
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 103

**The Alien and Locally Absent Species in
Aquaculture (Scotland) Regulations 2015**

PART 5

ENFORCEMENT

Entry and inspection of land and premises

20.—(1) An inspector may, on producing some duly authenticated document showing the inspector's authority if required, enter and inspect any land or premises at any reasonable time for the purposes of administering and enforcing Council Regulation 708/2007 or these Regulations.

(2) But an inspector may not enter any premises which are a dwelling unless a justice of the peace, or sheriff, has granted a warrant authorising the inspector to do so.

(3) A justice of the peace, or sheriff, may grant a warrant authorising an inspector to enter any land or premises if satisfied that the inspector will not be able to administer or enforce Council Regulation 708/2007 or these Regulations without the warrant.

(4) A warrant granted under paragraph (3) remains in force—

(a) for one month; or

(b) until the purpose for which it is issued has been fulfilled,

whichever is the sooner.

(5) An inspector entering any land or premises may be accompanied by—

(a) such persons, vehicles, equipment or materials as the inspector considers necessary; and

(b) a representative of the European Commission acting for the purposes of Council Regulation 708/2007.

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

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

(a) any vessel, vehicle or trailer; and

(b) any installation, container or receptacle.

Enforcement powers: general

21. The powers conferred by regulations 22, 23 and 24 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.

Search and examination of items on land and premises

22. An inspector entering any land or premises under regulation 20 may—
- (a) search the land or premises for any item, including any aquatic organism or water;
 - (b) examine anything that is—
 - (i) on the land or premises; or
 - (ii) attached to, or otherwise forms part of the land or premises.

Production of documents

23. An inspector entering any land or premises under regulation 20 may require any person—
- (a) to produce any document or record that is in that person's possession or control; or
 - (b) to 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.

Seizure of items

- 24.—(1) This regulation applies where an inspector exercises a power conferred by regulation 22 or 23.
- (2) An inspector may—
- (a) seize, detain or remove any item which is on the land or premises; or
 - (b) take copies of, or extracts from, any document or record found on the land or premises.
- (3) The power conferred by paragraph (2)(a) includes the 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 23 may—
- (a) seize, detain or remove that document or record; or
 - (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 land or 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 item seized by an inspector may be retained for so long as is considered necessary by the inspector in the circumstances.
- (7) Any aquatic organism or water seized by an inspector may be disposed of as the inspector sees fit.

Enforcement notices

- 25.—(1) Where the competent authority considers that any person has not complied with, or is not complying with, Council Regulation 708/2007 or these Regulations it may serve an enforcement notice on that person.
- (2) The competent authority may serve an enforcement notice on an operator of an aquaculture facility where it considers that aquatic organisms present in an aquaculture facility were introduced in contravention of—
- (a) Council Regulation 708/2007;
 - (b) these Regulations; or

- (c) any condition of a permit (including a permit amended under regulation 5) or a notice served under regulation 11(2)(a) or (b) or (3) (movement of Annex IV species).
- (3) An enforcement notice must state—
 - (a) the matters which constitute the contravention or failure to comply;
 - (b) the steps which the person on whom it is served must take or is prohibited from taking;
 - (c) the date by which the steps must be taken;
 - (d) the reasons for the service of the notice and for the requirements in it; and
 - (e) that there is a right of appeal under regulation 26.
- (4) An enforcement notice may require the person on whom it is served to—
 - (a) remove and dispose of any aquatic organism in a manner and within a period specified in the notice; and
 - (b) take such steps as are required to ensure that the aquaculture facility is, so far as possible, restored to its condition prior to the contravention.
- (5) Where an enforcement notice is not complied with the competent authority may—
 - (a) take such steps as it considers necessary (including the removal and disposal of any aquatic organisms) 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 notice.
- (6) The competent authority may remove and dispose of any aquatic organisms without serving an enforcement notice—
 - (a) in an emergency; and
 - (b) at the cost of the person or operator mentioned in paragraph (1) or (2).
- (7) In this regulation “operator” means any person who is responsible for the management of the aquaculture facility.

Appeals: enforcement notices

26.—(1) A person (“the appellant”) may appeal against an enforcement notice served under regulation 25 by complying with one of the requirements in paragraph (2) within 21 days from the date of the notice being served.

- (2) The requirements are—
 - (a) to make written representations to the competent authority; or
 - (b) to serve on the competent authority notice that the person wishes to appear before and be heard by an independent person appointed by the competent authority.
- (3) Where paragraph (2)(a) applies—
 - (a) the competent authority must appoint an independent person to consider the representations;
 - (b) that person must consider the representations and provide a report to the competent authority; and
 - (c) if the appellant requests the competent authority must provide a copy of that report.
- (4) Where paragraph (2)(b) applies—

- (a) the competent authority must appoint an independent person to hear representations (“the appointed person”) and specify a time limit within which representations must be made;
 - (b) if the appellant requests, the hearing must be in public;
 - (c) the appointed person must consider the representations and provide a report to the competent authority; and
 - (d) if the appellant requests, the competent authority must provide a copy of the appointed person’s report.
- (5) Where the competent authority makes a decision on appeal it may—
- (a) confirm the notice;
 - (b) amend the notice; or
 - (c) withdraw the notice.
- (6) The competent authority must serve notice of its final decision and the reasons for reaching that decision on the appellant.
- (7) Where an appeal is made under paragraph (1) the enforcement notice will have no effect pending the final decision of the competent authority or the withdrawal of the appeal.
- (8) But paragraph (7) does not apply where the notice includes a statement that, in the opinion of the competent authority, there is an imminent risk of adverse effects to biodiversity or an imminent threat to aquatic organisms, habitats or ecosystems.