

EXECUTIVE NOTE TO

THE FISHERY PRODUCTS (OFFICIAL CONTROLS CHARGES) (SCOTLAND) REGULATIONS 2007 SSI 2007/ 537

1. The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

Policy Objectives

2. The objective of Article 27 of Regulation (EC) No. 882/2004 on Official Feed and Food Controls (the OFFC Regulation)¹ in setting out the charging provisions for hygiene inspections is to ensure that industry contributes to the costs of enforcement authorities in carrying out certain activities – including sampling and testing direct landings of fish / fishery products and fishery products entering processing establishments to ensure they meet the hygiene standards set down in the EU hygiene legislation. Such products may enter Scotland without being subject to controls at point of entry. These requirements are therefore necessary to monitor these products to ensure they meet EU hygiene standards and are fit for human consumption. A transitional derogation in Article 27 permitted the retention of the existing rates in Directive 85/73/EEC until 1 January 2008. A copy of the EC instrument is attached.
3. This Instrument is being made to introduce national measures effective from 1 January 2008 to implement the new rates in the OFFC Regulation for the financing of official controls for hygiene inspections relating to landings into Scotland of fishery products and in establishments processing fishery products.

Background

¹ 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. L191, 28.05.04, p.1).

4. This instrument requires payment to local food authorities of charges for carrying out official controls in respect of fishery products.
5. The charges, in respect of hygiene controls on landings, are assessed and made in relation to the first placing on the market of fishery products and first sale in a fish market of fishery products, on the basis of the tonnage of fishery products. There are charges for official controls relating to the processing of fishery products. The vendor must then make a return to the local food authority within a specified period. The authority will then levy the charge on the basis of the landing or throughput of fishery products.
6. The costs contribute to the local food authority's legal obligation under Annex III to Regulation (EC) No. 854/2004² to:
 - Check fishing vessels in relation to hygiene controls;
 - Check on condition of landings and first sale of fishery products;
 - Make hygiene inspections of establishments and factory vessels on conditions of approval, correct handling, cleanliness and staff hygiene, and health certification and marking; and
 - Carry out organoleptic, parasitic, chemical, contaminant (heavy metals etc) and microbiological analyses.
7. Food business operators will continue to pay the lesser of the cost of carrying out the official controls or the specified new rates.

Consultation

8. Over 150 interested parties, including all Local Food Authorities in Scotland responsible for executing and enforcing the charging provisions, were consulted on the draft Instrument. Other Government Departments, industry and voluntary organisations were also included in the twelve week consultation.
9. A total of 4 responses were received with no major points arising. The majority of comments were requests for clarification on particular aspects of the draft Instrument. A summary of the responses may be found at www.food.gov.uk/consultations/#consultscot.

Financial Effects

10. The impact in Scotland of implementing the new provisions is estimated to be between £154,000 to £243,000 per annum. This is an increase of between £20,000 to £109,000 per annum from the current impact to industry.
11. There is no estimated impact on the processing sector as this information was not provided during the consultation stage. However the relatively small increase in charge of 0.05 Euro per tonne is considered by stakeholders to have minimal impact on the sector. A Regulatory Impact Assessment is provided in Annex B.

² 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. No. L226, 25.06.04, p.83).

Contacts

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Food Standards Agency Scotland

27 November 2007

FULL REGULATORY IMPACT ASSESSMENT (RIA)

1 Title of Proposal

1.1 The Fishery Products (Official Controls Charges) (Scotland) Regulations 2007.

2 Purpose and intended effect

Objectives

2.1 The objective of the proposed regulations is to introduce national measures in Scotland from 1 January 2008 to implement the new rates in Regulation (EC) No. 882/2004 on Official Feed and Food Controls (OFFC Regulation) that relate to the requirement to charge food business operators for official hygiene controls on landings into Scotland of fish and fishery products and in establishments processing fishery products according to the rates specified in Chapter V of Annex IV of the OFFC Regulation.

2.2 The key elements of this proposal are:

- i. to apply the new rates in the OFFC Regulation for the collection of charges for landings in Scotland of fish and fishery products from 1 January 2008;
- ii. to require charges relating to the controls applicable to the first sale of fish and fishery products in a fish market and the first placing on the market to be calculated on the basis of the tonnage of fish and fishery products landed by fishermen per month rather than per consignment (as is the current practice). This requirement for aggregate landings does not apply to direct landings of specified pelagic fish (SPF) and those fishery products entering a processing establishment;
- iii. to remove the current practice of applying a 55% reducible element for fish and fishery products that has been appropriately graded or grouped together. Under the proposed Regulations, the reduction is replaced by the requirement that the charge for the first sale in a fish market of relevant landed fishery products will be doubled where these activities are not carried out;
- iv. to maintain the current maximum charging rate (50 Euro per consignment) for direct landings of specified pelagic fish (SPF); and
- v. to amend the 'processing establishment charge' from 1 Euro per tonne to 0.5 Euro per tonne. It should be noted that the current practice of applying a 55% reducible element for fishery products that have been appropriately graded in processing establishments will no longer be applicable. In real terms this equates to a relatively small increase of 0.05 Euro per tonne, which we would view as having minimal impact.

