STATUTORY RULES OF NORTHERN IRELAND

2009 No. 129

AQUATIC ANIMAL HEALTH

The Aquatic Animal Health Regulations (Northern Ireland) 2009

Made - - - - 19th March 2009

Coming into operation in accordance with regulation 1

The Department of Agriculture and Rural Development is a department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the common agricultural policy of the European Community.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Department that it is expedient for references to—

(a) Parts I and II of Annex II, Part A of Annex III and Part II of Annex IV to Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals(**3**);

(b) Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species(**4**); and

(c) Commission Decision 2004/453/EC implementing Council Directive 91/67/EEC as regards measures against certain diseases in aquaculture animals(**5**),

to be construed as references to those Parts and those Community instruments as amended from time to time.

The Department of Agriculture and Rural Development makes the following Regulations in exercise of the powers conferred by section 2(2) of, as read with paragraph 1A(**6**) of Schedule 2 to, the European Communities Act 1972.

(**1**) S.I. 2000/2812

(**2**) 1972 c.68; by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183)

(**3**) O.J. No. L 328, 24.11.2006, p14

(**4**) O.J. No. L 337, 16.12.2008, p.41

(**5**) O.J. No. L156, 30.4.2004, p.5, as corrected by O.J. No. L.202, 7.6.2004, p.4

(**6**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51)

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Aquatic Animal Health Regulations (Northern Ireland) 2009 and, subject to paragraph (2), shall come into operation on 27th March 2009.

(2) Regulations 6(1) and 13(1) shall come into operation on 1st August 2009.

Interpretation

2.—(1) Subject to paragraph (7) and regulation 47(1), the Interpretation Act (Northern Ireland) 1954(**7**) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

"aquaculture product" means a product derived from aquaculture animals;

"aquatic animal" includes eggs and gametes;

"authorisation" means an authorisation granted by the Department under regulation 7;

"confirmed designation" means a designation made by the Department under regulation 31;

"confirmed designation area" means the area in respect of which a confirmed designation has been made;

"Decision 2004/453" means Commission Decision 2004/453/EC implementing Council Directive 91/67/EEC as regards measures against certain diseases in aquaculture animals(**8**), as amended from time to time;

"the Department" means the Department of Agriculture and Rural Development;

"Directive 2006/88" means Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals(**9**);

"document" includes any thing in which information is recorded in any form;

"electronic communication" has the meaning given in section 4(1) of the Electronic Communications Act (Northern Ireland) 2001(**10**);

"general licence" means a licence granted under these Regulations which applies to all persons or movements, or any class of persons or movements specified therein;

"initial designation" means a designation made by the Department under regulation 27;

"initial designation area" means the area in respect of which an initial designation has been made;

"inland fishery" and "salmon fishery" have the meanings given in section 206(1) of the Fisheries Act (Northern Ireland) 1966(**11**);

"inspector" means a person appointed to be an inspector for the purposes of these Regulations by the Department;

"listed disease" means—

(**7**) 1954 c.33 (N.I.)
(**8**) O.J. No. L 202, 7.6.2004, p.4, as amended by Commission Decision 2006/272/EC, O.J. No. L 99, 7.4.2006, p.31
(**9**) O.J. No. L 328, 24.11.2006, p.14, as corrected by Corrigenda, O.J. No. L 140, 1.6.2007, p.59 and O.J. No. L 239, 12.9.2007, p.70 as amended by Commission Directive 2008/53/EC, O.J. No. L 117, 1.5.2008, p.27
(**10**) 2001 c.9 (N.I.). Section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 c.21
(**11**) 1966 c.17 (N.I.)

(a) a disease listed in the second column of Part II of Annex IV to Directive 2006/88; or

(b) a disease listed in the first column of Schedule 1;

"Londonderry Area" and "Newry Area" have the meanings given in section 2(1) of the Foyle Fisheries Act (Northern Ireland) 1952(**12**);

"non-commercial installation" means any aquaculture production business in which aquatic animals are kept with no intention of placing them on the market;

"Northern Ireland" includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland;

"notice" means notice in writing;

"premises" includes any land or place and, in particular, includes—

(a) any vehicle, vessel or other means of transport;

(b) any installation, container or receptacle;

"processing establishment" means any food business which is approved for processing aquaculture animals for food purposes in accordance with Article 4 of Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (**13**), and which processes aquaculture animals for disease control purposes under Part 4 or under any equivalent provision in regulations extending to any other part of the United Kingdom;

"quarantine facility" has the meaning given in Article 2(1) of Commission Decision 2008/946/EC implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals (**14**);

"Regulation 1251/2008" means Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species(**15**), as amended from time to time;

"specific licence" means a licence granted under these Regulations which only applies to the applicant therefor;

"transporter" means any person who transports or proposes to transport aquaculture animals.

(3) Any expression used in these Regulations which is also used in Directive 2006/88 or Regulation 1251/2008 has the same meaning as it bears in that Directive or that Regulation.

(4) References in these Regulations to Directive 2006/88, Regulation 1251/2008 and Decision 2004/453 are references to those instruments as amended at the date of these Regulations.

