
STATUTORY RULES OF NORTHERN IRELAND

1998 No. 207

**Food Safety (Fishery Products and Live Shellfish)
(Hygiene) Regulations (Northern Ireland) 1998**

Part II

Production and Placing on the Market of Live Shellfish

Designation of areas as designated bivalve production areas

3.—(1) The Department shall designate sea waters and brackish waters from which live bivalve molluscs may be taken in accordance with the requirements of this Part and shall specify as respects each area of water designated by it whether it is—

- (a) a class A area from which live bivalve molluscs can be gathered as specified in Part I of Chapter I of Schedule 2;
- (b) a class B area from which live bivalve molluscs can be gathered as specified in Part II of Chapter I of Schedule 2;
- (c) a class C area from which live bivalve molluscs can be gathered as specified in Part III of Chapter I of Schedule 2,

and any such designation may be subject to such limitation, condition or restriction as appears to the Department to be called for by article 5(2) of the Live Bivalve Molluscs Directive.

(2) Each district council shall, wherever possible, designate as a relaying area any area within its district which—

- (a) fulfils the conditions required for designation as a class A or class B area specified in paragraph 1(a) and (b); and
- (b) in its opinion is suitable for the relaying of live bivalve molluscs if the conditions specified in Parts II and III of Chapter I of Schedule 2 and in Chapter III of Schedule 2 are satisfied,

and, where the Department has notified the district council that specified conditions relating to the matters mentioned in Chapter III of Schedule 2 should be complied with as respects the operation of the relaying area, the district council shall make that designation subject to those conditions.

(3) The district council shall notify the Department of any designation made under paragraph (2) and of its terms.

Designation of areas as prohibited areas for live shellfish production

4. The Department may at any time designate any area as an area unsuitable, for health reasons, for the production or harvesting of—

- (a) live bivalve molluscs;
- (b) live echinoderms, tunicates and marine gastropods;
- (c) live shellfish,

and any such area shall be designated, as appropriate, as a “designated prohibited area for live bivalve mollusc production”, a “designated prohibited area for live echinoderm, tunicate and marine gastropod production” or a “designated prohibited area for live shellfish production”.

Alterations to designated areas

- 5.—(1) The Department may in appropriate circumstances and at any time—
- (a) vary the boundary of any area designated under regulation 3(1) or 4;
 - (b) impose any limitation, restriction or condition on the use of any area designated under regulation 3(1) or 4;
 - (c) alter the class of any designated bivalve production area or any area within a designated bivalve production area;
 - (d) revoke the designation of a designated bivalve production area, if the area is no longer suitable for the gathering of live bivalve molluscs;
 - (e) vary or revoke the designation of any area designated under regulation 4.
- (2) A district council may at any time—
- (a) in appropriate circumstances, vary the designation of a relaying area made under regulation 3(2);
 - (b) if a relaying area designated in accordance with regulation 3(2) is no longer suitable for the relaying of live bivalve molluscs, revoke the designation of that relaying area,

and shall communicate any such variation or revocation to the Department.

Lists of designated production and relaying areas

- 6.—(1) The Department shall maintain and publish—
- (a) a list of designated bivalve production areas; and
 - (b) a list of any areas which district councils have designated as suitable for the relaying of live bivalve molluscs,

and amendments to these lists shall be published from time to time.

(2) The Department shall send a copy of the lists mentioned in paragraph (1), and any amendments to them to—

- (a) each district council;
- (b) trade associations which appear to it to represent the interests of food businesses who are likely to be directly affected by this Part.

(3) Each district council shall take such action as it considers sufficient to bring any part of the lists mentioned in paragraph (1) which relates to its district to the attention of any harvester, handler or operator of a dispatch centre or purification centre who is carrying out commercial operations with respect to live bivalve molluscs in its district.

Temporary prohibition orders concerning production areas

7.—(1) Subject to paragraph (4), a district council may, if it is satisfied that the consumption of live shellfish taken from a production area situated in its district is likely to cause a risk to public health, make a temporary prohibition order prohibiting the collecting of any live shellfish from that area.

