

## SCHEDULES

PROSPECTIVE

### SCHEDULE 1 **N.I.**

Article 3(2).

#### PROVISIONS TO BE INSERTED AS SCHEDULE 3A AND SCHEDULE 3B TO THE 1952 ACT

**N.I.**

#### “SCHEDULE 3A **N.I.**

#### FOYLE AND CARLINGFORD AQUACULTURE LICENSING APPEALS BOARD

##### *Incorporation*

- 1.—(1) The Appeals Board shall have the legal capacities of a body corporate.
- (2) The Appeals Board shall have the power to acquire, hold and dispose of land or other property.
- (3) The Appeals Board shall not acquire, hold or dispose of land without the consent of NSMC and the Finance Departments.
- (4) Judicial notice shall be taken of the seal of the Appeals Board.

##### *Membership*

- 2.—(1) Subject to the provisions of this paragraph, the remuneration, allowances and expenses of the Chairperson and other members of the Appeals Board, and any other terms and conditions on which they hold office, shall be determined by NSMC with the approval of the Finance Departments.
- (2) A member of the Appeals Board shall hold office for such period as may be determined by NSMC.
- (3) A person may resign as a member or Chairperson of the Appeals Board by notice in writing to NSMC.
- (4) NSMC may dismiss a person from his office as a member or as Chairperson of the Appeals Board, if—
  - (a) he fails without reasonable excuse to discharge his functions for a continuous period of 3 months;
  - (b) he is convicted of an offence on indictment and is sentenced to a term of imprisonment of not less than 3 months;
  - (c) a bankruptcy order is made against him, or he makes a composition or arrangement with his creditors; or

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(d) in the opinion of NSMC, he is unable or unfit to carry out his functions.

(5) If a member of the Appeals Board dies, resigns or is removed from office, NSMC may appoint a person to fill the vacancy, and the person so appointed shall be appointed in the same manner as the member who occasioned the vacancy.

(6) A person appointed under sub-paragraph (5) shall hold office for such period as may be determined by NSMC.

(7) In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices) there shall be inserted at the appropriate place in alphabetical order— “ Member of the Foyle and Carlingford Aquaculture Licensing Appeals Board. ”.

### *Staffing*

**3.—**(1) The Appeals Board may for the purposes of its functions, with the approval of NSMC—

- (a) employ staff; and
- (b) engage the services of such other persons as the Appeals Board considers necessary or expedient.

(2) The Appeals Board shall, with the approval of NSMC and the Finance Departments, determine the remuneration, grading, numbers and terms and conditions of service of staff employed by the Board.

(3) The Appeals Board may, in the case of such of its staff as may be determined by it with the approval of NSMC and the Finance Departments, pay such pensions, allowances or gratuities, or provide and maintain such pension schemes, as may be so determined.

### *Procedure*

**4.** At a meeting of the Appeals Board—

- (a) the quorum shall be 5 members;
- (b) the Chairperson when present shall preside;
- (c) in the absence of the Chairperson the members present shall appoint one of their number to preside; and
- (d) every question shall be determined by a majority of votes of the members present and, in the event of an equality of votes, the Chairperson or other member presiding shall have a casting vote in addition to his or her deliberative vote.

**5.** The seal of the Appeals Board shall, when applied to a document, be authenticated by the signature of the Chairperson or other member authorised by the Appeals Board to act for that purpose.

### *Code of conduct*

**6.—**(1) The Appeals Board shall, as soon as practicable, draw up a code of conduct for approval by NSMC.

(2) Without prejudice to sub-paragraph (1), the code shall cover the obligations of the Appeals Board to the public and the accountability and conduct of its members and staff (including membership of, or employment by, other organisations, acceptance of gifts or other benefits and the disclosure of other interests relevant to the work of the Appeals Board and confidentiality).

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### *Accounts*

7.—(1) The Appeals Board shall, in such form as may be determined by NSMC, keep proper accounts and financial records and shall prepare a statement of accounts in respect of each year containing such information and in such form as NSMC may direct.

(2) The Appeals Board shall submit copies of the statement prepared in pursuance of sub-paragraph (1) to—

- (a) NSMC;
- (b) the Comptroller and Auditor General for Northern Ireland and the Irish Comptroller and Auditor General who will in co-operation examine and certify the accounts.

(3) The statement prepared under sub-paragraph (1) shall be laid before the Assembly.

(4) Any report concerning the Appeals Board by the Comptroller and Auditor General for Northern Ireland and the Irish Comptroller and Auditor General shall be laid before the Assembly.

(5) The Appeals Board shall permit officers of the Comptroller and Auditor General for Northern Ireland access to all records as may be required to carry out the above functions.

### *Annual report*

8.—(1) The Appeals Board shall submit a report on its activities in each year to NSMC at such date and in such form as NSMC may direct.

(2) A copy of the report submitted under sub-paragraph (1) shall be laid before the Assembly.

### *Interpretation*

9. In this Schedule, “the Finance Departments” means the Northern Ireland Department of Finance and Personnel and the Irish Department of Finance.

