



STATUTORY INSTRUMENTS.

S.I. No. 466 of 2008

EUROPEAN COMMUNITIES (CONTROL OF DANGEROUS
SUBSTANCES IN AQUACULTURE) REGULATIONS 2008

(Prn. A8/1756)

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SUBSTANCES IN AQUACULTURE) REGULATIONS 2008

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I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006¹ and for the purpose of giving further effect to Council Directive 92/43/EEC of 21 May 1992² and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000³, so far as those Directives relate to the discharge of dangerous substances to the marine environment from aquaculture activities, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Control of Dangerous Substances in Aquaculture) Regulations 2008.

Interpretation

2. (1) In these Regulations—

“aquaculture” does not include an activity in freshwater that is subject to, or required to be subject to, a licence under the Water Pollution Act 1977;

“aquaculture licence” means an aquaculture licence granted under section 14 or section 40 of the Fisheries (Amendment) Act 1997 (No. 23 of 1997) to engage in aquaculture or operations in relation to aquaculture;

“aquaculture product” means an organism produced by culture or farming of a species of fish, an aquatic invertebrate animal, an aquatic plant or an aquatic form of food suitable for the nutrition of fish;

“authorised officer” means a person appointed under Regulation 9;

“dangerous substance” means a substance or member of a family or group of substances listed in List I or List II of Annex I to the Directive and includes a substance that consists of or contains a dangerous substance;

“Directive” means the Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006;

“Directive 2000/60/EC” means Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000;

¹ OJ No. L 64, 4.3.2006, p.52

² OJ No. L 206 of 22.7.1992 p.7

³ OJ No. L 327, 22.12.2000, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 14th November, 2008.*

“European site” means—

- (a) a site (until the adoption, in respect of the site, of a Decision under Article 21 of Council Directive 92/43/EEC of 21 May 1992⁴ for the purposes of the third paragraph of Article 4(2) of that Directive)—
 - (i) notified for the purposes of Regulation 4 of the Natural Habitats Regulations, subject to any amendments made to it by virtue of Regulation 5 of those Regulations,
 - (ii) details of which have been transmitted to the European Commission in accordance with Regulation 5(4) of the Natural Habitats Regulations, or
 - (iii) added by virtue of Regulation 6 of the Natural Habitats Regulations to the list transmitted to the European Commission in accordance with Regulation 5(4) of those Regulations,
- (b) a site adopted by the European Commission as a site of Community importance for the purposes of Article 4(2) of Council Directive 92/43/EEC of 21 May 1992 in accordance with the procedures laid down in Article 21 of that Directive,
- (c) a special area of conservation within the meaning of the Natural Habitats Regulations, or
- (d) an area classified in accordance with Article 4(1) or 4(2) of Council Directive 79/409/EEC of 2 April 1979⁵;

“licensing authority” means in relation to an aquaculture licence—

- (a) the Minister,
- (b) an officer to whom functions have been delegated under section 21(1) of the Fisheries (Amendment) Act 1997, or
- (c) the Aquaculture Licences Appeals Board;

“Minister” means Minister for Agriculture, Fisheries and Food;

“Natural Habitats Regulations” means the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) as amended by the European Communities (Natural Habitats) (Amendment) Regulations 1998 (S.I. No. 233 of 1998) and the European Communities (Natural Habitats) (Amendment) Regulations 2005 (S.I. No. 378 of 2005);

“record” includes any memorandum, book, report, statement, register, plan, chart, map, drawing, specification, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Acts

⁴ OJ No. L 206 of 22.7.1992 p.7

⁵ OJ No. L 103 of 25.04.1979 p.1

1988 and 2003) are held, any form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically, and anything that is a part or copy, in any form, of any of, or any combination of, the foregoing.

(2) A word or expression that is used in the Directive and is also used in these Regulations has, in these Regulations, the same meaning as in the Directive.

Application of these Regulations to an aquaculture licence

3. (1) A licensing authority shall not grant an aquaculture licence if, in the opinion of the authority-

- (a) the applicant is unable to comply with limits on the quantity and concentration of a dangerous substance that may be discharged,
- (b) the applicant is unable to comply with required emission standards,
- (c) it is necessary in order to secure compliance with environmental quality objectives or standards,
- (d) it is necessary for the protection of human health, plant health, animal health or welfare, or the environment, or
- (e) it is necessary, ancillary or supplementary for an act of the institutions of the European Communities (including an act cited in the preamble to these Regulations) to have full effect.