(2) A temporary prohibition order shall cease to have effect at the expiration of a period of 28 days after it was made, unless earlier revoked by the district council making the order.

- (3) Forthwith after making such an order, a district council shall—
- (a) in the case of a private laying, refer the matter to the Department and serve a notice on every owner and tenant of the laying whose name and address can with reasonable diligence be ascertained containing the following information—
 - (i) the reasons for the district council making the order, and
 - (ii) any action which the district council is requesting the Department to take pursuant to regulation 4 or 5(1), and in particular the detail or any proposed conditions or restrictions;
 - (b) in the case of any other production area, affix notices in the vicinity of the area and take any other steps it considers appropriate to bring the order to the attention of those affected, and in either case send a copy of the order and notice to the Department.
- (4) A district council shall not make a temporary prohibition order in respect of any production area if it has made such an order in respect of that area within the preceding 28 days, unless the Department gives consent to such action.

Collecting live shellfish from prohibited areas

8. No person shall collect—
- (a) live bivalve molluscs from a designated prohibited area for live bivalve mollusc production;
 - (b) live echinoderms, tunicates or marine gastropods from a designated prohibited area for live echinoderm, tunicate and marine gastropod production;
 - (c) live shellfish from—
 - (i) a designated prohibited area for live shellfish production, or
 - (ii) a laying which is the subject of a temporary prohibition order made by a district council under regulation 7.

Requirements relating to the harvesting, transporting and relaying of live shellfish

9. No person shall—
- (a) harvest or transport from a production area to a dispatch centre or processing plant any live echinoderms, tunicates or marine gastropods otherwise than in accordance with Chapter II of Schedule 2;
 - (b) harvest or transport from a production area to a relaying area, dispatch centre, purification centre or processing plant any live bivalve molluscs otherwise than in accordance with Chapter II of Schedule 2; or
 - (c) relay any live bivalve molluscs otherwise than at a designated relaying area and in accordance with the applicable conditions for relaying in Chapter III of Schedule 2,
- if they are intended for placing on the market for human consumption.

Requirement for the approval of dispatch or purification centres

10. No person shall operate a dispatch centre or purification centre unless it has been approved by the district council for the district in which the centre is situated.

Approval of dispatch or purification centres

11.—(1) An application for an approval for a dispatch centre or purification centre shall be made to the district council for the district in which the centre is situated.

(2) An application pursuant to paragraph (1) shall be—

- (a) made in writing; and
- (b) accompanied by such supplementary information, documents, plans and diagrams as are necessary to enable the district council to determine the application.

(3) An approval in respect of a dispatch centre may only be granted if the district council is satisfied that it meets such of the conditions set out in Sections I, II and IV of Chapter IV of Schedule 2 as apply to it.

(4) An approval in respect of a purification centre may only be granted if the district council is satisfied that it meets—

- (a) such of the conditions set out in Sections I, II and III of Chapter IV of Schedule 2 as apply to it; and
- (b) any additional conditions of which the district council has been notified by the Department pursuant to paragraph (5).

(5) An approval for a dispatch centre or purification centre under this regulation may be granted subject to limitations as to the particular activities approved, the method of operation approved and the intensity of use approved, and where the Department notifies the district council that specified conditions for the operation of a purification centre relating to matters mentioned in Chapter IV of Schedule 2 should be complied with, the district council shall give its approval subject to those conditions.

(6) The district council shall give written notification to each person who makes an application pursuant to paragraph (1) of the result of his application and, in the case of refusal, of the reasons for that refusal.

(7) If an application pursuant to paragraph (1) is approved, the district council shall—

- (a) designate the dispatch centre or purification centre with a unique approval number; and
- (b) notify the Department of the approval and the approval number allocated.

Appeals against a refusal to grant an approval or against any conditions or limitations in approvals

12.—(1) A person who is aggrieved by a decision taken by the district council—

- (a) to refuse to grant an approval for a dispatch centre or purification centre; or
- (b) to impose any limitation or condition in an approval granted for a dispatch centre or purification centre,

may appeal to a court of summary jurisdiction and Article 37(2) to (3) of the Order shall apply in relation to such an appeal as it applies in relation to an appeal under Article 37(1)(c) of the Order.

