STATUTORY RULES OF NORTHERN IRELAND

2006 No. 189

EMPLOYMENT

The Gangmasters (Appeals) Regulations (Northern Ireland) 2006

Made - - - - *20th April 2006*

Coming into operation - *15th May 2006*

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The Department of Agriculture and Rural Development(**a**), in exercise of the powers conferred on it by sections 10 and 25(2) of the Gangmasters (Licensing) Act 2004(**b**), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Gangmasters (Appeals) Regulations (Northern Ireland) 2006 and shall come into operation on 15th May 2006.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Gangmasters (Licensing) Act 2004;

"appointed person" has the meaning given by regulation 3(1);

"the Authority" means the Gangmasters Licensing Authority;

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

"decision with immediate effect" means a decision of the Authority to revoke or suspend a licence, where the period between the date of the decision document and the date on which the decision comes into effect is five working days or less;

"decision document" means the letter, notice or other communication by which the appellant is informed of a decision of the Authority;

"disputed decision" means the decision of the Authority in relation to which the appellant appeals;

"licence" means a licence granted by the Authority under section 7(1) of the Act authorising a person to act as a gangmaster;

"the parties" means the appellant and the Authority;

"working day" means a day other than a Saturday or a Sunday or a public holiday.

(2) The Interpretation Act (Northern Ireland) 1954(**c**) shall apply to these Regulations as it applies to an Act of the Assembly.

Appointed persons

3.—(1) The Department shall appoint an appointed person from members of the panel of Employment Tribunal Chairmen appointed under the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004(**d**) to hear and determine each appeal brought under these Regulations.

(2) The Department may pay such remuneration and allowances to appointed persons as it may determine.

The Secretariat

4.—(1) The Department shall ensure that arrangements are made for the provision of a Secretariat in Northern Ireland to administer the appeals process and provide administrative assistance to appointed persons.

(2) Any document or information required by these Regulations to be sent to, or provided by, an appointed person may be sent to, or provided on his behalf by, the Secretariat.

(**a**) Formerly the Department of Agriculture for Northern Ireland, *see* Article 3(4) of S.I. 1999/283 (N.I. 1)
(**b**) 2004 c. 11: *see* modifications to sections 10 and 25(2) made by paragraphs 11, 19(1) and 19(2) of Schedule 2
(**c**) 1954 c.33 (N.I.)
(**d**) S.R. 2004 No. 165

Decisions which may be appealed and effect of appeal on licence

5.—(1) An appeal may be brought by a person against a decision of the Authority—

(a) to refuse his application for a licence;

(b) as to the conditions to which the grant of the licence to that person is subject;

(c) to refuse consent to the transfer of a licence granted to that person; or

(d) to modify or revoke a licence granted to that person.

(2) An appeal may be brought in respect of a full licence or a provisional licence.

(3) A licence which is the subject of an appeal against modification or revocation shall continue to have effect according to its original terms and conditions until such date as determined by the appointed person.

(4) Paragraph (3) shall not apply in the case of an appeal against a decision with immediate effect.

(5) Upon the withdrawal of an appeal against revocation of a licence or modification of a licence or its conditions, the Secretariat shall notify the parties that the appeal has been withdrawn and the disputed decision shall take effect on the later of the following dates—

(a) the date specified in the original decision document as the date the disputed decision was to take effect; or

(b) the sixth working day after the date of the document sent by the Secretariat to the parties notifying them of the withdrawal.

Notice of appeal

6.—(1) In order for an appeal to be valid, a notice of appeal shall be received by the Secretariat—

(a) not later than twenty working days after the date of the decision document; or

(b) in the case of a decision with immediate effect, not later than ten working days after the date of the decision document.

(2) The notice of appeal shall be in writing and shall state—

(a) the name and address of the appellant and, if different, an address to which he requires notices and documents relating to the appeal to be sent;

(b) the grounds of the appeal.

Acknowledgement and notification of the appeal

7.—(1) The Secretariat shall send to the appellant an acknowledgement of receipt of the notice of appeal and shall specify a date by which the appellant shall supply any additional documentation on which he seeks to rely for the purposes of the appeal.

(2) The Secretariat shall at the same time send a copy of the notice of appeal and any accompanying documentation, or additional documentation, to the Authority.

Amendment and withdrawal of the appeal and supporting documentation

8.—(1) The appellant may amend his appeal, or any part of it, with the consent of the appointed person at any time before the hearing of the appeal.

(2) The appellant may withdraw his appeal at any time before it is determined.

(3) Where the appellant withdraws his appeal, he may not submit a subsequent appeal on the same grounds in relation to the same disputed decision.

(4) The Secretariat shall send to the Authority a copy of any documentation received from the appellant under this regulation.

Reply by the Authority

9.—(1) The Authority shall send to the Secretariat a reply to the notice of appeal so that it is received not later than the end of the period of twenty working days beginning with the date on which the copy of the notice of appeal is received by the Authority or as extended under regulation 13.

(2) The Authority may, either in its reply or at any time before the appeal is determined, notify the Secretariat that it no longer wishes to uphold a disputed decision, in which case the appointed person shall uphold the appeal.