(2) Notwithstanding section 70(1) of the Fisheries (Amendment) Act 1997, the Minister shall carry out a review of an aquaculture licence, granted before the making of these Regulations in accordance with that section, for the purpose of assessing compliance with these Regulations—

- (a) as soon as may be after the commencement of these Regulations and shall ensure that such a review is completed, in so far as is reasonably practicable, before 1 January 2009, and
- (b) at such intervals as the Minister may determine having regard to the objectives of the Directive.

(3) The Minister shall notify a licence holder in writing on commencement of a review under paragraph (2).

(4) On completion of a review to which paragraph (2) applies, the Minister may—

- (a) amend a licence, or
- (b) instead of making a decision to which section 70(2) of the Fisheries (Amendment) Act 1997 applies, suspend or revoke an aquaculture licence if he or she has reasonable grounds to believe that—

- (i) the activity to which the aquaculture licence relates is contributing to environmental pollution by a List I substance,
- (ii) the activity to which the licence relates is failing to reduce pollution by a List II substance, or
- (iii) a condition of an aquaculture licence to which Regulation 5 refers has not been complied with.

(5) Part III of the Fisheries (Amendment) Act 1997 applies to a decision under paragraph (4) as if it were a decision under section 70(2) of that Act.

(6) In considering an application, if it appears to the licensing authority that a discharge, or a proposed discharge is likely to have a significant effect on a European site, either alone or in combination with other operations or activities, the licensing authority shall—

- (a) in consultation with the Minister for the Environment, Heritage and Local Government, cause an assessment to be made of the implications for the site in view of that site's conservation objectives, and
- (b) shall not grant or amend the licence if it is of the opinion that the activity subject to the licence will adversely affect the integrity of the site.

(7) A licensing authority shall not grant an aquaculture licence or amend a licence with a condition which, in the opinion of the licensing authority—

- (a) excludes or compromises the achievement of the objectives established for protected species and natural habitats in the case of European sites where the maintenance or improvement of the status of water is an important factor in their protection, or
- (b) is inconsistent with the achievement of environmental quality standards established under an act of an institution of the European Communities or enactment giving effect to an act of an institution of the European Communities relating to water quality.

Information to be provided with application

4. (1) Notwithstanding Regulation 4 of the Aquaculture (Licence Application) Regulations 1998 (S.I. No. 236 of 1998), an application for an aquaculture licence, or for review or renewal of an aquaculture licence, shall—

- (a) identify any dangerous substance which is intended to be discharged,
- (b) indicate the quantity of the discharge of each dangerous substance,
- (c) indicate the frequency of the discharge of each dangerous substance, and

- (d) demonstrate that the intended discharge will not have a deleterious effect on the environmental quality objectives for the receiving waters
- (2) It is sufficient compliance with paragraph (1) to—
- (a) address the matters raised in that paragraph in an Environmental Impact Statement submitted as part of an application, and
 - (b) demonstrate that the use of a dangerous substance is subject to an equivalent level of statutory control as provided for in these Regulations.

Conditions of aquaculture licence

5. (1) Notwithstanding the generality of section 7 of the Fisheries (Amendment) Act 1997, a licensing authority may grant or attach conditions to an aquaculture licence, amend an aquaculture licence, revoke an aquaculture licence or refuse an application for an aquaculture licence, if, in the opinion of the licensing authority, it is necessary, supplementary or ancillary for these Regulations to have full effect.

(2) Section 68(3) of the Fisheries (Amendment) Act 1997 applies to a revocation or amendment for the purpose of paragraph (1).

Restriction on licensing

6. (1) A licensing authority shall not grant or amend an aquaculture licence, unless, without prejudice to the generality of section 7(3) of the Fisheries (Amendment) Act 1997, the licence is subject to conditions—

- (a) (i) limiting the discharge of a dangerous substance, and
 - (ii) establishing, in relation to the licensed activity, emission standards,

set in accordance with Article 6 of the Directive,
- (b) identifying, by means of a map or otherwise, the boundaries or limits of the place or waters in relation to which discharge of a dangerous substance may take place,
- (c) relating to monitoring and inspection of discharges and emission standards,
- (d) specifying the amount of feed inputs,
- (e) specifying operational practices, including the stock density and fallowing of sites,
- (f) relating to the use and storage of chemicals and medicines,
- (g) requiring compliance with such protocols, including in relation to monitoring, auditing and any aspect of managing an aquaculture site, as may be published by the Minister, and

(h) requiring the keeping of records relating to a condition to which this Regulation relates.

