
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 579

FOOD

The Fishery Products (Official Controls Charges) (Scotland) Regulations 2006

Made - - - - 29th November 2006
Laid before the Scottish Parliament - - - - 30th November 2006
Coming into force - - 1st January 2007

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and of all other powers enabling them in that behalf, after consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽²⁾, hereby make the following Regulations:

PART I
PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Fishery Products (Official Controls Charges) (Scotland) Regulations 2006 and come into force on 1st January 2007.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

(1) 1972 c. 68; section 2(2) was modified by the Scotland Act 1998 (“the 1998 Act”), section 125 and Schedule 8, paragraph 15. The function conferred upon the Minister of the crown by section 2(2), insofar as exercisable within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) O.J. No. L 31, 1.2.03, p.1, as last amended by Commission Regulation (EC) No. 575/2006 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (O.J. No. L 100, 8.4.06, p.3).

“Directive 2004/41”, “Regulation 178/2002”, “Regulation 1642/2003”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 854/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005”, “Regulation 2075/2005”, “Regulation 2076/2005” and “Regulation 776/2006” have the meanings respectively given to them in the Schedule;

“EEA State” means a member State, Norway, Iceland or Liechtenstein;

“establishment” has the meaning given to it in Article 2.1(c) of Regulation 852/2004;

“first placing on the market” has the meaning that it bears in Regulation 882/2004;

“first sale in a fish market” shall be construed in accordance with the phrase “first sale in fish market” in Regulation 882/2004;

“fishery products” has the meaning given to it in point 3.1 of Annex I to Regulation 853/2004;

“food authority” has the meaning that it bears by virtue of section 5(2) of the Food Safety Act 1990(3);

“imported” means introduced into Scotland other than from another part of the British Islands;

“official controls” shall be construed in accordance with the definition of the term “official control” in Article 2.1 of Regulation 882/2004;

“processing” has the meaning given to it in Article 2.1(m) of Regulation 852/2004;

“processing establishment” means an establishment at which processing occurs;

“relevant fishery products” means fishery products which–

- (a) were caught in their natural environment;
- (b) are imported by a fishing vessel flying the flag of a third country;
- (c) have not been on land prior to being imported; and
- (d) are intended for placing on the market for human consumption, other than relevant landed fishery products and third country imports;

“relevant food authority” means the food authority in whose area circumstances giving rise to an obligation under these Regulations to pay a charge to that authority arise;

“relevant landed fishery products” means fishery products which–

- (a) are landed in Scotland;
- (b) have not been on land previously; and
- (c) are intended for placing on the market for human consumption, other than relevant fishery products and third country imports;

“specified pelagic fish” means–

- (a) herring of the species *Clupea harengus*;
- (b) sardines of the species *Sardinia pilchardus*;
- (c) mackerel of the species *Scomber scombrus* or *Scomber japonicus*;
- (d) horse mackerel (*Trachurus* spp.);
- (e) anchovies (*Engraulis* spp.); and
- (f) picarels of the species *Maena smaris*;

“third country”, except in the expression “third country import”, means any country or territory, other than Greenland, which does not comprise the whole or part of an EEA State;

(3) 1990 c. 16; section 5 was amended by the Food Standards Act 1999 (1999 c. 28), Schedule 5, paragraphs 8 and 9.

“third country import” means an import in respect of which a charge is payable under regulation 48(1) of the Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2002(4); and

“vendor” means—

- (a) where a first placing on the market or first sale in a fish market of relevant fishery products or relevant landed fishery products is effected by an agent on behalf of the owner or master of a vessel, that agent; and
- (b) where there is a first placing on the market or first sale in a fish market of relevant fishery products or relevant landed fishery products in any other circumstances, the owner or master of the vessel from which they are landed.

Actual costs

3. For the purposes of these Regulations, the actual costs of exercising official controls are the aggregate of the costs of the items listed in Annex VI to Regulation 882/2004 directly incurred in the exercise of the official controls required under Annex III to Regulation 854/2004.

Sterling equivalents of Euro

4.—(1) Any reference in these Regulations to a specified number of Euros shall be deemed to be a reference to the sterling equivalent of that number calculated in accordance with paragraph (2).

