices and authorisations given under these Regulations shall be in writing and may be made subject to conditions, and may be amended, suspended or revoked in writing.

(5) The provisions of section 7 of the Act shall apply to the service of a notice and the giving of an authorisation under these Regulations as they do to a notice served under the Act.

(6) Where a farm is entirely in Wales, any function of the Secretary of State under these Regulations may be exercised by her, by the National Assembly for Wales or by both acting jointly.

### **Official census**

**3.—**(1) As soon as possible after—

- (a) a section 4 or 4A notice has been served; or
- (b) a section 2 order has been made,

in relation to a farm suspected of being infected, the Secretary of State shall prepare a record (referred to in these Regulations as an “official census”) in relation to the fish on the farm containing the information set out in Schedule 2 and give it to the occupier of the farm.

(2) After the official census has been given to the occupier of the farm, the occupier shall check regularly for—

- (a) any increased population, or
- (b) new mortality,

of the fish on the farm and make any appropriate amendments to the official census.

(3) The official census, as amended in accordance with this regulation, shall be kept by the occupier in such a place that it shall be available to the Secretary of State or an inspector on demand for inspection or making a copy to retain.

(4) The official census, as amended in accordance with this regulation, shall be retained by the occupier of the farm for a period of four years from the date on which the section 4 or 4A notice has lapsed or any section 2 order has been revoked, whichever is the later.

### **Control measures when a disease in Part I or II of Schedule 3 is suspected on a farm**

**4.** Without prejudice to the provisions of the Act or the Fish Health Regulations, where—

- (a) a farm is suspected of being infected with a disease listed in Schedule 3; and
- (b) a section 4 or 4A notice served, or a section 2 order made, in relation to that farm remains current,

the occupier of the farm shall take all reasonable steps to ensure that the prohibitions in paragraph 1 of Schedule 4 are complied with in relation to the farm, and paragraph 2 of that Schedule shall apply to it.

**Control measures if presence of a disease in Part I of Schedule 3 is confirmed on a farm**

5.—(1) If the presence of a disease listed in Part I of Schedule 3 is confirmed in fish on a farm, the Secretary of State shall, by notice served on the occupier of the farm, require—

- (a) the withdrawal of all fish from the waters of the farm;
- (b) all live fish showing clinical signs of the disease to be killed and disposed of or consigned for disposal, under the supervision of the Secretary of State, in accordance with the provisions of the Animal By-Products Order 1999<sup>(8)</sup> applicable to high risk material;
- (c) the disposal or consignment for disposal of all eggs, gametes, and dead fish under the supervision of the Secretary of State in accordance with the provisions of the Animal By-Products Order 1999 applicable to high risk material;
- (d) where the waters of the farm are inland waters, the draining, cleaning and disinfection of all pools on the farm;
- (e) in any case where the notice authorises fish of a commercial size and which show no sign of the disease to be slaughtered and gutted for marketing or processing for human consumption—
  - (i) the disposal or consignment for disposal of any resultant fish waste and offal in accordance with the provisions of the Animal By-Products Order 1999 applicable to high risk material so as to destroy pathogens; and
  - (ii) the treatment of used water so as to inactivate any pathogens it may contain;
- (f) the cleaning and disinfection or destruction of any equipment, material or substances liable to be contaminated with the disease pathogen, under the supervision of the Secretary of State; and
- (g) that the repopulation of the farm shall only take place when the Secretary of State so authorises by notice.

(2) A notice served under paragraph (1) above shall be accompanied by a copy of the scheme and shall include directions—

- (a) as to the process of, and timetable for, the carrying out of the requirements of the notice; and
  - (b) for keeping and submission of records.
- (3) Any notice under this Regulation must be consistent with the scheme.

**Control measures when a disease listed in Part II of Schedule 3 is confirmed on a farm**

6.—(1) If the presence of a disease listed in Part II of Schedule 3 is confirmed in fish in a farm, the Secretary of State may, by notice served on the occupier of the farm require—

- (a) the withdrawal of all fish from the waters of the farm in accordance with the directions contained in the notice;
- (b) all live fish showing clinical signs of the disease to be killed and disposed of or consigned for disposal, under the supervision of the Secretary of State, in accordance with the provisions of the Animal By-Products Order 1999 applicable to high risk material;

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<sup>(8)</sup> S.I. 1999/646, amended in relation to England by S.I. 2001/1704, in relation to Wales by S.I. 2001/1735 and in relation to Scotland by S.S.I. 2001/171.