(2) A level of discharge or an emission standard referred to in paragraph (1) shall be set by a licensing authority based on relevant environmental quality objectives or standards published by the Minister for the Environment, Heritage and Local Government in accordance with Directive 2000/60/EC and taking into account, in particular, the toxicity, persistence and bioaccumulation of the substance concerned in the environment into which it is discharged.

(3) A person shall not contravene a discharge or an emission standard referred to in paragraph (2) except in accordance with an enactment giving effect to an act of an institution of the European Communities relating to the protection of the environment or the prevention and control of certain diseases in aquatic animals.

Additional information

7. A licensing authority may require an applicant or licensee to submit plans or other particulars in relation to the activity to which the application or aquaculture licence relates, or to the emission or discharge of a dangerous substance due to that activity as the licensing authority considers necessary for the purpose of determining an application or carrying out a review in accordance with Regulation 3(2).

Records to be kept by licensee

8. (1) A licensee shall maintain and make available for inspection by an authorised officer records which relate to the activity subject to an aquaculture licence.

(2) Without prejudice to the generality of paragraph (1), records which a licensee shall maintain and keep available include—

- (a) records of receipt of a dangerous substance,
- (b) each prescription issued in respect of an animal remedy (within the meaning of the European Communities (Animal Remedies) (No. 2) Regulations 2007 (S.I. No. 786 of 2007)) which consists of or contains a dangerous substance,
- (c) records of storage of a dangerous substance,
- (d) records of use of a dangerous substance, and
- (e) such other records as the Minister may specify.

(3) The Minister may determine the format of records to be maintained under this Regulation and if he or she does so, a licensee shall maintain the records in that format.

(4) Records under this paragraph may be maintained in machine readable form if capable of being translated into readable form.

Appointment of authorised officers

9. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations as may be specified in the instrument.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.

(3) An appointment as an authorised officer ceases—

(a) if it is terminated pursuant to paragraph (2),

(b) if it is for a fixed period, on the expiry of that period, or

(c) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

(5) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer, an officer of Customs and Excise or a member of the Garda Síochána shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer or member to the person.

Functions of authorised officer

10. (1) If an authorised officer has reasonable cause to suspect that—

(a) an aquaculture product or dangerous substance is present, has been present or may be present on a premises,

(b) an aquaculture product or dangerous substance is or has been kept, processed, stored or otherwise dealt with on a premises,

(c) equipment, plant or machinery used in connection with an aquaculture product or dangerous substance has been, is or may be on a premises, or

(d) a document relating to a thing referred to in paragraph (a), (b) or (c) is present, was present or may be present on a premises,

the authorised officer may enter the premises and he or she may—

(i) search the premises,

(ii) stop a person, vehicle, vessel or container,

(iii) board and search a vehicle, vessel or container,

- (iv) examine an aquaculture product or dangerous substance, a vehicle, vessel, container, equipment, machinery or other thing,
- (v) take, without payment, samples of an aquaculture product or dangerous substance as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (vi) require the production of a document (including a document in non-legible form in a legible form) or thing relating to an aquaculture product or dangerous substance, a vehicle, vessel, container, equipment, machinery or other thing,
- (vii) retain a document or thing (for so long as is necessary),
- (viii) make a record using any means including writing, photography or video,
- (ix) give a direction to, or request information of, a person regarding an aquaculture product or dangerous substance, a vehicle, vessel, container, machinery, equipment, premises or other thing as he or she considers necessary,
- (x) require the name and address of a person and the name and address of any other person including the owner of, or person to an aquaculture product or dangerous substance is being delivered or who is causing it to be delivered,
- (xi) require of a person the ownership, identity and origin of an aquaculture product or dangerous substance, a vehicle, vessel, container, equipment, machinery or other thing,
- (xii) require a person in charge or control of a vehicle, vessel or container to refrain from moving it,
- (xiii) carry out surveys or other investigations, or
- (xiv) mark or otherwise identify an aquaculture product or dangerous substance, a vehicle, vessel, machinery, equipment or other thing or a sample taken under subparagraph (v).