(3) If the Authority fails to send a reply within the time specified in paragraph (1), or by a new date set by the appointed person under regulation 13(1), it may not take any further part in the proceedings unless the appointed person so directs.

Contents of the reply

10. The Authority's reply shall state—

(a) an address to which the Authority requires notices and documentation relating to the appeal to be sent;

(b) if the Authority seeks to uphold the disputed decision; and

(c) if the Authority seeks to uphold the disputed decision, the Authority's reply to each of the grounds of appeal supplied by the appellant.

Action by Secretariat on receipt of reply

11. Upon receipt of a reply by the Authority, the Secretariat shall send—

(a) an acknowledgement of receipt to the Authority specifying a date by which the Authority shall supply any additional documentation on which it seeks to rely for the purposes of the appeal;

(b) a copy of the reply and any accompanying documentation to the appellant; and

(c) a statement informing the parties that if either wishes the appeal to be determined without an oral hearing it shall notify the Secretariat as soon as possible.

Amendment of the reply and supporting documentation

12.—(1) The Authority may amend its reply, or any part of it, with the consent of the appointed person at any time before the hearing of the appeal.

(2) The Authority may amend or withdraw any documentation submitted in support of the reply at any time with the consent of the appointed person.

(3) The Secretariat shall send to the appellant a copy of any documentation received from the Authority under this regulation.

Extension of time

13.—(1) An appointed person may, on the application of either party or on his own initiative, extend the time for doing any act appointed by or under these Regulations where he considers there are reasonable grounds to do so, and may do so whether or not the time so appointed has expired.

(2) An application under paragraph (1) shall be made by presenting to the Secretariat a notice stating—

(a) the name of the appellant;

(b) the nature and date of the disputed decision which is the subject of appeal; and

(c) the grounds of the application.

(3) The Secretariat shall notify each party of any extension of time granted under this regulation.

Directions

14.—(1) At any stage in the proceedings the appointed person may, on his own initiative or on the application of either party, give such directions as he considers necessary or desirable to further the conduct of the appeal and may direct either party to provide any further particulars or documentation which may reasonably be required.

(2) The Secretariat shall send a copy of any application and documents submitted to the other party.

Power to decide the appeal without an oral hearing

15.—(1) If—

(a) both parties agree; and

(b) the appointed person considers it appropriate,

the appeal shall be determined without an oral hearing but otherwise shall be determined with an oral hearing.

(2) If—

(a) the appellant agrees that the case can be determined without an oral hearing;

(b) the Authority has not sent its reply before the date specified in regulation 9(1) (or as extended under regulation 13(1)); and

(c) the appointed person does not consider that there are reasonable grounds for an oral hearing,

the Secretariat shall notify the parties that the appointed person will determine the appeal without an oral hearing.

(3) Before determining an appeal without an oral hearing, the appointed person shall consider any written representations from the parties, unless regulation 9(3) applies in the case of the Authority.

Action by Secretariat in fixing a hearing date

16.—(1) Where an oral hearing is to be held, the Secretariat shall, within twenty working days of the date of receiving the Authority's reply within the period specified in regulation 9(1), fix a date for the hearing.

(2) The Secretariat shall send to the parties a notice—

(a) stating the time and place of the hearing of the appeal;

(b) giving guidance regarding the procedure to be followed at the hearing;

(c) stating the consequences under regulation 19(5) of not attending the hearing; and

(d) giving guidance regarding the right to submit written representations if that party elects not to attend or be represented at the hearing pursuant to regulation 17(1)(a).

(3) If the Authority fails to send a reply within the period specified in regulation 9(1) and an extension of time is not granted under regulation 13, the Secretariat shall, within twenty working days of the end of the period specified in regulation 9(1), fix a date for the hearing.

(4) The date fixed for the hearing shall be not less than fifteen working days after the date on which the notice referred to in paragraph (2) is sent to the parties.

Procedure preliminary to oral hearing

17.—(1) Not less than ten working days before the date fixed for an oral hearing, each party shall—

(a) inform the Secretariat if they intend to appear and, whether or not they intend to appear in person, if they will be represented at the hearing; and

(b) if appearing or being represented, specify which, if any, witnesses they intend to call and enclose a signed witness statement for each witness containing the evidence the witness intends to give at the oral hearing.

(2) Either party may submit written representations to the appointed person not later than five working days prior to the oral hearing, whether or not that party has elected to appear or be represented unless regulation 9(3) applies in the case of the Authority.

(3) The Secretariat shall send to the other party a copy of any representations or witness statements received under this regulation.

Change in place, date or time of the hearing

18.—(1) The appointed person may change the place, date or time of the hearing if he considers it appropriate.

(2) Where the appointed person changes the place, date or time of the hearing, the Secretariat shall notify the parties immediately of the change.

(3) Any altered hearing date shall not be before the date notified under regulation 16 unless both parties agree.

Procedure at the hearing

19.—(1) The appointed person may give directions to the parties concerning the procedure to be followed at the hearing.

(2) The hearing of the appeal shall be in public unless the appointed person determines that it is appropriate, fair and reasonable for the hearing, or any part of it, to be held in private.

