STATUTORY RULES OF NORTHERN IRELAND

1997 No. 489

EUROPEAN COMMUNITIES
WATER AND SEWERAGE

The Surface Waters (Shellfish) (Classification) Regulations (Northern Ireland) 1997

Made - - - - 12th November 1997

Coming into operation 5th January 1998

The Department of the Environment, in exercise of the powers conferred on it by section 4B of the Water Act (Northern Ireland) 1972(**1**) and now vested in it(**2**), section 56B of the Water and Sewerage Services (Northern Ireland) Order 1973(**3**) and, being a department designated(**4**) for the purposes of section 2(2) of the European Communities Act 1972(**5**) in relation to measures relating to the prevention, reduction and elimination of pollution of water, in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Surface Waters (Shellfish) (Classification) Regulations (Northern Ireland) 1997 and shall come into operation on 5th January 1998.

Interpretation

2.—(1) In these Regulations—

"the Department" means the Department of the Environment; and

"pollution control functions" means the Department's functions under or by virtue of the following enactments, that is to say—

(a) the Water Act (Northern Ireland) 1972;

(b) the Water and Sewerage Services (Northern Ireland) Order 1973;

(**1**) 1972 c. 5 (N.I.) as amended by the Water and Sewerage Services (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/3165 (N.I. 16) Art. 16)
(**2**) S.R. & O. (N.I.) 1973 No. 504 Art. 4
(**3**) S.I. 1973/70 (N.I.2) as amended by the Water and Sewerage Services (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/3165 (N.I. 16) Art. 12)
(**4**) S.I. 1989/2393
(**5**) 1972 c. 68

(c) Regulations made by virtue of section 2(2) of the European Communities Act 1972, to the extent that the Regulations relate to pollution of water.

(2) Expressions used in these Regulations which are also used in Directive 79/923/EEC(**6**) (quality required of shellfish waters) shall have the same meaning as in that Directive.

(3) The Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Classification of waters

3. The classifications SFW and the criteria for that classification set out in Schedule 1 shall apply for classifying waters which are coastal or brackish waters which need protection or improvement in order to support shellfish (bivalve and gastropod mollluscs) life and growth and thus contribute to the high quality of shellfish products directly edible by man.

Compliance with relevant requirements

4.—(1) Subject to paragraphs (2) and (3), any waters classified under these Regulations shall be treated in relation to any period of 12 months as complying with the requirements specified in Schedule 1 for any parameter if in that period in relation to those waters—

(a) in the case of the parameter for organohalogenated substances or metals, 95 per cent of the samples taken for that parameter in accordance with regulation 7 comply with the requirements;

(b) in the case of the parameter for salinity or dissolved oxygen,100 per cent of the samples taken for that parameter in accordance with regulation 7 comply with the requirements;

(c) in the case of any other parameter, 75 per cent of the samples taken for that parameter in accordance with regulation 7 comply with the requirements.

(2) Where in accordance to regulation 7(5) the frequency of sampling is reduced in relation any waters classified under these Regulations, 100 per cent of samples taken for each parameter in accordance with regulation 7 in relation to those waters must comply with the requirements specified in Schedule 1.

(3) Non-compliant samples shall be ignored for the purposes of paragraphs (1) and (2) if they are the result of a disaster.

Guideline values and no deterioration principle

5. In discharging its pollution control functions in relation to any waters classified under these Regulations, the Department shall—

(a) endeavour to respect the guideline values and comments specified in Schedule 2; and

(b) take into account the principle that implementation of measures taken pursuant to Directive 79/923/EEC may on no account lead, either directly or indirectly, to increased pollution of coastal or brackish waters.

Compliance with standards

6.—(1) Subject to paragraphs (2) and (3), any waters classified under these Regulations shall be treated in relation to any period of 12 months as complying with any standard for any parameter adopted as a result of regulation 5 if in period in relation to those waters—

(**6**) O.J. No. L281, 10.11.1979, p. 47
(**7**) 1954 c. 33 (N.I.)

(a) in the case of the parameter for organohalogenated substances or metals, 100 per cent of of the samples taken for that parameter in accordance with regulation 7 comply with the standard;

(b) in the case of the parameter for salinity or dissolved oxygen, 95 per cent of the samples taken for that parameter in accordance with regulation 7 comply with that standard;

(c) in the case of any other parameter, 75 per cent of the samples taken for that parameter in accordance with regulation 7 comply with the standard.