(2) If an authorised officer has reasonable cause to suspect that—

- (a) an offence is being or has been committed under these Regulations,
- (b) evidence of an offence or contravention to which paragraph (a) relates may be, is or has been on a premises—

the authorised officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (i) search a person, where the authorised officer considers it necessary,
- (ii) seize and detain an aquaculture product or dangerous substance, a document or other record, a vehicle, vessel, container, equipment, machinery or other thing, or
- (iii) dispose of, or require the owner or person in charge of or in possession of an aquaculture product or dangerous substance to deal with or dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, the aquaculture product or dangerous substance) in a manner that the authorised officer sees fit.

(3) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 12 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) or (2) relates is being or is likely to be destroyed or disposed of.

(4) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(5) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(6) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under this Regulation if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(7) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions—

- (a) prohibiting, restricting or otherwise controlling the use, processing or movement of an aquaculture product or dangerous substance, a vehicle, vessel, container, equipment, machinery or other thing as may be specified by the authorised officer, or
- (b) requiring that the person to whom the direction is addressed to take the measures specified by the authorised officer.

(8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

(9) If in the course of exercising any powers under these Regulations an authorised officer or a member of the Garda Síochána finds or comes into possession of any thing that the officer or member believes to be evidence of an offence or

suspected offence under these Regulations, it may be seized and retained for use in evidence in criminal proceedings.

(10) Nothing in these Regulations operates to prejudice a power conferred by another enactment to search, or to seize or detain property, which may be exercised by a member of the Garda Síochána or an officer of Customs and Excise.

Assistance to authorised officer

11. (1) A person shall give any assistance requested to an authorised officer or person who accompanies an authorised officer.

(2) A person shall give any assistance requested to an authorised officer or person who accompanies an authorised officer for the purpose of undertaking a monitoring, investigation or surveillance programme for the purposes of the Directive.

Search warrant

12. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting—

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was an aquaculture product or dangerous substance or equipment or other thing made, used or adapted for use (including manufacture and transport) in connection with an aquaculture product or dangerous substance on a premises, or
- (c) a document or other record related to a thing to which subparagraph (a) or (b) refers is or may be on a premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises named in the warrant.

(3) If a premises is entered under a search warrant, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Obstruction, etc.

13. A person shall not—

- (a) obstruct or impede an authorised officer (or a person who accompanies an authorised officer) in the exercise of his or her powers under Regulation 10,

- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 10,
- (c) fail, without reasonable cause, to give assistance to an authorised officer in accordance with Regulation 11, or
- (d) in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 10—
 - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular.

Forgery

14. (1) A person shall not forge or utter knowing it to be forged—

- (a) an aquaculture licence,
- (b) a direction or requirement of an authorised officer under Regulation 10 (if the requirement or direction is in documentary form), or
- (c) a compliance notice,

(hereafter in this Regulation referred to as an “forged document”).

(2) A person shall not alter with intent to defraud or deceive, or to utter knowing it to be so altered—

- (a) an aquaculture licence,
- (b) a direction or requirement of an authorised officer under Regulation 10 (if the requirement or direction is in documentary form), or
- (c) a compliance notice,

(hereafter in this Regulation referred to as an “altered document”).

(3) A person shall not have, without lawful authority (the proof of which lies on him or her), in his or her possession or under his or her control a forged document or an altered document.

Compliance notice

15. (1) If an authorised officer is of the opinion that—

- (a) these regulations are not being or have not been complied with or there are reasons to believe that they will not be complied with,
- (b) a condition of an aquaculture licence inserted in accordance with Regulation 5 is not being or has not been complied with or there are reasons to believe that it will not be complied with,

- (c) the discharge or emission of a dangerous substance presents a danger to the environment, including public or animal health, or
- (d) specific action should be taken in the interest of fish health or welfare, or the environment,

he or she shall serve or cause to be served on the licensee, his or her employee, servant or agent, a notice (“compliance notice”) stating that opinion and directing that—