## SCHEDULE 3B N.I.

### PROCEDURE IN RELATION TO APPEALS

#### *Notice of appeal*

1.—(1) A notice of appeal shall—

- (a) be made in writing;
- (b) state—
  - (i) the name and address of the appellant;
  - (ii) the name and address of the appellant's legal representative, if appropriate; and
  - (iii) an address for service;
- (c) contain—
  - (i) a brief statement of the facts;
  - (ii) a summary of the principal grounds for contesting the decision of the Commission and the arguments supporting those grounds;

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(iii) a statement of the relief sought by the appellant and any directions sought pursuant to paragraph 14;

(iv) a schedule listing all the documents annexed to the notice of appeal; and

(d) be accompanied by such fee (if any) as may be prescribed.

(2) If the appellant wishes to request confidential treatment for any part of his appeal, he shall indicate in the notice of appeal, or within 14 days of sending it to the Appeals Board, the relevant passages or documents, together with the reasons for the request, and, if so directed by the Appeals Board, supply a non-confidential version of the notice of appeal.

(3) There shall be annexed to the notice of appeal a copy of every document on which the appellant intends to rely.

**2.—**(1) If the Appeals Board considers that the notice of appeal does not comply with paragraph 1, or is incomplete, or is lacking in clarity, the Appeals Board may give such directions as may be necessary to ensure that the notice of appeal is put in order and dealt with justly.

(2) The Appeals Board may, if satisfied that the efficient conduct of the proceedings so require, defer service of the notice of appeal on the Commission until after the directions referred to in sub-paragraph (1) have been complied with.

**3.—**(1) The Appeals Board may strike out a notice of appeal at any stage in the proceedings if—

(a) having considered the grounds of appeal set out in the notice of appeal—

(i) it considers that the notice of appeal discloses no valid ground of appeal; or

(ii) it is of the opinion that the appeal is vexatious, frivolous or without substance or foundation; or

(b) the notice of appeal does not comply with paragraph 1 in a substantial respect, and the appellant has not remedied the defect pursuant to a direction under paragraph 2(1); or

(c) the appellant fails to comply with a direction of the Appeals Board.

(2) Where the Appeals Board strikes out a notice of appeal it may make any consequential order it considers appropriate.

**4.—**(1) The appellant may amend the notice of appeal only with the permission of the Appeals Board.

(2) Where the Appeals Board grants permission under sub-paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.

(3) The Appeals Board shall not grant permission to amend the notice of appeal in order to add a new ground for contesting the decision unless—

(a) such ground is based on matters which have come to light since the notice of appeal was sent to the Appeals Board; or

(b) it was not practicable to include that ground in the notice of appeal; or

(c) the circumstances are, in the opinion of the Appeals Board, exceptional.

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### *Withdrawal of appeal*

**5.—**(1) The appellant may withdraw his appeal only with the permission of the Appeals Board.

- (2) Where the Appeals Board gives permission under sub-paragraph (1) it may—
- (a) do so on such terms as it thinks fit;
  - (b) notify such parties to the appeal as the Board thinks fit in such manner as it thinks fit; and
  - (c) publish notice of the withdrawal in such manner as the Board thinks fit.

### *Response to notice of appeal*

- 6.** On receiving a notice of appeal the Appeals Board shall—
- (a) send an acknowledgement of its receipt to the appellant; and
  - (b) subject to paragraphs 2(2) and 3, send a copy of the notice of appeal to the Commission.

**7.—**(1) The Commission shall send a response to the Appeals Board in the form required by this paragraph so that the response is received within six weeks, or such further time as the Appeals Board may allow, of the date on which the Commission received a copy of the notice of appeal sent in accordance with paragraph 6(b).

- (2) The response shall contain—
- (a) a copy of the decision which is the subject of the appeal;
  - (b) a succinct presentation of the arguments upon which the Commission will rely in opposing the notice of appeal;
  - (c) the relief sought by the Commission and any directions sought pursuant to paragraph 14; and
  - (d) a copy of the documents on which the Commission intends to rely and a schedule listing those documents.

(3) On receiving the response, the Appeals Board shall send a copy of the response to the appellant.

**8.** If the Commission wishes to request confidential treatment for any part of its response, it shall indicate in the response, or within 14 days of sending it to the Appeals Board, the relevant passages or documents, together with the reasons for the request, and, if so directed by the Appeals Board, supply a non-confidential version of the response.

**9.—**(1) If the Appeals Board considers that the response does not comply with paragraph 7, or is incomplete, or is lacking in clarity, the Appeals Board may give such directions as may be necessary to ensure that the response is put in order and dealt with justly.

(2) The Appeals Board may, if satisfied that the efficient conduct of the proceedings so require, defer service of the response on the appellant until after the directions referred to in sub-paragraph (1) have been complied with.

**10.—**(1) The Appeals Board may, after hearing the parties, strike out the response at any stage in the proceedings if—

- (a) it considers that the response discloses no valid ground of defence;

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(b) the response does not comply with paragraph 7 in a substantial respect, and the Commission has not remedied the defect pursuant to a direction under paragraph 9(1); or

(c) the Commission fails to comply with a direction of the Appeals Board.

