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STATUTORY RULES OF NORTHERN IRELAND

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**2012 No. 335**

**The Alien and Locally Absent Species in  
Aquaculture Regulations (Northern Ireland) 2012**

**PART 3**

**ENFORCEMENT, PENALTIES AND APPEALS**

**Entry and inspection of premises**

**12.**—(1) For the purposes of enforcing Council Regulation 708/2007 or these Regulations, an inspector may, on producing, if so required, some duly authenticated document showing the inspector's authority, enter and inspect any premises at any reasonable hour.

(2) But an inspector may not enter any premises which are used wholly or mainly as a private dwelling-house unless –

- (a) 24 hours' notice of the intended entry has been given to the occupier; or
- (b) a lay magistrate has issued a warrant under this regulation authorising the inspector to enter the dwelling.

(3) A lay magistrate may issue a warrant authorising an inspector to enter any premises, if necessary by reasonable force, if the lay magistrate is satisfied, on complaint on oath, –

- (a) that there are reasonable grounds to enter the premises for a purpose mentioned in paragraph (1); and
- (b) that any of the conditions in paragraph (4) is met.

(4) The conditions are –

- (a) that admission to the premises has been, or is likely to be, refused and (in either case) notice of the intention to apply for a warrant has been given to the occupier;
- (b) that asking for admission to the premises, or the giving of such notice, would defeat the object of the entry;
- (c) that entry to the premises is required urgently; or
- (d) that the premises are unoccupied or the occupier is temporarily absent.

(5) A warrant issued under paragraph (3) shall continue in force for one month or, if sooner, until the purpose for which it was issued has been fulfilled.

[<sup>F1</sup>(6) An inspector entering any premises may be accompanied by such persons, and may enter with such equipment or vehicle, as the inspector considers necessary for the purposes of these Regulations.]

(7) An inspector entering any premises which are unoccupied, or from which the occupier is temporarily absent, shall leave them as effectively secured against unauthorised entry as the inspector found them.

(8) In this regulation “premises” includes any land or place and, in particular, includes—

- (a) any vessel, vehicle or trailer;
- (b) any installation, container or receptacle.

**F1** [Reg. 12\(6\)](#) substituted (31.12.2020) by [The Aquatic Animal Health and Alien Species in Aquaculture \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/581\)](#), regs. 1(1), 3; 2020 c. 1, Sch. 5 para. 1(1)

**Commencement Information**

**I1** [Reg. 12](#) in operation at 15.10.2012, see [reg. 1](#)

**Search and examination of items on premises**

- 13.** Subject to regulation 16, an inspector entering any premises under regulation 12 may—
- (a) search the premises for any item, including any aquatic organism or water;
  - (b) examine anything that is—
    - (i) on the premises;
    - (ii) attached to, or otherwise forms part of, the premises.

**Commencement Information**

**I2** [Reg. 13](#) in operation at 15.10.2012, see [reg. 1](#)

**Production of documents**

- 14.** Subject to regulation 16, an inspector entering any premises under regulation 12 may require any person on the premises to —
- (a) produce any document or record that is in the person’s possession or control;
  - (b) 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.

**Commencement Information**

**I3** [Reg. 14](#) in operation at 15.10.2012, see [reg. 1](#)

**Seizure of items**

- 15.—(1)** Subject to regulation 16, this regulation applies where an inspector exercises a power conferred by regulation 13 or 14.
- (2) An inspector may—
- (a) seize, detain or remove any item found on the premises;
  - (b) take copies of, or extracts from, any document or record found on the premises.
- (3) The power conferred by paragraph (2)(a) is to be construed as including power to take samples of any aquatic organism or water.
- (4) An inspector, to whom any document or record has been produced in accordance with a requirement imposed under regulation 14, may—
- (a) seize, detain or remove that document or record;

(b) take copies of, or extracts from, that document or record.

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

(6) Any aquatic organism or water seized by an inspector may be disposed of as the inspector sees fit.

(7) It is an offence for a person to fail to comply with a requirement imposed under paragraph (5).