(2) The sterling equivalent of a specified number of Euros shall be calculated by multiplying that number by the Euro/Sterling conversion rate specified in paragraph (3).

(3) The Euro/Sterling conversion rate shall be—

- (a) for 2007, 1 Euro = £0.67410; and
- (b) in each subsequent year, the rate published in the C Series of the Official Journal of the European Communities on the first working day of the September of the preceding year or, if no rate is published in it on that day, the first rate published in it thereafter.

Account period

5.—(1) For the purposes of these Regulations, the account period shall be one month or such longer period not exceeding twelve months as is determined by the relevant food authority.

(2) The account period shall be determined with a view to reducing to a reasonable amount, in comparison with the charges which are expected to fall due, the costs of—

- (a) making returns; and
- (b) collecting charges.

Recovery of charges

6. Where a duty to pay a charge under these Regulations is imposed on either of two persons the authority to which the charge is payable may recover it—

- (a) jointly from both of them; or
- (b) separately from either of them.

Calculation, payment and repayment of charges

7.—(1) Where the relevant food authority becomes aware that a charge is due to it under these Regulations, it shall—

- (a) calculate the amount of the charge having regard to the information in its possession; and
- (b) give notice of the amount so calculated to any person from whom it may be collected.

(2) If the relevant food authority is satisfied that a calculation made under paragraph (1) is incorrect, it shall recalculate the charge and—

- (a) where the correct amount is more than the amount calculated under paragraph (1), it shall recover the higher amount in accordance with that paragraph;
- (b) where the correct amount is less than the amount calculated under that paragraph and that amount has not been recovered, it shall recover the lesser amount in accordance with that paragraph; and
- (c) where no charge is payable or the charge payable is less than the amount calculated under that paragraph, and that amount has been recovered, it shall repay the difference.

Appeals

8.—(1) A person may appeal against any decision of the relevant food authority imposing a charge under these Regulations.

(2) The appeal shall be heard by the sheriff and section 37(4), (5) and (6) of the Food Safety Act 1990 shall apply in relation to such an appeal as it applies in relation to an appeal under section 37(1) (c) of that Act.

(3) On any such appeal, the court may—

- (a) confirm the decision of the relevant food authority;
- (b) determine any charge which is payable under these Regulations; or
- (c) determine that no charge is payable.

(4) Pending the outcome of the appeal the original amount of the charge shall remain payable, but if after the court's decision the amount of the charge needs to be recalculated, the new amount of the charge shall have effect from the date on which the original charge was made and the sum equal to that new amount shall be payable to the relevant food authority.

(5) If the court determines that a charge payable under these Regulations is less than the charge that has been so paid, the relevant food authority shall reimburse the overpayment to the successful appellant.

Charges payable to more than one food authority

9. In any case where the exercise of official controls is deferred and the food authority responsible for the exercise of the official controls required under Annex III to Regulation 854/2004 ("authority A") is not the relevant food authority to which a charge is required to be paid under these Regulations ("authority B"), authority B shall remit to authority A a sum equal to any amount received by authority B which is referable to official controls exercised by authority A.

PART II

OFFICIAL CONTROLS CHARGES OTHER THAN CHARGES FOR THIRD COUNTRY IMPORTS

Charge in respect of the first placing on the market or the first sale in a fish market of relevant fishery products or relevant landed fishery products

10.—(1) The first placing on the market or first sale in a fish market of relevant fishery products or relevant landed fishery products shall be a chargeable transaction for the purposes of this Part.

(2) Subject to paragraph (6), where there is a chargeable transaction for the purposes of this Part, the vendor shall pay the charge determined in accordance with paragraphs (3) to (5) (“the landings charge”) to the relevant food authority.

(3) Subject to paragraphs (4) and (5), the landings charge shall be a contribution of 1 Euro per tonne for the first 50 tonnes of fishery products and 0.5 Euro per tonne for each additional tonne towards the expenditure incurred in exercising the official controls required under Annex III to Regulation 854/2004.