(2) Where an appeal against—

- (a) a limitation as to the particular activities approved, the method of operation approved or the intensity of use approved; or
- (b) a condition notified to the district council by the Department in accordance with regulation 11(5),

is brought in accordance with paragraph (1)(b), the appellant may continue to operate the dispatch centre or the purification centre, as the case may be, free of the limitation or condition which is being

appealed against while the appeal is pending, and an appeal shall be regarded as pending for these purposes until it is finally disposed of, is struck out for want of prosecution or is withdrawn.

(3) Where an appeal is brought in accordance with paragraph (1)(b) against a condition notified to the district council by the Department in accordance with regulation 11(5), the district council shall inform the Department that such an appeal has been brought.

(4) Where an appeal is brought in accordance with paragraph (1), the court may—

- (a) affirm any decision to refuse an approval;
- (b) grant the approval either in its original form or with such modifications as the court may in the circumstances think fit;
- (c) remit the matter to the district council with the court's opinion on it; or
- (d) make such other order in relation to the matter as the court thinks fit.

Obligations on food business proprietors operating dispatch or purification centres

13. A food business proprietor who is operating a dispatch centre or purification centre at which live shellfish which are intended for placing on the market are handled shall ensure that—

- (a) the requirements of the approval for his centre and of the applicable provisions of Chapter IV of Schedule 2 are complied with as respects his centre;
- (b) regular microbiological checks are carried out on—
 - (i) those of his shellfish which he is required to check for microbiological contamination in order to comply with the requirements set out in Chapter IV of Schedule 2, and
 - (ii) if he is a purification centre proprietor, the water for use in the purification system at his centre,

by or in laboratories which meet the applicable requirements of Chapter IV of Schedule 2; and

- (c) the results of the checks mentioned in sub-paragraph (b)(i) are recorded in a historical record which, in relation to each production area from which the shellfish were taken, gives details of the health quality of the shellfish from that area both before and after handling at the centre.

Variation of approvals for dispatch or purification centres

14.—(1) A person may at any time apply to the district council for the council to vary or revoke any term or limitation in any approval for a dispatch centre or purification centre granted to him, and subject to paragraph (2), the district council may, in appropriate circumstances, vary any such term or limitation.

(2) A district council may vary or revoke any additional condition of which it has been notified by the Department pursuant to regulation 11(5) only with the consent of the Department.

(3) Any person who is aggrieved by a decision of a district council to refuse to vary any term or limitation of any approval for a dispatch centre or purification centre may appeal to a court of summary jurisdiction and Article 37(2) to (3) of the Order shall apply in relation to such an appeal as it applies in relation to an appeal under Article 37(1)(c) of the Order.

(4) Where an appeal is brought in accordance with paragraph (3) against a refusal to vary a condition notified to the district council by the Department in accordance with regulation 11(5), the district council shall inform the Department that such an appeal has been brought.

(5) Where an appeal is brought in accordance with paragraph (3), the court may—

- (a) affirm any decision to refuse to vary the term or limitation in the approval;

- (b) vary the term or limitation in the approval;
- (c) remit the matter to the district council with the court's opinion on it; or
- (d) make such other order in relation to the matter as the court thinks fit.

Revocation of approvals for dispatch or purification centres

15.—(1) A district council may revoke an approval of a dispatch centre or purification centre situated in its area if, after inspection of or any inquiry into the method of operation of the centre, it is satisfied that—

- (a) there has been a serious (on animal or public health grounds) and manifest breach of the conditions or limitations subject to which the approval was granted or of the applicable provisions of Chapter IV of Schedule 2;
- (b) the food business proprietor who is operating the centre is either unable or not prepared to ensure that the breach is remedied; and
- (c) there is in force in relation to that dispatch centre or purification centre—
 - (i) a prohibition order under Article 10 of the Order, or
 - (ii) an emergency prohibition order under Article 11 of the Order,and as a consequence of the order, commercial operations with regard to live shellfish which are for placing on the market for human consumption may not be carried out at that dispatch centre or purification centre.