(5) References in these Regulations to Part I and Part II of Annex II, Part A of Annex III and Part II of Annex IV to Directive 2006/88 are references to those Parts as amended from time to time.

(6) References in these Regulations to a species of aquatic animal includes references to a hybrid of that species.

(7) Section 24(1) of the Interpretation Act (Northern Ireland) 1954 (service of documents) has effect in relation to the service of any document required or authorised by virtue of these Regulations to be served on any person with the omission of the word "registering".

(8) Any notice required under these Regulations to be served by the Department or an inspector on any person may be served on that person by means of an electronic communication if—

(**12**) 1952 c.5 (N.I.)
(**13**) O.J. No. L 139, 30.4.2004, p.55
(**14**) O.J. No. L 337, 16.12.2008, p.94
(**15**) O.J. No. L 337, 16.12.2008, p.41

(a) the person has consented to the use of that form of communication and has provided an electronic address for that purpose;

(b) the consent has not been withdrawn; and

(c) the notice is sent to the address provided,

and where an electronic communication is used for the purpose of serving a notice, then, unless the contrary is proved, the notice shall be deemed to have been served on the day and at the time recorded by the transmitting apparatus as being the day and time of satisfactory completion of the transmission.

Application

3. These Regulations do not apply to—

(a) any ornamental aquatic animal reared in a non-commercial aquarium;

(b) any wild aquatic animal harvested or caught for the purpose of direct entry into the food chain other than one which is to be treated as an aquaculture animal under regulation 21(3);

(c) any aquatic animal caught for the purpose of the production of fishmeal, fish feed, fish oil or any similar product.

Licences

4.—(1) A licence granted under these Regulations—

(a) shall be in writing;

(b) may be made subject to such conditions as the Department considers appropriate, having regard to the risk of the spread of disease; and

(c) may be either a general licence or a specific licence.

(2) A general licence shall be granted by the publication of it in such manner and to such extent as appears to the Department to be sufficient to bring it to the notice of those persons likely to be affected by it.

(3) The Department may amend, suspend or revoke any licence granted under these Regulations—

(a) in the case of a general licence, by a notice published so far as practicable, in the same manner and to the same extent as the licence; and

(b) in the case of a specific licence, by a notice served on the person to whom the licence was granted.

(4) The Department may amend, suspend or revoke a general licence in so far as it applies to any particular person by notice served on that person.

(5) It is an offence for a person to contravene, or fail to comply with, a condition of a licence.

PART 2

AUTHORISATION AND REGISTRATION REQUIREMENTS

Application of Part 2

5. This Part does not apply where any ornamental aquatic animal is kept in a closed ornamental facility.

Requirement for authorisation of aquaculture production businesses and processing establishments

6.—(1) Subject to paragraph (2), it is an offence for a person to operate, or cause or permit another person to operate, an aquaculture production business or a processing establishment unless the business or establishment is—

(a) authorised by the Department; and

(b) operated in accordance with that authorisation.

(2) Paragraph (1) does not apply to—

(a) a put and take fishery; or

(b) a non-commercial installation.

Authorisation

7.—(1) An application for the authorisation of an aquaculture production business or a processing establishment shall be made to the Department and shall—

(a) be made on a form provided by the Department for the purpose; and

(b) be accompanied by such information in such form as the Department may reasonably require.

(2) Subject to paragraph (3) and regulation 8, the Department may grant an authorisation in relation to an aquaculture production business or a processing establishment on such terms and subject to such conditions as it considers appropriate, having regard to the risk of the spread of disease.

(3) The Department shall only grant an authorisation if it is satisfied that the operation of the aquaculture production business or the processing establishment will not lead to an unacceptable risk of spreading disease.

(4) The Department may grant a single authorisation in relation to two or more aquaculture production businesses situated in one mollusc farming area provided each business relates exclusively to molluscs.

(5) But a dispatch centre, purification centre or similar business in a mollusc farming area shall be separately authorised.

(6) As soon as practicable after determining an application for an authorisation the Department shall give notice of its decision to—

(a) the applicant;

(b) in the case of an aquaculture production business situated in the Londonderry Area or the Newry Area, the Foyle, Carlingford and Irish Lights Commission;

(c) in the case of an aquaculture production business situated outside those areas and which is an inland fishery or a salmon fishery, the Fisheries Conservancy Board for Northern Ireland(**16**).

(7) An authorisation shall be in writing and shall specify—

(a) the address of the aquaculture production business or the processing establishment to which the authorisation relates;

(b) the name of the operator;

(**16**) The Fisheries Conservancy Board for Northern Ireland is prospectively abolished and its functions under the Fisheries Act (Northern Ireland) 1966 transferred to the Department of Culture, Arts and Leisure under section 1 of the Public Authorities (Reform) Act (Northern Ireland) 2009 c.3 (N.I.). However, by virtue of paragraph 4(1) of Schedule 1 to that Act, any reference to the Board in any statutory provision shall, subject to paragraph 4(2), after the day appointed for the coming into operation of section 1(1), be construed as a reference to that Department.