(4) Subject to paragraph (5), in respect of any consignment of specified pelagic fish which are relevant landed fishery products, the landings charge shall not exceed 50 Euros.

(5) Where—

- (a) the chargeable transaction is a first sale in a fish market and relates to relevant landed fishery products only; and
- (b) any official controls required under Annex III to Regulation 854/2004 are facilitated on the basis that—
 - (i) the relevant landed fishery products concerned are graded for freshness or size in accordance with relevant national or Community rules, or
 - (ii) such transactions are grouped together,

the landings charge shall be 45% of the amount that it would otherwise be under paragraph (3) or (4).

(6) Where the actual costs of exercising the official controls required under Annex III to Regulation 854/2004 are less than the landings charge, the vendor shall pay an amount equal to those costs to the relevant food authority, instead of the landings charge.

Returns and records relating to relevant fishery products or relevant landed fishery products

11.—(1) Within 7 days of the end of each account period, the vendor shall make a written return to the relevant food authority to which the landings charge is payable in respect of the aggregate of chargeable transactions that the vendor has entered into during that period.

(2) The return referred to in paragraph (1) shall include the following information—

- (a) the account period to which the return relates;
- (b) the place of landing and first placing on the market or first sale in a fish market of the fishery products to which it relates; and
- (c) for landings of relevant fishery products and for landings of relevant landed fishery products other than specified pelagic fish—
 - (i) the name of each vessel and the number of consignments landed from it,

- (ii) the aggregate weight of consignments landed by each vessel which do not exceed 50 tonnes and the first 50 tonnes of consignments the weight of which exceeds that amount, and
 - (iii) the aggregate weight of consignments less the weight calculated under paragraph (ii);
 - (d) for landings of relevant landed fishery products which are specified pelagic fish–
 - (i) the name of each vessel and the number of consignments landed from it, and
 - (ii) the aggregate weight of consignments landed by each vessel which do not exceed 50 tonnes and the first 50 tonnes of consignments the weight of which exceeds that amount;
 - (e) notification of any amount paid under regulation 10(5) which has been paid in respect of–
 - (i) consignments of fish consisting only of fish other than specified pelagic fish, or
 - (ii) consignments of specified pelagic fish only,
 specifying which of the circumstances described in sub paragraph (b)(i) or (b)(ii) of that paragraph led to the payment of that amount;
 - (f) in relation to consignments of relevant fishery products–
 - (i) the total weight of all relevant fishery products landed, and
 - (ii) the total amount of the charge payable under regulation 10 in respect of those products; and
 - (g) the amount of the landings charge.
- (3) Subject to paragraph (4), during the period of 1 year beginning on the day on which a vendor makes a return under this regulation–
- (a) the relevant food authority to which it was made may require the vendor to supply separate information of the kind required by paragraph (2) in respect of each transaction included in it; and
 - (b) the vendor shall retain records which are sufficient to enable the vendor to supply any such information.
- (4) Paragraph (3) shall not apply in relation to landings of relevant fishery products.
- (5) Any vendor who without reasonable excuse–
- (a) fails to comply with paragraph (1) or (3)(b); or
 - (b) fails to comply with a requirement made under paragraph (3)(a),
- shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Charge in respect of processing establishments

12.—(1) Subject to paragraph (4), the proprietor or operator of a processing establishment shall pay the charge determined in accordance with paragraphs (2) and (3) (“the processing establishment charge”) to the relevant food authority.

(2) Subject to paragraph (3), the processing establishment charge shall be a contribution of 1 Euro per tonne of fishery products entering the establishment towards the expenditure incurred by the relevant food authority in exercising the official controls required under Annex III to Regulation 854/2004.

(3) Where processing is carried out–

- (a) on the same site as that on which the first placing on the market or first sale in a fish market of the fishery products concerned is effected; or

- (b) in an establishment in which operating conditions and guarantees as to the establishment's own checks are such that staff requirements for the exercise of official controls can be reduced,

the processing establishment charge shall be 45% of the amount that it would otherwise be under paragraph (2).

(4) Where the actual costs of exercising the official controls required under Annex III to Regulation 854/2004 are less than the processing establishment charge, the proprietor or operator shall pay an amount equal to those costs to the relevant food authority, instead of the processing establishment charge.