#### Commencement Information

**I4** [Reg. 15](#) in operation at 15.10.2012, see [reg. 1](#)

### Enforcement powers

**16.** The powers conferred by regulations 13, 14 and 15 may only be exercised—

- (a) for the purpose of determining whether an offence under these Regulations has been committed; or
- (b) in relation to an item, document or record which an inspector reasonably believes to be evidence of the commission of an offence under these Regulations.

#### Commencement Information

**I5** [Reg. 16](#) in operation at 15.10.2012, see [reg. 1](#)

### Enforcement notices

**17.—(1)** The Department may serve an enforcement notice on any person who it considers has contravened Council Regulation 708/2007 or these Regulations.

(2) The Department may serve an enforcement notice on the operator of an aquaculture facility if it considers that any aquatic organism present in the aquaculture facility was moved in contravention of Council Regulation 708/2007 or these Regulations or any condition of a permit or a notice served under regulation 7(2)(a) or (b) or (3).

(3) An enforcement notice shall—

- (a) state the matters constituting the contravention;
- (b) specify the steps which the operator is required to take to remedy the contravention;
- (c) state the date by which those steps shall be taken; and
- (d) inform the operator of the right of appeal under regulation 20.

(4) An enforcement notice may require the operator on whom it is served to—

- (a) remove and dispose of any aquatic organism, at their own cost, in a manner and within the period specified in the notice; and
- (b) take steps to ensure that the aquaculture facility is, so far as possible, restored to its condition prior to the contravention.

(5) If an enforcement notice is not complied with, the Department may—

- (a) take such steps as it considers necessary (including the removal and disposal of the aquatic organism) to —

- (i) ensure compliance with the requirements of the notice; or
  - (ii) remedy the consequences of the failure to carry them out; and
- (b) recover any expenses reasonably incurred in so doing from the person who has failed to comply with the enforcement notice.
- (6) An enforcement notice does not take effect until 21 days after it is served.
- (7) The Department may remove and dispose of any aquatic organisms without serving an enforcement notice —
- (a) in an emergency; and
  - (b) at the cost of the operator.
- (8) Except where regulation 20 (7) applies, it is an offence for a person to fail to comply with an enforcement notice.
- (9) In this regulation “operator” means any person who is responsible for the management of the aquaculture facility.

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**Commencement Information**

**I6** [Reg. 17](#) in operation at 15.10.2012, see [reg. 1](#)

**Recovery of expenses of enforcement**

- 18.**—(1) This regulation applies where a court convicts a person of an offence under regulation 17(8) or 21 (b).
- (2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the Department for any expenditure which the Department has incurred under regulation 17(5) or (7).

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**Commencement Information**

**I7** [Reg. 18](#) in operation at 15.10.2012, see [reg. 1](#)

**Amendment, suspension or revocation of permit or notice**

- 19.**—(1) This regulation applies in relation to —
- (a) a permit; or
  - (b) a notice served under regulation 7(2)(b) or (3)(b).
- (2) The Department may—
- (a) amend a permit or notice, including any condition of a permit or notice; or
  - (b) suspend or revoke a permit or notice if it is satisfied that any condition of the permit or notice or any provision of Council Regulation 708/2007 or these Regulations has been or is being contravened.
- (3) An amendment under paragraph (2)(a) may be made —
- (a) on the initiative of the Department; or
  - (b) on application in writing by the permit or notice holder in such form and containing such information as the Department may reasonably require.

(4) Where the Department amends, suspends or revokes a permit or notice under paragraph (2) (a) or (b) or, in the case of an application under paragraph (3)(b), refuses an application for the amendment of a permit or notice, it shall, by notice served on the permit or notice holder —

- (a) in the case of an amendment, specify the amendment;
- (b) give the reasons for the amendment, suspension, revocation or the refusal;
- (c) state the date on which the amendment, suspension or revocation is to take effect and, in the case of a suspension, the date or event on which the suspension will cease to have effect;
- (d) except in the case of an amendment made on the application of the permit or notice holder, inform the permit or notice holder of the right of appeal under regulation 20.

(5) In the case of a suspension or revocation, a notice served under paragraph (4) may make provision requiring the removal and disposal of any aquatic organism to which the permit or notice relates in such manner as may be specified in the notice.