- (i) the discharge or emission of a specified dangerous substance cease or be reduced in a manner that the authorised officer may specify,
- (ii) require that an aquaculture product or dangerous substance be disposed of or destroyed in a manner specified in the notice,
- (iii) prohibit or regulate any operation or processing on the premises to which the notice relates,
- (iv) prohibit the transport or the further transport of an aquaculture product or dangerous substance either absolutely or unless such conditions as may be specified in the notice are complied with,
- (v) require that specific action, including administration of an animal remedy (within the meaning of the Animal Remedies Act 1993 (No. 23 of 1993)) or other substance, is taken in the interest of fish health or welfare, or the environment,
- (vi) require a person to return an aquaculture product or dangerous substance to the place of departure by a route which in the opinion of the authorised officer is the most direct or prudent,
- (vii) require that such alterations be made to a premises or means of transport as may be specified in the notice, or
- (viii) require a person to secure in a manner specified by the authorised officer (if any) an aquaculture product or a dangerous substance,
- (ix) such alterations or additions be made to the premises, land or place at which the aquaculture product or dangerous substance is kept, or to the equipment and facilities found there, as the officer may specify in the notice, or
- (x) such other measures be taken as are necessary to ensure compliance with these Regulations.

(2) A person shall comply with a compliance notice or a requirement of a compliance notice unless and until the notice is annulled under Regulation 17.

(3) A compliance notice may specify one or more requirements or refer to one or more dangerous substances.

- (4) A requirement contained in a compliance notice may specify a time limit within which it is to be complied with.
- (5) A compliance notice may require a person to choose between two or more of the requirements specified in the compliance notice.
- (6) A requirement specified in a compliance notice (in this Regulation referred to as “the earlier compliance notice”) may be modified or withdrawn in a further compliance notice and in that event the earlier compliance notice shall have effect subject to such modification or withdrawal.
- (7) In the event of an appeal made pursuant to Regulation 16 a person, including the person appealing, shall not deal with a premises to which a compliance notice relates pending the determination of the appeal other than in accordance with such directions as shall be given in writing to the appellant by an authorised officer.
- (8) If the terms of a compliance notice are confirmed with or without modification by the judge of the District Court hearing an appeal under Regulation 16, a person including the person who made the appeal shall not deal with a premises to which the compliance notice relates other than in accordance with the compliance notice as confirmed.
- (9) Any costs pertaining to action required to comply with a compliance notice will be borne by the owner of the premises to which the compliance notice relates.
- Service of compliance notice*
16. (1) A compliance notice shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on a person—
- (a) by giving it to the person,
 - (b) by leaving it at the address at which the person ordinarily resides or, where an address for service has been furnished, at that address,
 - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, where an address for service has been furnished, at that address,
 - (d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises,
 - (e) by electronic communication, or
 - (f) if the Minister or an authorised officer considers that the immediate giving of the compliance notice is required, by sending a copy, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily

resides or carries on business or, if an address for service has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the compliance notice.

(2) If a compliance notice is to be served on a person who is the owner or keeper of an aquaculture product or dangerous substance and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to that person by using the words "the occupant".

(3) A person shall not, at any time within 6 months after a compliance notice is affixed under paragraph (1)(d), remove, damage or deface the compliance notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Appeal against compliance notice

17. (1) A person may appeal within 7 days of the service of a compliance notice to the judge of the District Court having jurisdiction in the District Court District where the aquaculture product or dangerous substance to which the compliance notice relates is situated or to the judge of the District Court where the person bringing the appeal ordinarily resides or carries on business on the grounds that the notice or any terms thereof are not justified having regard to these Regulations and the objectives of the Directive (hereafter referred to as "an appeal").

(2) An appeal may be heard at any sitting of the District Court within the appropriate District Court District.

(3) Notice of an appeal shall be served on the Minister at least 2 days prior to the hearing of the appeal by serving it on the Minister or by leaving it at the place and in the manner (if any) specified in the compliance notice.

(4) A notice of appeal shall contain a statement of the grounds upon which it is alleged that the notice or any of the terms thereof are not justified.

(5) A copy of the notice of appeal shall be lodged with the District Court Clerk in the manner specified in the compliance notice (if any) at least 2 days prior to the hearing of the appeal.

(6) On the hearing of an appeal under this Regulation a judge of the District Court may confirm, modify or annul a compliance notice.

(7) A person, including a person on whom a compliance notice has been served, shall not after the appeal, deal with an aquaculture product, dangerous substance, premises or other thing other than in accordance with the compliance notice or compliance notice as modified.