(2) A proprietor who is aggrieved by a decision to revoke an approval for a dispatch centre or purification centre may appeal to a court of summary jurisdiction and Article 37(2) to (3) of the Order shall apply in relation to such an appeal as it applies in relation to an appeal under Article 37(1)(c) of the Order.

- (3) A revocation under this regulation shall take effect—
 - (a) immediately after the time for appealing against it has elapsed; or
 - (b) if an appeal is brought, immediately after the appeal is finally disposed of, struck out for want of prosecution or withdrawn,

and when a district council informs the food business proprietor who is operating a dispatch centre or purification centre of a decision to revoke the approval for the centre, it shall explain to the proprietor in writing when the revocation will take effect (including when it will take effect if an appeal is brought).

Wrapping of live shellfish

16. A proprietor of a food business in the course of which live shellfish which are intended for placing on the market for human consumption are wrapped or repackaged shall ensure that the wrapping or repackaging of such shellfish is in accordance with the applicable requirements of those set out in Chapter VII of Schedule 2.

Storage and transportation of live shellfish after dispatch

17. A proprietor of a food business in the course of which live shellfish which are intended for placing on the market for human consumption are stored or transported after they have left a dispatch centre or purification centre, shall ensure that such shellfish are stored and transported in accordance with the applicable requirements of those set out in Chapters VIII and IX of Schedule 2.

Splitting consignments of live shellfish

18.—(1) A person other than the final consumer who splits the contents of a consignment of live shellfish which are not wrapped in individual consumer-sized parcels shall keep—

- (a) any healthmark which is attached to the consignment; or
- (b) a copy of any certificate required in accordance with regulation 45(2) which accompanied that consignment,

for a period of not less than 60 days from the date of the splitting of the contents of that consignment.

(2) A person who repackages a consignment of live shellfish in accordance with paragraph 3 of Chapter VII of Schedule 2 shall keep the original healthmark (if one was required) which was attached to the consignment for a period of not less than 60 days from the date of the splitting of the contents of that consignment.

Placing live shellfish on the market

19.—(1) Subject to paragraphs (2) to (4), no person shall place on the market for immediate human consumption any live shellfish, unless—

- (a) they originate, if they are live bivalve molluscs, from a bivalve production area which—
 - (i) has been designated a class A area, a class B area or a class C area in accordance with regulation 3(1), and any condition or limitation specified in Chapter I of Schedule 2 in relation to that class of area has been complied with,
 - (ii) has been identified, pursuant to any law in force in Great Britain, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by Chapter I of the Annex to the Live Bivalve Molluscs Directive, as an area from which bivalve molluscs may be collected, and any condition or limitation derived from that Chapter which relates to that production area has been complied with, or
 - (iii) if they are imported for relaying, was of the same standard as an area designated as a class B area or a class C area in accordance with regulation 3(1)(b) or (c), and any condition or limitation specified in Chapter I of Schedule 2 for that production area has been complied with;
- (b) they have been harvested, kept and transported to any approved dispatch centre, approved purification centre or approved relaying area to which they are thereafter transferred in accordance with the applicable requirements of—
 - (i) Chapter II of Schedule 2, or
 - (ii) any law in force in Great Britain, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by Chapter II of the Annex to the Live Bivalve Molluscs Directive,accompanied by a valid movement document or a valid permanent transport authorisation;
- (c) if they are live bivalve molluscs, they have, where necessary, been relaid in accordance with—
 - (i) Chapter III of Schedule 2, or
 - (ii) any law in force in Great Britain, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by Chapter III of the Live Bivalve Molluscs Directive;

(d) they have been handled hygienically and, if they are live bivalve molluscs, they have, where appropriate, been purified at a purification centre which has been approved in accordance with—