(6) Except where regulation 20(7) applies, it is an offence for a person to fail to comply with —

- (a) a notice suspending a permit or notice served under paragraph (4); or
- (b) any requirement for the removal and disposal of any aquatic organism imposed by a notice served under paragraph (4).

(7) Where the Department considers that any requirement imposed by a notice under paragraph (4) has not been complied with, the Department may, without prejudice to any proceedings under paragraph (6)—

- (a) take, or cause to be taken, such steps as the Department considers necessary to—
  - (i) ensure compliance with the requirement; or
  - (ii) remedy the consequences of the failure to comply with the requirement; and
- (b) recover any expenses reasonably incurred in so doing from the permit or notice holder.

(8) In this regulation “notice holder” means the person on whom the notice was served under regulation 7(2)(b) or (3)(b).

#### **Commencement Information**

**18** [Reg. 19](#) in operation at 15.10.2012, see [reg. 1](#)

### **Appeals**

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

- (a) a notice served under regulation 5(3);
- (b) a notice served under regulation 7(2)(a), (2)(b) or (3);
- (c) a notice served under regulation 8(2);
- (d) an enforcement notice served under regulation 17(1) or (2);
- (e) a notice served under regulation 19(4).

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

- (a) make written representations to the Department; or
- (b) serve notice on the Department 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 serves 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 a copy of the appointed person's report to the appellant.

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

(7) Where an appeal is made against any notice listed in paragraph (8), the notice shall not have effect pending the final decision of the Department or the withdrawal of the appeal.

(8) The notices are —

- (a) a notice served under regulation 19(4) suspending or revoking —
  - (i) a permit; or
  - (ii) a notice served under regulation 7(2)(b) or (3)(b);
- (b) an enforcement notice served under regulation 17(1) or (2).

(9) But paragraph (7) does not apply where the notice includes a statement that in the opinion of the Department there is an imminent risk of adverse effects to biodiversity or an imminent threat to aquatic organisms, habitats or ecosystems.

(10) The Department shall pay an amount equal to the loss suffered or expenditure reasonably incurred by the person on whom the notice was served if —

- (a) a notice to which paragraph (7) does not apply by virtue of paragraph (9) is varied or withdrawn by the Department on appeal; and
- (b) that person has complied with the notice.

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**Commencement Information**

**19** [Reg. 20](#) in operation at 15.10.2012, see [reg. 1](#)

**Offences**

**21.** It is an offence for a person —

- (a) for the purpose of procuring the grant or amendment of a permit, -
  - (i) to make a statement which that person knows or suspects is false or misleading in a material particular; or
  - (ii) intentionally to fail to disclose any material particular;
- (b) to abandon or allow to escape any aquatic organism, the movement of which took place under a permit or under a notice served under regulation 7(2)(b) or (3)(b) (movement of an Annex IV species) unless the person can show that all reasonable steps were taken and due diligence exercised to avoid the abandonment or escape;

- (c) to fail, without reasonable cause, to give an inspector any assistance or information which the inspector may reasonably require for the purposes of the inspector's functions under these Regulations;
- (d) intentionally to obstruct an inspector; or
- (e) knowingly to give false or misleading information to an inspector.

**Commencement Information**

**I10** [Reg. 21](#) in operation at 15.10.2012, see [reg. 1](#)

**Offences by corporate bodies, partnerships and unincorporated associations**

**22.**—(1) In its application to these Regulations, section 20 of the Interpretation Act (Northern Ireland) 1954 (offences by bodies corporate) has effect as if –

- (a) in subsection (2) the words “the liability of whose members is limited” were omitted and where the affairs of a body corporate are managed by its members, as if, in relation to the acts or defaults of a member in connection with the member's functions of management, the member were a director of the body corporate;
- (b) subsection (3) was omitted.

(2) If any offence under these Regulations committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) If any offence under these Regulations committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

- (4) In paragraph (2) “partner” includes a person purporting to act as a partner.

**Commencement Information**

**I11** [Reg. 22](#) in operation at 15.10.2012, see [reg. 1](#)

**Penalties**

**23.** A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

**Commencement Information**

**I12** [Reg. 23](#) in operation at 15.10.2012, see [reg. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012, PART 3.