Returns and records relating to processing establishments

13.—(1) Within 7 days of the end of each account period, the proprietor or operator who is responsible for paying the processing establishment charge shall make a written return to the relevant food authority to which that charge is payable in respect of the fishery products which have entered the establishment concerned during that period.

(2) The return referred to in paragraph (1) shall include the following information—

- (a) the account period to which the return relates;
- (b) the weight of the fishery products entering the establishment;
- (c) notification of any amount paid under regulation 12(3), specifying which of the circumstances described in sub paragraph (a) or as the case may be (b) of that paragraph led to the payment of that amount; and
- (d) the amount of the charge payable under regulation 12.

(3) During the period of 1 year beginning on the day on which a proprietor or operator makes a return under this regulation—

- (a) the relevant food authority to which the return was made may require the proprietor or operator to supply separate information of the kind required by paragraph (2) in respect of each batch of fishery products included in it; and
- (b) the proprietor or operator shall retain records which are sufficient to enable the proprietor or operator to supply any such information.

(4) Any proprietor or operator who, without reasonable excuse—

- (a) fails to comply with paragraph (1) or (3)(b); or
- (b) fails to comply with a requirement made under paragraph (3)(a),

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Revocation

14. The Fishery Products (Official Controls Charges) (Scotland) Regulations 2005(5) are revoked.

St Andrew's House, Edinburgh
29th November 2007

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 2(1)

DEFINITIONS OF COMMUNITY LEGISLATION

“Directive 2004/41” means Directive [2004/41/EC](#) of the European Parliament and of the Council repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives [89/662/EEC](#) and [92/118/EEC](#) and Council Decision [95/408/EC](#)(**6**);

“Regulation 178/2002” means Regulation ([EC](#)) No. [178/2002](#) of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety as last amended by Regulation [1642/2003](#);

“Regulation 1642/2003” means Regulation ([EC](#)) No. [1642/2003](#) of the European Parliament and of the Council amending Regulation ([EC](#)) No. [178/2002](#) laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety;

“Regulation 852/2004” means Regulation ([EC](#)) No. [852/2004](#) of the European Parliament and of the Council on the hygiene of foodstuffs(**7**) as read with Regulation [2073/2005](#);

“Regulation 853/2004” means Regulation ([EC](#)) No. [853/2004](#) of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(**8**), as amended by Regulation [2074/2005](#) and Regulation [2076/2005](#) and as read with Directive [2004/41](#), Regulation [1688/2005](#), Regulation [2074/2005](#) and Regulation [2076/2005](#);

“Regulation 854/2004” means Regulation ([EC](#)) No. [854/2004](#) of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(**9**), as amended by Regulation [882/2004](#), Regulation [2074/2005](#) and Regulation [2076/2005](#) and as read with Directive [2004/41](#), Regulation [2074/2005](#), Regulation [2075/2005](#) and Regulation [2076/2005](#);

“Regulation 882/2004” means Regulation ([EC](#)) No. [882/2004](#) of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(**10**), as read with Regulation [2074/2005](#) and Regulation [2076/2005](#) and as amended by Regulation [776/2006](#);

“Regulation 1688/2005” means Commission Regulation ([EC](#)) No. [1688/2005](#) implementing Regulation ([EC](#)) No. [853/2004](#) of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs(**11**);

“Regulation 2073/2005” means Commission Regulation ([EC](#)) No. [2073/2005](#) on microbiological criteria for foodstuffs(**12**);

“Regulation 2074/2005” means Commission Regulation ([EC](#)) No. [2074/2005](#) laying down implementing measures for certain products under Regulation ([EC](#)) No. [853/2004](#) of the

(6) O.J. No. L 157, 30.4.04, p.33. The revised text of Directive [2004/41/EC](#) is now set out in a Corrigendum (O.J. No. L 195, 2.6.04, p.12).

(7) O.J. No. L 139, 30.4.04, p.1. The revised text of Regulation ([EC](#)) No. [852/2004](#) is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.3).