- 2.3 Fees for hygiene inspections on landings of fish and fishery products are to be calculated on the basis of the tonnages landed. The catching sector will be charged for official controls on the basis of the tonnage of fishery products landed directly in Scotland whilst operators of approved establishments processing fishery products will be charged according to the throughput of fishery products entering these establishments for the purpose of processing. The regulations do not apply to landings of live bivalve molluscs such as mussels and cockles.
- 2.4 All food business operators will continue to pay the lesser of the actual cost of inspection or charges calculated at the minimum rates.

Background

- 2.5 Existing charges regulations³ require fees for official controls (including hygiene inspection and analyses) of fish and fishery products to be collected under Article 27 of the OFFC Regulation at the Community rates specified in Council Directive 85/73/EEC (as amended by Directive 2004/41/EC). This system of charging was introduced to require contributions from industry towards the costs incurred by Local Food Authorities in carrying out official controls on directly landed fish / fishery products and fishery products entering processing establishments. Direct landings of fish / fishery products are not required to enter through controlled points of entry into Scotland (via Border Inspection Posts) and are therefore not subject to hygiene checks at that stage.
- 2.6 A new framework for the financing of official feed and food controls (as set out in the OFFC Regulation) came into force on 1 January 2007. A transitional derogation in the OFFC Regulation has allowed for the retention of the rates in Directive 85/73/EEC (as amended) until 31 December 2007. This derogation will expire on 1 January 2008 when the new charge rates for official controls for fishery products, set out in Chapter V, Annex IV of the OFFC Regulation, will apply.
- 2.7 The current rates for charging have remained unchanged since 1998. The proposed increase in rates for fish hygiene charges from 1 January 2008 are relatively small and remain below the increase in inflation throughout this period. The rates have neither increased in-line with inflation, nor with the actual costs of implementation throughout this time.

Rationale for Government intervention

- 2.8 From 1 January 2008 the OFFC Regulation sets new minimum charges as contributions by food businesses to local food authorities for the hygiene controls on directly landed fish and fishery products and on fishery products entering a processing establishment in all Member States (MS) as part of the EU common market agreement.
- 2.9 This Instrument is required to achieve continued compliance with the OFFC Regulation by the due date. Failure to do so would be anti-competitive and create a

³ The Fishery Products (Official Controls Charges) (Scotland) Regulations 2006

trade barrier. It would widen the gap between the cost of official controls and charges for those controls at a different rate from other MS.

Devolution

2.10 The proposed regulations will be implemented by separate but similar legislation in England, Wales and Northern Ireland. However, one partial Regulatory Impact Assessment (RIA) covering the Statutory Instruments (SI) in all four countries was used during the consultation period.

3 Consultation

3.1 A partial RIA accompanied a formal 12-week public consultation launched on 29 June 2007 to gain stakeholder comments on the proposed draft Scottish Regulations. Approximately 150 interested parties, including consumer organisations, industry associations and enforcement authorities were consulted.

3.2 Four responses were received to the Scottish consultation from two trade associations, one local food authority and one government department. Specific comments made related to points of clarification concerning the application of charges and enforcement responsibilities relating to different types of fish landings. In addition, figures were provided from an enforcement authority detailing what the hygiene charges for direct landings would amount to based on tonnage throughput and actual costs which has assisted in the assessment of the cost/benefits of the proposed options. The Agency has addressed these in correspondence to the consultees.

3.3 The Food Standards Agency (FSA) has also been consulting industry representatives through informal discussions on the proposed new rates since early 2006. More recently, a working group involving representatives from various sectors of the fishing industry was set up in January 2007 to progress work on the impact of the proposed draft Instrument. The work of the group has encouraged positive discussion and addressed issues relating to the practical implementation of Article 27 of the OFFC Regulation. It is with the assistance of members of this group, including the Seafish Industry Authority⁴ (Seafish) who replied to the consultation carried out in England and Wales on behalf of the Industry in the UK, that we have been able to assimilate data to calculate the figures used in section 5.