Emergency measures

18. (1) Without prejudice to Regulation 16, if—

- (a) the person in control of an aquaculture product or dangerous substance fails to comply with the terms of a compliance notice within the time specified therein,
- (b) an authorised officer has reasonable grounds for believing that the terms of a compliance notice will not be complied with,
- (c) a compliance notice has been confirmed with or without modification under Regulation 16 and the notice has not been complied with,
- (d) an authorised officer has reasonable grounds for believing that the terms of a compliance notice which has been confirmed with or without modification under Regulation 18 will not be complied with, or
- (e) pending the determination of an appeal, an authorised officer has reasonable grounds for believing that directions given pursuant to Regulation 16(7) have not been or shall not be complied with,

an authorised officer may at any time seize the aquaculture product or dangerous substance.

(2) If an aquaculture product or dangerous substance is seized in accordance with paragraph (1), an authorised officer may—

- (a) sell, destroy or dispose of the aquaculture product or dangerous substance or cause it to be sold, destroyed or be disposed of, or
- (b) take such other measures in relation to the aquaculture product or dangerous substance as the authorised officer considers appropriate in the circumstances of the case.

(3) Any profits arising out of the sale, destruction or disposal of an aquaculture product or dangerous substance in accordance with paragraph (2) shall be paid to the owner of the aquaculture product or dangerous substance less any expenses incurred in connection with the seizure, sale, destruction or disposal.

(4) The costs (including ancillary costs) of a measure taken under this Regulation is recoverable by the Minister—

- (a) as a simple contract debt in a court of competent jurisdiction from the person who was the owner of the aquaculture product or dangerous substance at the time the measure was carried out, or
- (b) by deducting the costs from any sum due by the Minister to a person on whom a compliance notice has been served.

Water quality standards

19. (1) The Minister may, in respect of an area that is the subject of an aquaculture licence, or adjacent to an area that is the subject of an aquaculture licence, establish water quality standards in respect of a particular substance or class of substances and different standards may be established for different substances or classes of substance and for different areas.

(2) The Minister may amend or replace a water quality standard established under paragraph (1).

(3) A person shall comply with a water standard established under paragraph (1).

Programme to reduce pollution

20. (1) The Minister shall publish or cause to be published a programme, in accordance with Article 6 of the Directive, containing measures aimed at reducing pollution from dangerous substances used in aquaculture, within one month of the commencement of these Regulations.

(2) The programme referred to in paragraph (1) shall take account of other programmes established to achieve the objectives of Directive 2000/60/EC of 23 October 2000 or other acts of the institutions of the European Communities that are, in the opinion of the Minister, necessary, ancillary or supplementary to achieving the objectives of the Directive.

(3) The Minister may amend or replace a programme under paragraph (1).

Evidence on certificate

21. (1) A certificate purporting to be signed by an officer of the Minister and to certify that on a specific day or days or during the whole of a specified period—

- (a) a particular person was not a holder of an aquaculture licence,
- (b) that a particular aquaculture licence was subject to a particular condition or conditions, or
- (c) that a particular water quality standard established under Regulation 19 applied to an area,

is, without proof of the signature of the person purporting to sign the certificate or that he or she is an officer of the Minister, evidence, unless the contrary is shown, of the matters stated in the certificate.

(2) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under paragraph (1) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(3) In proceedings for an offence, evidence of an act of the institutions of the European Communities may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(4) Paragraph (3) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Offences, etc.

22. (1) A person who contravenes Regulation 6(3), 8(1), (3), 13, 14, 15(2), 17(7) or 19(3) commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment to a fine not exceeding €250,000.

(2) A summary offence under these Regulations may be prosecuted by the Minister.

(3) A person who is convicted of an offence under these Regulations is ineligible to apply for financial assistance from an agency of the State for the activity to which the offence relates for a period of 2 years from the date of conviction.

(4) If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of any person who, when the offence is committed, is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(5) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (4) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.

(6) If a person is convicted of an offence under these Regulations the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the prosecutor the costs and expenses, measured by the court, reasonably incurred by the prosecutor in relation to the investigation, detection and prosecution of the offence, including costs incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers.



GIVEN under my Official Seal,
6 November 2008

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give effect to Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment so far as the Directive relates to the protection of waters in the marine environment from aquaculture activities.

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