(8) O.J. No. L 139, 30.4.04, p.55. The revised text of Regulation ([EC](#)) No. [853/2004](#) is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.22).

(9) O.J. No. L 139, 30.4.04, p.206. The revised text of Regulation ([EC](#)) No. [854/2004](#) is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.83).

(10) O.J. No. L 165, 30.4.04, p.1. The revised text of Regulation ([EC](#)) No. [882/2004](#) is now set out in a Corrigendum (O.J. No. L 191, 28.5.04, p.1).

(11) O.J. No. L 271, 15.10.05, p.17.

(12) O.J. No. L 338, 22.12.05, p.1.

European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(13);

“Regulation 2075/2005” means Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat(14);

“Regulation 2076/2005” means Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(15); and

“Regulation 776/2006” means Commission Regulation (EC) No. 776/2006 amending Annex VII to Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards Community reference laboratories(16).

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations extend to Scotland only. They revoke and replace the Fishery Products (Official Controls Charges) (Scotland) Regulations 2005 (S.S.I. 2005/597) (regulation 14).

2. These Regulations provide for the execution and enforcement in relation to Scotland of Articles 26 and 27 of Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (O.J. No. L 165, 30.4.04, p.1; the revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum, O.J. No. L 191, 28.5.04, p.1), so far as those provisions require fees to be collected to cover the costs occasioned by official controls performed on fishery products under Annex III to Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (O.J. L 139, 30.4.04, p.206; the revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum, O.J. No. L 226, 25.6.04, p.83).

3. These Regulations—

- (a) state what costs constitute the actual costs of exercising official controls for the purposes of the Regulations (regulation 3);
- (b) provide the rates to calculate the sterling equivalent of any sums which are specified in Euros in the Regulations (regulation 4);
- (c) prescribe how the length of an “account period” for the purposes of the Regulations is to be determined (regulation 5);

(13) O.J. No. L 338, 22.12.05, p.27.

(14) O.J. No. L 338, 22.12.05, p.60.

(15) O.J. No. L 338, 22.12.05, p.83.

(16) O.J. No. L 136, 24.5.06, p.3.

- (d) provide that where a duty to pay charges under the Regulations is imposed on more than one person, it may be enforced jointly or separately against such persons (regulation 6);
 - (e) require authorities to which charges are payable under the Regulations to calculate the charges, recalculate if an error is made and give notice of amounts due to those liable to pay (regulation 7);
 - (f) provide for appeals against decisions of authorities imposing charges under the Regulations and lay down the requirements for the conduct and determination of such appeals (regulation 8);
 - (g) provide for the payment of charges by one food authority to another where charges are payable to more than one authority (the term “food authority” is defined in regulation 2) (regulation 9);
 - (h) require payment of a specified amount (subject to a reduction in specified circumstances) to the relevant food authority by vendors of relevant fishery products or relevant landed fishery products in relation to the first placing on the market or first sale in a fish market of such products (the terms “relevant food authority”, “vendor”, “relevant fishery products”, “relevant landed fishery products”, “first placing on the market” and “first sale in a fish market” are defined in regulation 2) (regulation 10);
 - (i) require such vendors to supply the relevant food authority with returns in respect of the aggregate of transactions for which charges are payable by them under regulation 10, specify the information to be contained in such returns, permit the relevant food authority to require vendors of relevant landed fishery products to supply additional information in relation to such transactions, require those vendors to keep records that are sufficient to enable them to supply such information and make it a summary offence to fail to comply with any such requirement (regulation 11);
 - (j) require payment of a specified amount (subject to a reduction in specified circumstances) to the relevant food authority by proprietors or operators of processing establishments in relation to fishery products entering the establishment concerned (the term “processing establishment” is defined in regulation 2) (regulation 12);
 - (k) require proprietors and operators of processing establishments to supply the relevant food authority with returns in respect of fishery products for which charges are payable under regulation 12, specify the information to be contained in such returns, permit the relevant food authority to require those proprietors or operators to supply additional information in relation to such products and make it a summary offence to fail to comply with any such requirement (regulation 13);
- 4.** No Regulatory Impact Assessment has been produced for this instrument as it has no impact on the costs of business.