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- (c) the disposal of or consignment for disposal of all eggs, gametes, and dead fish, under the supervision of the Secretary of State in accordance with the provisions of the Animal By-Products Order 1999 applicable to high risk material;
  - (d) where the waters of the farm are inland waters, the draining, cleaning and disinfection of all pools on the farm;
  - (e) the cleaning and disinfection or destruction of any equipment, material or substances liable to be contaminated with the disease pathogen, under the supervision of the Secretary of State; and
  - (f) that the repopulation of the farm shall only take place when the Secretary of State so authorises by notice.
- (2) A notice served under paragraph (1) above shall include directions—
- (a) as to the process of, and timetable for, the carrying out of the requirements of the notice; and
  - (b) for keeping and submission of records.
- (3) In respect of fish showing no sign of the disease, a notice served under paragraph (1) above may include directions authorising the fattening of fish until they reach commercial size and then requiring them to be slaughtered and gutted for marketing or processing for human consumption, but if it does so the notice shall also direct—
- (a) the disposal or consignment for disposal of any resultant fish waste and offal in accordance with the provisions of the Animal By-Products Order 1999 applicable to high risk material so as to destroy pathogens; and
  - (b) the treatment of used water so as to inactivate any pathogens it may contain.”.
2. In regulation 9 (which deals with other control measures)—
- (a) in paragraph (1), for the words “come into force” there are substituted the words “have effect whilst the Order is in force”; and
  - (b) in paragraph (3), the words “land or” are deleted and for the words “to the designated area” there are substituted the words “to those waters”.
- 3.—(1) For paragraph (1) of regulation 10 (prohibition on vaccination) there is substituted the following paragraph—
- “(1) No person shall vaccinate any fish or cause any fish to be vaccinated against any disease listed in Part I of Schedule 3 unless—
- (a) the presence of the disease has been confirmed at any place in Great Britain; and
  - (b) he has obtained the prior authorisation of the Secretary of State to do so in accordance with the derogation in paragraph 1 of Article 14 of Directive 93/53”.
- (2) In paragraph (2) of regulation 10 the words after “Schedule 3” are deleted.
4. In paragraph (1) of regulation 11 (powers of an inspector) after the words “enter any land or premises” there are inserted the words “(other than any premises used only as a dwelling)”.
5. For regulation 12 (failure to comply with a notice) there is substituted the following regulation—

**“Failure to comply with control measures**

12.—(1) If any person fails to comply with any control measure, then, without prejudice to any proceedings following such failure, an inspector may enter any premises in relation to which such control measure relates and take, or cause to be taken, such steps as appear

to the inspector to be necessary either to ensure compliance with the control measure or to remedy the failure to comply with it, at the expense of the person required to comply with the control measure.

(2) In paragraph (1) above, “control measure” means any requirement, prohibition or restriction imposed on any person (other than the Secretary of State) by or under these Regulations”.

6. In paragraph (2) of regulation 13 (obstruction), for the words “paragraph (1)(c)” there are substituted the words “paragraph (1)(b)”.

7. For paragraph (1) of regulation 15 (offences and penalties) there is substituted the following paragraph—

“(1) Any person (other than the Secretary of State or the National Assembly for Wales) contravening any requirement or prohibition imposed on him by or under these Regulations shall be guilty of an offence.”.

8. Schedule 1 is deleted.

9. In Schedule 4—

(a) in paragraph 1(b), for the words “the official service” there are substituted the words “an inspector”; and

(b) in paragraph 1(f)(ii), for the words “owner or keeper” there is substituted the word “occupier”.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Diseases of Fish (Control) Regulations 1994 in so far as they are applicable in England and Wales.

The 1994 Regulations implemented in Great Britain Council Directive [93/53/EEC](#) introducing minimum Community measures for the control of certain fish diseases (OJNo. L175, 19.7.93, p. 23) (“the Directive”).

These Regulations, in addition to making various minor and consequential drafting amendments to the 1994 Regulations, implement, in relation to England and Wales, amendments to the Directive made by Council Directive [2000/27/EC](#) (OJ No. L114, 13.5.2000, p.28).

The main changes made to the 1994 Regulations are as follows—

- (i) the references to approved zones are deleted as the entirety of England and Wales is approved under Council Directive [91/67/EEC](#) and Commission Decision [2000/188/EC](#) (OJ No. L59, 4.3.2000, p. 17);
- (ii) regulation 5 of the 1994 Regulations, which required certain control measures to be taken when the presence of a disease listed in Part I of Schedule 3 to those Regulations is confirmed, has been replaced by a new regulation 5. This provides that where the presence of a disease listed in Part I of Schedule 3 is confirmed on a farm the Secretary of State for Environment, Food and Rural Affairs is required to issue appropriate directions as to the process and timetable for the carrying out of the control measures required to be taken by the occupier of the farm under

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the regulation. In issuing such directions the Secretary of State is to have regard to the scheme established by her pursuant to Article 6 of the Directive (as amended by Council Directive [2000/27/EC](#)) and which was approved by the European Commission by Decision [2001/872/EC](#) (OJ No. L325, 8.12.2001, p. 33). Her functions may also be exercised in relation to farms in Wales concurrently by or jointly with the National Assembly for Wales.

- (iii) regulation 7 of the 1994 Regulations, which previously required certain control measures to be taken where the presence of a disease listed in Part II of Schedule 3 was confirmed on a farm in an approved zone or on an approved farm not in an approved zone, has been replaced by a new regulation 6 which provides for control measures to be taken on any farm in England and Wales where there is confirmation of the presence of fish with such a disease. As regards the control measures to be applied, the provision for the immediate removal of fish has been replaced by provision for directions to be given as to the process of and timetable for the specified control measures to be carried out. In implementation of a derogation provided for under Article 9(3) of the Directive, these directions may include authorisation of the fattening of fish until they reach commercial size and are slaughtered for marketing or processing for human consumption;
- (iv) regulation 8 of the 1994 Regulations, which dealt with controls outside approved zones, is not replaced;
- (v) regulation 10 of the 1994 Regulations, which prohibited the vaccination of fish against the diseases listed in Schedule 3, Part I, has been amended to permit the vaccination of fish against diseases listed in Part I of Schedule 3 where the presence of such a disease has been confirmed at any place in Great Britain and the prior authorisation of the Secretary of State has been obtained;
- (vi) the power of an inspector under regulation 11 of the 1994 Regulations to enter any premises for enforcement purposes is no longer exercisable in relation to premises used exclusively as a dwelling.