
STATUTORY RULES OF NORTHERN IRELAND

2009 No. 129

**The Aquatic Animal Health
Regulations (Northern Ireland) 2009**

PART 5

ENFORCEMENT AND APPEALS

Further information

36.—(1) The Department may, by notice served on the applicant, request such additional information in relation to any application under regulation 7(1), 9(1)(b), 12(3), or 13(2) as the Department may reasonably require.

(2) The Department may request such additional information within such period as it may specify in the notice or agree with the applicant in writing.

(3) Where an applicant fails to provide the Department with any information requested under paragraph (1), the Department may refuse to proceed with the application to which it relates or refuse to proceed with it until the information is provided.

Powers of entry

37.—(1) An inspector may, on producing, if so required, some duly authenticated document showing the inspector's authority, enter any premises at any reasonable time for the purposes of Directive 2006/88 and, in particular, for the purposes of—

- (a) administering and enforcing these Regulations;
- (b) monitoring or surveillance for disease.

(2) An inspector may be accompanied by—

- (a) such persons, vehicles, equipment or materials as the inspector considers necessary;
- (b) any representative of the European Commission acting for the purposes of Directive 2006/88.

(3) An inspector may not enter any premises used wholly or mainly for residential purposes unless a lay magistrate has issued a warrant authorising the inspector to do so.

(4) If a lay magistrate, on sworn complaint in writing, is satisfied—

- (a) that there is reasonable ground for entry onto any premises for any of the purposes mentioned in paragraph (1); and
- (b) that any one or more of the conditions in paragraph (5) is fulfilled in relation to the premises,

the lay magistrate may issue a warrant authorising the inspector to enter the premises, if need be by reasonable force.

(5) The conditions are—

- (a) that admission to the premises has been refused;
 - (b) that such refusal is apprehended;
 - (c) that the premises are unoccupied or the occupier is temporarily absent;
 - (d) that the case is one of urgency;
 - (e) that an application for admission would defeat the object of the entry;
 - (f) that the premises are used wholly or mainly for residential purposes.
- (6) A warrant issued under paragraph (4) shall continue in force—
- (a) for one month; or
 - (b) until the purpose for which it was issued has been fulfilled,

whichever is the sooner.

(7) If an inspector enters any unoccupied premises by virtue of a warrant the inspector shall leave them as effectively secured against unauthorised entry as the inspector found them.

Powers of inspectors

38.—(1) Where an inspector enters any premises under regulation 37, the inspector shall have powers to carry out all checks and examinations necessary for the purposes mentioned in regulation 37(1) and, in particular, may—

- (a) inspect any part of the premises or any equipment on the premises;
- (b) search for or examine any aquatic animal, aquaculture product, water or any thing on the premises;
- (c) take samples of or from any aquatic animal, aquaculture product or water on the premises and, if necessary, send the samples for laboratory testing;
- (d) carry out such other inquiries, investigations, examinations or tests as may be necessary;
- (e) seize, detain or remove—
 - (i) any aquatic animal or any part of such animal;
 - (ii) any aquaculture product;
 - (iii) any container or receptacle in which aquatic animals are kept;
 - (iv) any thing on the premises liable to transmit disease,
 and dispose of them as the Department thinks fit;
- (f) require any person to afford the inspector such facilities and assistance or do any thing with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on the inspector by this regulation;
- (g) require any person to produce any document or record that is in that person's control or possession;
- (h) require any appropriate or responsible person to render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away;
- (i) for the purpose of determining whether these Regulations are being complied with, have access to, inspect and take copies of or extracts from any document or record (in whatever form it is held) produced to the inspector or found on the premises or remove such document or record to enable it to be copied; and
- (j) if the inspector has reason to suspect that an offence has been committed under these Regulations, seize, detain or remove any document or record produced to the inspector or

found on the premises for the purpose of enabling the document or record to be used as evidence in proceedings for the offence.

(2) If, in the opinion of the inspector, it is not for the time being practicable for the inspector to seize and remove any thing, the inspector may require any appropriate or responsible person on the premises to secure that the thing is not removed or otherwise interfered with until such time as the inspector may seize and remove it.

(3) It is an offence for a person to fail to comply with any requirement imposed under paragraph (2).

Enforcement notices

39.—(1) An inspector may serve a notice (“an enforcement notice”) on a relevant person if the inspector considers that—

- (a) any condition of an authorisation or licence or any requirement in these Regulations has not been complied with, is not being complied with or is not likely to be complied with; or
- (b) the person does not have satisfactory measures in place to prevent or limit the risk of the spread of disease.

(2) An enforcement notice served under paragraph (1) may require—

- (a) the execution of such works; or
- (b) the taking of such other steps,

as the inspector considers necessary to prevent or limit the risk of the spread of disease.