⁴ The Seafish Industry Authority is a UK cross-industry seafood body working with fishermen, processors, wholesalers, seafood farmers, fish friers, caterers, retailers and the import/export trade.

4 Options

4.1 The possible options are:

- Option 1 – do nothing;
- Option 2 – apply the charges prescribed in the OFFC Regulation; or
- Option 3 – apply a higher set of charges to seek full cost recovery for costs incurred by Local Food Authorities.

Analysis of options

- 4.2 Option 1 (do nothing) - this would breach an EU obligation to apply the OFFC Regulation and leave the UK open to infraction proceedings by the Commission for failing to comply with the fish hygiene official controls charges requirements of the Regulation (which might have cost implications). It would also continue to widen the gap between the cost of controls and the charges for those controls.
- 4.3 Option 2 (apply the charges prescribed in the OFFC Regulation) - this would ensure continuing compliance with EU law. It would partly offset the cost of exercising official controls. It should be noted that food business operators will continue to pay the lesser of the cost of carrying out the official controls or the specified new rates. There would be no social or environmental impacts (on businesses) associated with this option.
- 4.4 Option 3 (apply a higher set of charges to seek full cost recovery) - this would allow Local Food Authorities to recover the actual costs of conducting official controls. However, this would put UK food business operators at a disadvantage as compared with their competitors in the fishing industry in other Member States.
- 4.5 **Recommendation:** Doing the minimum necessary to ensure continued compliance with EC law (option 2) is preferred.

5 Cost and Benefits

Sectors and groups affected

- 5.1 The catching sector and establishments processing fish and fishery products will be affected by the proposed changes in rates. Voluntary organisations and charities are unlikely to be affected by the charging provisions of the OFFC Regulation.

Benefits

Option 1

5.2 There are no benefits from Option 1 over and above those already of assistance to businesses (i.e. principally, that costs charged are lower than the actual costs of implementation).

Option 2

5.3 Local authorities carrying out official control checks and hygiene inspections² will benefit from the regulations, which will enable a greater percentage of the actual cost of exercising these controls to be recovered from industry³.

5.4 All businesses will pay the specified legal minimum rates or the actual cost of the inspection, whichever is the lower.

Option 3

5.5 Local authorities will be able to recover the full cost of carrying out the official controls on directly landed fish and fishery products. There are no benefits to industry in applying full cost recovery.

Costs

Option 1

5.6 There are no additional costs from Option 1 over and above those already incurred. There may be cost implications if the Commission decide to initiate infraction proceedings against the UK for failing to comply with EU legislation.

Option 2

5.7 The catching sector and operators of establishments first placing fishery products on the market will be affected by the draft regulations. Based on the responses received during the consultation and the work of the FSA/industry working group (paragraph 3.3), the effect on the catching sector of applying the minimum rates specified in the regulations, for direct landings into the UK, is shown in the Table 1.

² on direct landings of fishery products, at the point of first placing on the market and at the point of first sale in a fish market

³ At present a greater percentage of the cost of exercising the controls is borne by the budgets of authorities in Scotland.

Table 1: Official Controls Charges for Fish and Fishery Products – present and proposed (Option 2)

2006 Data	Scotland
Total landings into Scotland by UK vessels (000s tonnes) (A)	289
% UK landings (B)	77
Total number of businesses affected (vessels landing > 25T per annum) (C)	2224 ⁷
Current annual impact across industry (total landings charges) (£s to the nearest hundred) (D)	134,000
Proposed annual impact across industry (total landings charges) (£s to the nearest hundred) (E)	154,000 [243,000]*
Change in annual impact across industry (£s to nearest hundred) (F)	20,000 [109,000]*
Current annual impact: average charge per business (£s) (G)	60
Proposed annual impact: average charge per business (£s) (H)	69 (109)*
Change in annual impact: average per business (£s) (I)	9 [49]*

* [Figures in square brackets represent impact of full compliance; the other figure in those cells provides a more accurate impact assessment according to the current level of compliance.]