(2) When the Appeals Board strikes out a response it may make any consequential order it considers appropriate.

**11.—**(1) The Commission may amend the response only with the permission of the Appeals Board.

(2) Where the Appeals Board grants permission under sub-paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.

(3) The Appeals Board shall not grant permission to amend the response in order to add a new ground for contesting the decision unless—

(a) such ground is based on matters which have come to light since the response was sent to the Appeals Board; or

(b) it was not practicable to include that ground in the response; or

(c) the circumstances are exceptional.

#### *Consolidation, location and conduct of proceedings*

**12.—**(1) Where two or more notices of appeal have been received in respect of the same decision or which involve the same or similar issues, the Appeals Board may, on the request of a party or of its own motion, direct that the appeals or any particular issue or matter raised in the notices of appeal be consolidated or heard together.

(2) Before giving a direction under this paragraph, the Appeals Board shall invite the parties to the relevant proceedings to submit their observations on the consolidation of the proceedings.

**13.** The Appeals Board may hold any meeting or hearing or give any directions in such place as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

#### *Directions and witnesses*

**14.—**(1) The Appeals Board may at any time, on the request of a party or of its own motion, give such directions as are provided for in sub-paragraph (2) or such other directions as it thinks fit to secure the just, expeditious and economical conduct of the proceedings.

(2) The Appeals Board may give directions—

(a) as to the manner in which the proceedings are to be conducted and, in particular, as to whether any part of the proceedings should take the form of an oral hearing;

(b) as to any time limits to be observed, including any time limits in respect of the conduct of any oral hearing;

(c) for any party to file a reply to the response or other pleadings;

(d) requiring persons to attend and give evidence or to produce documents;

(e) as to the evidence which may be required or admitted in proceedings before the Appeals Board and the extent to which it shall be oral or written, including, where a witness statement has been submitted, whether the witness is to be called to give oral evidence;

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- (f) as to the submission in advance of a hearing of any witness statements or expert reports;
  - (g) as to the examination or cross-examination of witnesses;
  - (h) as to the fixing of time limits with respect to any aspect of the proceedings;
  - (i) as to the abridgement or extension of any time limits, whether or not expired;
  - (j) for the disclosure between, or the production by, the parties of documents or classes of documents;
  - (k) in relation to the inspection of any area;
  - (l) for the appointment and instruction of experts, whether by the Board or by the parties and the manner in which expert evidence is to be given; and
  - (m) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Appeals Board;
  - (n) in relation to such other matters as it thinks fit.
- (3) The Appeals Board may, in particular, of its own motion—
- (a) put questions to any party to the appeal;
  - (b) invite any party to the appeal to make written or oral submissions on certain aspects of the proceedings;
  - (c) ask any party to the appeal for information or particulars;
  - (d) ask any party to the appeal to produce any documents or papers relating to the appeal.
- (4) A request by a party for directions shall be made, as far as practicable, in the notice of appeal or response.
- (5) A request for directions made otherwise than in the notice of appeal or response shall be made in writing and shall be—
- (a) served by the Appeals Board on any party to the appeal who might be affected by such directions; and
  - (b) determined by the Appeals Board taking into account the observations of the parties.
- 15.—(1)** Subject to sub-paragraphs (2) and (3), the Appeals Board may at any time, either of its own motion or on the request of any party, issue a summons, requiring any person to do one or both of the following—
- (a) to attend as a witness before the Appeals Board at the time and place set out in the summons; and
  - (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the proceedings.
- (2) A request by a party for the issue of a summons under this paragraph shall specify—
- (a) upon which facts the witness is to be questioned and the reasons for the examination;
  - (b) the documents required to be produced.
- (3) No person may be required to attend in compliance with a summons under this paragraph unless—
- (a) he has been given at least 7 days notice of the hearing; and

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(b) he is paid such sum as the Appeals Board may determine.

(4) The Appeals Board may make the summoning of a witness on the request of a party conditional upon the deposit with the Appeals Board of a sum determined by the Appeals Board as sufficient to cover—

(a) the costs of the summons;

(b) the sum referred to in sub-paragraph (3)(b).

(5) The Appeals Board shall advance the funds necessary in connection with the examination of any witnesses summoned by the Appeals Board on its own motion.

(6) If any person—

(a) on being duly summoned to attend as a witness before the Appeals Board does not attend; or

(b) being in attendance, refuses to produce any document or other material in his possession or under his control which he is lawfully required to produce, or to answer any question which he is lawfully required to answer,

he shall be guilty of an offence under this paragraph and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

**16.** If any party fails to comply with any direction given in accordance with this Schedule, the Appeals Board may, if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without the permission of the Appeals Board.

#### *Oral hearing to be in public*

**17.** Any oral hearing shall be in public except for any part of the hearing where the Appeals Board is satisfied that it will be considering information which is, in its opinion, confidential information.

#### *Decision of the Board*

**18.—(1)** The decision of the Appeals Board shall be delivered in such manner as may be determined by the Board.

(2) The Appeals Board shall send a copy of the decision to each party to the appeal.”.



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