(3) The parties may each appear at the hearing and may be assisted by any person.

(4) The parties may each be represented by any person whether or not they appear at the hearing.

(5) If either party elects to appear at the hearing, but fails without reasonable excuse to appear, the appointed person may proceed to hear the appeal and, provided he has considered any representations made by the absent party, determine it in the absence of that party.

(6) The parties may give evidence, call witnesses, question any witnesses and make submissions on the evidence and issues in the appeal.

(7) The appointed person may give directions at the hearing concerning the exercise of the rights specified in paragraph (6) where he considers that the directions are in the interests of justice.

(8) The appointed person may adjourn the hearing where he considers there are reasonable grounds to do so.

(9) The appointed person shall send to the parties, not later than three working days after the date on which the hearing is adjourned, a notice informing them of the place, date and time of the adjourned hearing.

Expedited procedure for decisions with immediate effect

20.—(1) An appeal against a decision with immediate effect shall be heard and determined not later than thirty-five working days after the date on which the notice of appeal is received by the Secretariat, unless the appointed person decides in the interests of justice that the expedited procedure in this regulation shall not apply.

(2) Where the expedited procedure applies, the appointed person shall determine the applicable procedure and time limits.

(3) The appointed person may vary the expedited procedure determined under paragraph (2) at any time if he considers there are reasonable grounds to do so.

(4) The appointed person shall promptly notify each party of the applicable procedure to be followed and of any subsequent variation.

Appeal decisions

21.—(1) The appointed person shall allow or dismiss the appeal.

(2) The decision of the appointed person shall be binding on the parties.

Determination of appeal by the appointed person

22.—(1) The decision of the appointed person—

(a) may be given orally at the end of the hearing or reserved;

(b) shall be recorded as soon as possible in a document which shall also contain a statement of the reasons (in summary form) for the decision and the date from which the decision is to take effect; and

(c) shall be signed and dated by the appointed person.

(2) The appointed person shall send to the parties a copy of a statement of the reasons for his decision, specifying the date from which the decision is to take effect.

(3) The record of the decision and the reasons for the decision shall be a matter of public record.

Register

23.—(1) The Secretariat shall keep a register which is open to inspection by any person without charge at all reasonable hours.

(2) The register shall contain a copy of all decisions and statements of reasons issued by the appointed person.

(3) The register or any part of it may be kept by means of a computer.

Irregularities

24.—(1) Any irregularity resulting from a failure to comply with any provision of these Regulations shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the appointed person prior to finally determining the appeal, he may give such directions as he thinks appropriate to overcome any prejudice caused to a party by the irregularity.

Delivery

25.—(1) Anything required to be sent under these Regulations may be—

(a) delivered personally; or

(b) sent by post, fax or e-mail.

(2) A person's postal address for the purposes of paragraph (1)(b) is the address stated in his notice of appeal or (in the case of the Authority) its reply, or such other address as may be subsequently notified to the Secretariat.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 20th April 2006.

L.S.

D Small
A senior officer of the Department of Agriculture and Rural Development

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations provide for an appeals procedure against decisions of the Gangmasters Licensing Authority, under the Gangmasters (Licensing) Act 2004 (c.11), to refuse to grant a licence, to impose conditions to which a licence is subject, to modify or revoke a licence, or to refuse to transfer a licence.

The overriding objective of the Regulations is to enable an appointed person to deal with appeals justly. Dealing with an appeal justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing

(b) dealing with the appeal in ways which are proportionate to the complexity or importance of the issues and

(c) ensuring that the appeal is dealt with expeditiously and fairly.

The appointed person will give effect to the overriding objective when he—

(a) exercises the powers given to him by these Regulations or

(b) interprets any provision.

The parties will assist the appointed person to further the overriding objective.

Regulations 3 and 4 provide for the appointment and remuneration of an appointed person to consider appeals and for a Secretariat to administer the appeals procedure.

Regulation 5 lists the decisions which may be appealed.

The procedure to be followed when making or replying to an appeal is set out in regulations 6 to 13. Regulation 9(3) provides that if the Authority fails to send a reply to the appeal within a specified timeframe it may not take any further part in the appeal proceedings unless the appointed person so directs. Regulation 13 enables the appointed person to grant an extension of time.

Regulation 14 allows the appointed person to make such directions as are considered necessary or desirable.

Regulation 15 provides for the determination of an appeal without an oral hearing if both parties agree and the appointed person considers it appropriate.

Regulations 16 to 19 provide for the procedure up to and at the hearing.

Regulation 20 provides an expedited procedure for appeals against decisions which have taken immediate effect.

Regulations 21 and 22 provide for the determination of the appeal.

Regulation 23 provides that a register of decisions and reasons be kept by the Secretariat.

Regulation 24 provides that the appointed person may give directions as appropriate to deal with irregularities.

Regulation 25 provides for delivery of documentation required under the Regulations.

A Regulatory Impact Assessment has been prepared. Copies can be obtained from Farm Policy Branch, Department of Agriculture and Rural Development, Dundonald House, Upper Newtownards Road, Belfast BT4 3SB.

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