Basis of calculations

A, B and C = 2006 fish landing data, Scottish Sea Fisheries Statistics 2006, Scottish Government and UK Sea Fisheries Statistics 2006, Marine Fisheries Agency (MFA)

D= Seafish Industry Authority; Consideration of the impact of the new EU minimum hygiene inspection charges for fishery products and of the operation of border inspection posts

E = Seafish Industry Authority; Estimate provided during consultation

F = E – D

G = D/C

H = E/C

I = H - G

⁷ This figure includes some vessels landing less than 25t of fishery products. It has been impossible to get a full breakdown, as the estimated number of 112 vessels landing less than 25t also includes those that land bivalve molluscs, which are not covered by this regulation. Scottish Fishermen's Federation

- 5.8 In response to the consultation, Seafish were of the view that the figure in square brackets in row E should be regarded as the actual impact of the proposed 2007 SI, as opposed to the figure in square brackets in row F. These figures have been included in the table above. Appendix 1 sets out the rates proposed under the Regulations.
- 5.9 Industry representatives were also able to provide estimates during the consultation relating to the impact on individual vessels. Seafish estimated an impact of £200 per vessel across the UK on average which did not include the vessels under 10 metres, which are presumed to land less than 25 tonnes of fishery products a year. However, in Scotland there are over 1,500 vessels in this category and it is known that only a small percentage of the vessels land less than 25 tonnes in a year so the estimated impact per vessel will be much less in Scotland. Although the relative impact of the new rates appears to vary significantly according to the size of the vessel, stakeholders agree that the total financial impact on industry is unlikely to be significant for the large majority of fishing vessels, and industry in general.
- 5.10 Table 1 does not include the impact to landings of SPF, the rates for which remain unchanged (paragraph 2.2 iv). Similarly it also does not include the impact to direct landings of fishery products from third country vessels, aquaculture businesses or to processing establishments as we were not provided with detailed information from industry in response to our consultation on the new regulations. Furthermore, given the variability of the throughput it was not possible for us to produce a representative figure. However, stakeholders have confirmed that the likely impact to the processing sector, in Scotland, is considered to be minimal. We received no response regarding the impact to the other sectors.
- 5.11 From the response received from the Local Food Authority who area covers approximately 40% of the direct landings into Scotland and is responsible for the official controls of a large number of processing establishments as well as two fish markets, it is likely that for a significant number of the businesses the actual cost of exercising the controls will be applied as this will be lower than the charge based on tonnage throughput. Depending on the size of the business the actual cost of official controls is estimated to be in the range of £35 to £147 for an inspection.
- 5.12 The revenue raised from the charges will still not fully reflect the cost of carrying out hygiene inspections for every local food authority administering these regulations in Scotland. This is due to differences in individual local authority costing structures as well as the small percentage of businesses whose throughput charge will be less than the actual official controls. However, this shortfall will be lower than if the current charges are retained.
- 5.13 Option 2 was considered by stakeholders to be the most favourable.

Option 3

- 5.14 The catching sector and operators of establishments first placing fishery products on the market will be required to pay the full cost of an actual inspection. This would

be anti-competitive and due to the different costing structures in enforcement authorities across the UK and EU this would put industry at a disadvantage as compared with their competitors in other Member States. It is also because of the variety of inspections and costing structures in local authorities across the UK, that we have not been able to estimate the impact of this option on industry.

Administrative Burdens

5.15 No new administrative burdens to business have been identified in these regulations. Industry representatives are of the view that the new Regulations will impose some additional administrative burdens on fishing vessel agents, but have been unable to provide any figures. As the requirement to provide written returns is not new, we do not consider the new rates to introduce any new or additional administrative burdens.

6 Small/Micro Firms Impact Test

6.1 We do not believe that the proposed Regulations will disproportionately impact small businesses as the charging requirements do not apply to vessels directly landing less than 25 tonnes of fish per annum. Information received from industry is that around one hundred vessels in Scotland will not be subject to the requirements of the regulations.

6.2 Similarly, land based businesses regarded as small, marginal and restricted, handling less than 25 tonnes per annum of fishery products, which are exempt from the requirements of Regulation 853/2004 will also fall outside the scope of the draft Instrument.

7 Test Run of Business Forms

7.1 No other changes to the administration of the system for charging for fish hygiene official controls are intended as part of these proposals. No new or additional forms will be introduced.

8 Competition Assessment

8.1 The Regulations apply to the catching sector and operators of approved establishments processing fishery products. All sectors will pay the lesser of actual inspections costs or throughput charges. With the exception of UK fish markets, the recommended Option 2 to apply the rates for official controls charges in the OFFC Regulation would tend to maintain the present proportions of businesses that pay fish hygiene charges and thus have a minimal effect on competition.

8.2 It can be stated that the new Regulation is unlikely to impose significant negative impact on competition across Scotland, and when compared with other Member States. Our discussions with industry and stakeholders did not provide any information to the contrary in response to the public consultation.

