

2011 No. 80

ENVIRONMENTAL PROTECTION

MARINE LICENSING

**The Marine Licensing (Appeals) Regulations (Northern Ireland)
2011**

Laid before the Assembly in draft

Made - - - - 22nd March 2011

Coming into operation - 6th April 2011

The Department of the Environment, as the appropriate licensing authority under section 113(6)(b) of the Marine and Coastal Access Act 2009(a), makes these Regulations in exercise of the powers conferred by sections 73, 108 and 316(1) of that Act.

Citation and commencement

1. These Regulations may be cited as the Marine Licensing (Appeals) Regulations (Northern Ireland) 2011 and come into operation on 6th April 2011.

Application

2. These Regulations apply in relation to Northern Ireland and the Northern Ireland inshore region, and any licensable marine activity carried on in Northern Ireland or the Northern Ireland inshore region, for which the Department of the Environment is—

- (a) the appropriate licensing authority (and references in these Regulations to “the licensing authority” are to be read accordingly); or
- (b) an appropriate enforcement authority (and references in these Regulations to the “enforcement authority” are to be read accordingly)(b).

Interpretation

3.—(1) The Interpretation Act (Northern Ireland) 1954(c) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the Act” means the Marine and Coastal Access Act 2009; and

(a) 2009 c. 23.

(b) Under sections 113(6)(a) and 114(2) of the Act the Secretary of State is, respectively, the licensing authority and the enforcement authority in respect of anything done in the course of carrying on any activity which relates to a matter which is an excepted matter, by virtue of paragraph 4 of Schedule 2 to the Northern Ireland Act 1998 (c.47) (defence of the realm etc.) in Northern Ireland and the Northern Ireland inshore region.

(c) 1954 c. 33 (N.I.).

“Appeals Commission” means the Water Appeals Commission for Northern Ireland as specified in Article 292 of the Water and Sewerage Services (Northern Ireland) Order 2006(a).

Appeals against marine licensing decisions and enforcement notices

4. A person who has—

- (a) applied for a marine licence and a decision on that application has been taken by the licensing authority under section 71 of the Act (refusal of licence or grant subject to conditions etc.);
- (b) been issued with a notice by the licensing authority under section 72 of the Act (notice varying, suspending or revoking a marine licence or extending a period of suspension); or
- (c) been issued with an enforcement notice,

may by notice appeal to the Appeals Commission.

Powers of the Appeals Commission

5.—(1) Except as otherwise provided for in these Regulations, any appeal under regulation 4 shall be determined in accordance with Articles 292 (Water Appeals Commission) and 293 (Procedure of the Appeals Commission) of the Water and Sewerage Services (Northern Ireland) Order 2006.

(2) Before determining any appeal under regulation 4, the Appeals Commission shall, if either the appellant or the licensing or enforcement authority (as the case may be) so desires, afford to each of them an opportunity of appearing before and being heard by the Appeals Commission.

(3) The Appeals Commission may in respect of an appeal under regulation 4(a)—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision in whole or in part; or
- (c) where the Appeals Commission quashes a decision under sub-paragraph (b), direct the licensing authority—
 - (i) to grant a marine licence; or
 - (ii) to grant a marine licence on such terms or subject to such conditions as the Appeals Commission may direct.

(4) The Appeals Commission may in respect of an appeal under regulation 4(b) or (c)—

- (a) quash the notice, vary the terms of the notice or uphold the notice; or
- (b) take such steps as the licensing authority or enforcement authority (as appropriate) could take in relation to the act or omission giving rise to the notice.

Appeals – further provisions

6.—(1) The enforcement notice referred to in regulation 4(c) is—

- (a) a compliance notice issued under section 90 of the Act;
- (b) a remediation notice issued under section 91 of the Act;
- (c) a stop notice issued under section 102 of the Act; or
- (d) an emergency safety notice issued under section 104 of the Act.

(2) A compliance notice is suspended on appeal pending determination of the appeal against the notice.

(a) S.I. 2006/3336 (N.I.21)

(3) The enforcement authority may suspend a remediation notice, a stop notice or an emergency safety notice, wholly or in part, pending determination of an appeal against the notice.

Time limit for making an appeal

7.—(1) Notice of appeal given pursuant to an appeal under regulation 4(a) must be received by the Appeals Commission within a period of 6 months beginning with the date of notification of the decision to which the appeal relates.

(2) Notice of appeal given pursuant to an appeal under regulation 4(b) or (c) must be received by the Appeals Commission within 28 days from the day on which the notice was issued.

Notice of appeal

8.—(1) A person who wishes to appeal under regulation 4 shall give the Appeals Commission written notice of the appeal complying with paragraph (3), together with the documents specified in paragraph (4).

(2) A person who sends a notice of appeal to the Appeals Commission must, at the same time, send a copy of that notice to the enforcement authority or as the case may be, the licensing authority.

(3) A notice of appeal must include—

- (a) the name, address (including any e-mail address) and telephone number of the appellant and any agent acting for the appellant;
- (b) a statement of the grounds of appeal; and
- (c) a list of all the documents, including dates, specified in paragraph (4).

(4) A notice of appeal against a marine licensing decision or, as the case may be, enforcement notice, must be accompanied by—

- (a) a copy of the relevant marine licence or marine licence application or, as the case may be, enforcement notice;
- (b) a copy of the decision to which the appeal relates;
- (c) a copy of any relevant correspondence;
- (d) a copy of all documents upon which the appellant wishes to rely; and
- (e) such forms and other relevant information as may be required by the procedures of the Appeals Commission.

Amendment of the Water and Sewerage Services (Northern Ireland) Order 2006

9.—(1) The Water and Sewerage Services (Northern Ireland) Order 2006 is amended in accordance with paragraph (2).

(2) In Article 293(9) (procedure of the Appeals Commission) after sub-paragraph (c) add—

- “(d) the Marine Licensing (Appeals) Regulations (Northern Ireland) 2011(a); and
- (e) the Marine Licensing (Civil Sanctions) Order (Northern Ireland) 2011(b).”.

(a) S.R. 2011 No. 80

(b) S.R. 2011 No. 81

Sealed with the Official Seal of the Department of the Environment on 22nd March 2011



Maggie Smith
A senior officer of the
Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for appeals to be made to the Water Appeals Commission against marine licensing decisions and decisions to issue notices varying, suspending or revoking a marine licence or extending a period of suspension taken under Part 4 of the Marine and Coastal Access Act 2009(a) (“the Act”). Appeals can also be made to the Water Appeals Commission in respect of enforcement decisions.

Regulation 5 prescribes the powers of the Water Appeals Commission to determine an appeal.

Regulations 4, 6, 7 and 8 specify when, on what grounds and by whom an appeal can be made.

Marine licences are defined in Part 4 of the Act.

Enforcement notices are a compliance notice, a remediation notice, a stop notice and an emergency safety notice in relation to which the Department of the Environment is an enforcement authority. See section 115 of the Act for definitions of these notices.

(a) 2009 C. 23.