(3) An enforcement notice shall—

- (a) give the reasons for the service of the notice and for the requirements in it;
- (b) specify the steps which the relevant person is required to take;
- (c) state the date by which the steps must be taken; and
- (d) inform the relevant person of the right of appeal under regulation 44.

(4) Except where regulation 44(7) applies, it is an offence for a person to fail to comply with an enforcement notice.

(5) In this regulation and in regulation 40 a “relevant person” means—

- (a) the operator of an aquaculture production business or processing establishment authorised under Part 2;
- (b) the operator of a put and take fishery or non-commercial installation registered under Part 2;
- (c) the holder of a licence granted under these Regulations; or
- (d) a transporter.

Prohibition notices

40.—(1) An inspector may serve a notice (“a prohibition notice”) on a relevant person if the inspector considers that—

- (a) any condition of an authorisation or licence or any requirement in these Regulations has not been complied with, is not being complied with or is not likely to be complied with;
- (b) there is a risk of the spread of disease to aquatic animals; and
- (c) the prohibition is necessary to prevent or limit that risk.

(2) A prohibition notice shall—

- (a) give the reasons for the service of the notice and for the prohibition in it;
- (b) specify the nature of the prohibition;
- (c) state the date on which the prohibition is to take effect and (if appropriate) the date on which it is to cease to have effect; and
- (d) inform the relevant person of the right of appeal under regulation 44.

(3) Except where regulation 44(7) applies, it is an offence for a person to fail to comply with a prohibition notice.

Costs of compliance

41. Unless the Department directs otherwise in writing, a notice served under these Regulations shall be complied with at the expense of the person on whom it is served.

Powers of inspectors in case of default

42. If any person fails to comply with a notice served under regulation 39 or regulation 40, an inspector may—

- (a) take such steps as the inspector considers necessary to—
 - (i) ensure compliance with the notice; or
 - (ii) remedy the consequences of the failure to comply with the notice;
- (b) recover any expenses reasonably incurred in so doing from any person who has failed to comply with the notice.

Enforcement by High Court

43. If the Department considers that proceedings against a person for an offence under regulation 39(4) or 40(3) would afford an ineffectual remedy against that person, it may take proceedings in the High Court for the purpose of securing compliance with the notice.

Appeals

44.—(1) A person (“the appellant”) may appeal to the Department against any of the following—

- (a) a decision to refuse to grant an authorisation;
- (b) a decision to grant an authorisation subject to any condition, other than a condition imposed under regulation 8;
- (c) a decision to amend an authorisation or to refuse to grant an application for an amendment under regulation 9;
- (d) a suspension notice under regulation 10;
- (e) a revocation notice under regulation 11;
- (f) a decision to refuse to accept the surrender of an authorisation under regulation 12;
- (g) an enforcement notice under regulation 39;
- (h) a prohibition notice under regulation 40,

and notice of any such decision or any such notice is referred to in this regulation as the “relevant notice”.

(2) An appellant may, within 21 days from the date on which the relevant notice was issued,—

- (a) make written representations to the Department; or

(b) give notice that the appellant wishes to appear before and be heard by an independent person appointed for the purpose by the Department.

(3) Where an appellant makes written representations under paragraph (2)(a) the Department shall appoint an independent person to consider the representations and report in writing to the Department.

(4) Where an appellant gives notice under paragraph (2)(b)—

(a) the Department shall appoint an independent person to hear representations and specify a time limit within which representations to that person shall be made;

(b) if the appellant so requests, the hearing before the appointed person shall be in public;

(c) the appointed person shall consider the representations and report in writing to the Department.

(5) If the appellant so requests, the Department shall provide the appellant with a copy of the appointed person's report.

(6) The Department shall, after considering the report, give the appellant notice of its final determination and the reasons for it.

(7) Subject to paragraph (8), where an appeal is brought by virtue of this regulation against—

(a) the amendment of an authorisation under regulation 9(1)(a);

(b) a suspension notice under regulation 10;

(c) a revocation notice under regulation 11;

(d) an enforcement notice under regulation 39; or

(e) a prohibition notice under regulation 40,

the amendment or notice shall not have effect pending the final determination or the withdrawal of the appeal.

(8) But paragraph (7) shall not apply where the relevant notice includes a statement that in the opinion of the Department or, as the case may be, the inspector it is necessary for the purpose of preventing or limiting the risk of the spread of disease that that paragraph should not apply.

(9) Where—

(a) a notice referred to in paragraph (7) to which that paragraph does not apply by virtue of paragraph (8) is varied or revoked on appeal; and

(b) the person on whom it was served has complied with the notice,

the Department shall pay to that person an amount equal to the loss suffered or expenditure reasonably incurred by that person in complying with the notice.