9 Enforcement, sanction and monitoring

- 9.1 Enforcement of the Scotland Regulations will be the responsibility of Local Authority Environmental Health Departments.
- 9.2 The effectiveness and impact of the new Regulations will be monitored via feedback from stakeholders, as part of the ongoing policy process.
- 9.3 If any person contravenes or fails to comply with any of the provisions of the Regulations, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

10 Sustainable development

- 10.1 The economic, social and environmental costs and benefits associated with the three options were all considered.
 - i. Option 1 - This option is not sustainable as it would leave the UK open to infraction proceedings by the EU Commission.
 - ii. Option 2 - Environmental and social costs are not significant. There will be economic costs falling on industry but these are offset against the benefit of not applying different rates for charges across Member States, which would be anti-competitive. Furthermore, there is also an economic benefit to local authorities in being able to recover greater contributions to the cost of hygiene official controls than at present.
 - iii. Option 3 - Costs are as outlined for Option 2, with a higher degree of anti-competitiveness.

10.2 Option 2 is the most sustainable option.

11 Implementation and delivery plan

- 11.1 The FSA will implement the proposal in Scotland in accordance with usual procedures. The publication of the new regulations will be communicated to stakeholders through the Agency's website, FSA News, etc. This will include ensuring the food business operators are alerted to the new minimum rates that may affect them.
- 11.2 In addition, it is expected that the current guidance available to enforcement authorities on the regulations will be updated to reflect changes to the legislation for the charges now applicable to official hygiene controls on direct landings of fishery products.

12 Post-implementation review

- 12.1 The Agency will consider proposals from stakeholders for any further changes to the regulations that they may consider necessary in the light of experience and the

effectiveness of the new legislation. Agency mechanisms for review include: open fora, stakeholder meetings, and general enquiries from the public / industry.

12.2 In line with Scottish Government guidance we will review the continued effectiveness of this Regulation through the use of a Review Regulatory Impact Assessment that will be completed within 10 years.

13 Summary and recommendation

13.1 Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1. Do nothing	None	Risks infraction proceedings against the UK.
2. Apply the charges prescribed in the OFFC Regulations	<p>Local Authorities will be able to recover greater percentage of actual cost of exercising controls</p> <p>All businesses will pay the lower of either the legal minimum rates or the actual cost of the inspection</p> <p>Charges will not impact small businesses (vessels and land based) landing less than 25 tonnes of fishery product per year.</p> <p>Would not be applying different rates for hygiene official control charges across Member States, which would be anti-competitive.</p> <p>Unlikely to impose significant negative impact on competition across Scotland.</p>	<p>Environmental and social costs are not significant.</p> <p>The economic costs of hygiene official control charges falling on industry as estimated in Table 1.</p>
3. Apply a higher set of charges to seek full cost recovery for costs incurred by Local Food Authorities.	Local Authorities will be able to recover the full cost of carrying out official controls on direct landed fishery products.	<p>Costs as per Option 2</p> <p>Higher degree of anti-competitiveness.</p>

13.2 The recommended option is option 2 – to implement the new minimum rates for charges applicable to official hygiene controls on direct landings of fishery products in Scotland to achieve continued compliance with the OFFC Regulation.

13.3 The rates will be reviewed by the European Commission every two years to take account of inflation. Food business operators will continue to pay the lesser of the actual cost of carrying out the official controls or charges calculated at the specified new rates, depending on throughput of fish.

14 Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed SHONA ROBISON.....

Date 28 November 2007

Shona Robison, Minister for Public Health

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Appendix 1

FISH HYGIENE CHARGING RATES

	Current Actual Rate	Sterling equivalent	Proposed 2008 Rate	Sterling equivalent*
Sector/Activity				
First placing on the market (per tonne)	€1/T for first 50T €0.5/T >50T	£0.67/T £0.34/T	€1/T for first 50T per month €0.5/T >50T	£0.68/T £0.34/T
First sale in a fish market (per tonne)	n/a		€0.5/T for first 50T per month €0.25/T >50T	£0.68/T £0.34/T
Processing establishment charge (per tonne)	€1/T	£0.67/T	€0.5/T	£0.34/T
Pelagic landings (max/consignment)	€50	£33.5	€50	£34
Reducible element (%)	55%		[see note 1]	
(per tonne)	€0.45/T for first 50T	£0.3/T	[see note 1]	
	€0.225/T >50T	£0.15/T	[see note 1]	

Note 1: The reducible element for relevant landed fishery products which have been suitably graded or grouped together as in the current Statutory Instrument will no longer apply (see paragraph 2.2iii). Under the proposed Regulations, the reduction is replaced by the requirement that the charge for the first sale in a fish market of relevant landed fishery products will be doubled where these activities are not carried out.