(2) Where in accordance with regulation 7 the frequency of sampling is reduced in relation to any waters classified under these Regulations, 100 per cent of samples taken for each parameter in accordance with regulation 7 in relation to those waters must comply if it is to be treated as meeting the standard adopted as a result of regulation 5.

(3) Non-compliant samples shall be ignored for the purposes of paragraphs (1) and (2) if they are the result of a disaster.

Sampling and analysis

7.—(1) The Department shall ensure that waters classified under these Regulations are sampled and samples are analysed in accordance with the following provisions of this Regulation.

(2) Samples in relation to any waters classified under these Regulations shall always be taken at the same sampling point.

(3) The Department shall fix the exact position of the sampling point, and the depth at which samples are to be taken, having regard in particular to —

(a) the distance of the sampling point to the nearest point where pollutants are discharged; and

(b) local environmental conditions.

(4) Subject to paragraphs (5) and (6), sampling for any parameter shall be carried out at least at the minimum frequency specified in the Schedules in relation to that parameter.

(5) Where the Department's records show that the quality of any waters classified under these Regulations is appreciably higher than the minimum required by these Regulations and the standards adopted as a result of regulation 5, the Department may reduce the sampling frequency for that parameter or, if there is no pollution and no risk of deterioration of their quality, it may dispense with sampling for that parameter altogether.

(6) Where sampling shows that the requirements of regulation 4, or the standards adopted as a result of regulation 5 are not being met, the Department shall establish whether this is the result of chance, a natural phenomenon or pollution and shall adopt appropriate measures.

(7) Samples for any parameter shall be analysed using the reference methods of analysis specified in the Schedules in relation to that parameter or methods which are at least as reliable as the reference methods.

Derogations

8. The Department may derogate from the requirements of these Regulations in the event of exceptional weather or geographical conditions.

Modification of section 4C of the Water Act (Northern Ireland) 1972

9. Section 4C of the Water Act (Northern Ireland) 1972 shall have effect—

(a) as if it imposed a duty on the Department to exercise the powers conferred on it by that section to classify under these Regulations such waters as are appropriate to give effect to Directive 79/923/EEC; and

(b) in relation to the performance of that duty, as if subsections (4), (5) and (7) of that section were omitted.

Programmes

10. The Department shall establish programmes in order to reduce pollution and to ensure that waters classified under these Regulations conform, within 6 years following classification, to the criteria contained in Schedule 1 and the values adopted as a result of regulation 5.

Transfrontier consultation

11.—(1) Where the Department considers classifying coastal and brackish waters in the immediate vicinity of the frontier with the Republic of Ireland, it shall consult with the competent authorities of that State in order to determine the stretches of such waters which should be classified for the purposes of these Regulations and the consequences to be drawn from the establishment of common quality objectives.

(2) The consequences referred to in paragraph (1) shall be determined by each State after formal consultations and the Commission may participate in any such consultations.

Sealed with the Official Seal of the Department of the Environment on

L.S.

R. W. Rogers
12th November 1997. Assistant Secretary

SCHEDULE 1

regulations 3, 4 and 7

Criteria for classification of waters as shellfish waters

No in Annex 1 to 79/923/ EEC	Parameter	Units	Requirements to be satisfied	Reference methods of analysis	Minimum sampling and measuring frequency
1.	pH	pH unit	≥7 and ≤9	— electrometry Measured *in situ* at the time of sampling	Quarterly
3.	Coloration (after filtration)	mg Pt/1	A discharge affecting shell-fish waters must not cause the colour of the waters after filtration to deviate by more than 10 mg Pt/1 from the colour of waters not so affected.	— Filter through a 0.45 um membrane Photometric method, using the platinum/ cobalt scale	Quarterly
4.	Suspended solids	mg/1	A discharge affecting shell-fish waters must not cause the suspended solids content of the water to exceed by more than 30% the content of waters not so affected	Filtration through a 0.45 µm membrane, drying at 105°C and weighing — Centrifuging (for at least 5 minutes, with mean acceleration 2,800 to 3,200g), drying at 105°C and weighing	Quarterly
5.	Salinity	‰	≤40‰ — A discharge affecting	Conductivity	Monthly