- (i) regulation 11, or

- (ii) any law in force in Great Britain, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved in relation to the approval of purification centres by the Live Bivalve Molluscs Directive;
- (e) they are as specified in Chapter V of Schedule 2;
- (f) they have been wrapped in accordance with the applicable requirements of Chapter VII of Schedule 2;
- (g) they have been stored and transported in accordance with the applicable requirements of Chapter VIII and Chapter IX of Schedule 2;
- (h) they comprise or form part of a consignment which bears a healthmark—
 - (i) unless head (ii) or (iii) applies, which is in accordance with Chapter X of Schedule 2,
 - (ii) which, if they comprise or form part of a consignment which has been given a healthmark in accordance with any law in force in another EEA State, Great Britain, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by Chapter X of the Annex to the Live Bivalve Molluscs Directive, is in accordance with that law,
 - (iii) which, if they comprise or form part of a consignment from a third country in respect of which the European Commission has adopted approved import conditions, is in accordance with those approved import conditions,
 but a healthmark is not required in relation to live shellfish which originate from a third country in respect of which the European Commission has not adopted approved import conditions, unless those live shellfish have been repackaged in accordance with paragraph 3 of Chapter VII of Schedule 2;
- (i) if they are imported live shellfish, prior to importation such of the requirements specified in regulations 44 and 45 as are applicable to his case are satisfied in relation to those live shellfish which he places on the market.

(2) Paragraph (1)(a) shall not apply to—

- (a) pectinidae, unless they are aquaculture products; or
- (b) any imported live bivalve molluscs, unless they were harvested from seawaters or brackish waters within British fishery limits⁽¹⁾.

(3) Paragraph (1)(b) and (c) shall not apply to imported live shellfish, unless their country of dispatch is part of the United Kingdom, the Channel Islands or the Isle of Man.

(4) Paragraph (1)(h)(ii) to (iii) shall not apply in circumstances where, in Northern Ireland, a person repackages live shellfish from a country or territory other than Northern Ireland in accordance with paragraph 3 of Chapter VII of Schedule 2.

Direct transfers of live shellfish on local markets

20.—(1) Regulations 9, 16, 17 and 19 shall not apply to a direct transfer to a retailer or final consumer in the United Kingdom of a small quantity of—

- (a) live bivalve molluscs gathered from a class A designated bivalve production area; or
- (b) live echinoderms, tunicates or marine gastropods,

which are as specified in Chapter V of Schedule 2 by a coastal fisherman who is part of the direct transfers scheme.

(2) A coastal fisherman is part of the direct transfers scheme for the purposes of paragraph (1) if, prior to gathering live shellfish for the first time in any calendar year in the district of a district

(1) See sections 1(5) and 10(2)(b) of the Fishery Limits Act 1976 (c. 86)

council, he notifies the district council of his intention to do so and supplies it with the following information—

- (a) his name, address and telephone number;
- (b) the address where he keeps the equipment he uses for gathering;
- (c) the intended place of landing of gathered live shellfish;
- (d) the address where he intends to put the gathered live shellfish when landed;
- (e) if applicable, the name, address and approval number of any dispatch centre or purification centre to which he intends to send the live shellfish after gathering,

and if he notifies the district council of any changes to the information originally supplied.

(3) For the purposes of paragraph (1) a “small quantity” means an amount which comprises part of the coastal fisherman’s annual allowance.

(4) For the purposes of paragraph (3), a coastal fisherman’s annual allowance is a total amount of not more than 25 tonnes of live shellfish in a calendar year, and although that total amount may comprise of amounts of one or more species, in that total amount the amount of any species listed in column (a) of the following Table shall not exceed the maximum amount for that species mentioned in column (b) of that Table—

TABLE

(a) <i>Species</i>	(b) <i>Maximum amount</i>
Cockles	25.0 tonnes
Oysters	5.0 tonnes
King Scallops	5.0 tonnes
Queen Scallops	10.0 tonnes
Mussels	20.0 tonnes
Other Live Bivalve Molluscs	10.0 tonnes
Marine Gastropods	20.0 tonnes