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STATUTORY INSTRUMENTS

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**1998 No. 994**

**The Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998**

**PART V**

**INSPECTION CHARGES FOR DIRECT LANDINGS FROM THIRD COUNTRY VESSELS**

**Interpretation of Part V**

47.—(1) In this Part, unless the context otherwise requires—

“chargeable transaction” shall be construed in accordance with regulation 48(1);

“ECU” means European Currency Unit, and any reference in this Part to a specified number of ECU shall be taken to be a reference to the sterling equivalent of that number of ECU;

“reducible element” shall be construed in accordance with regulation 50(1);

“relevant fishery products” means imported fishery products which—

- (a) originate in a country or territory which is not part of the customs territory of the European Community other than Greenland;
- (b) were caught in their natural environment;
- (c) have not or had not been on land prior to their importation or proposed importation into the European Community;
- (d) are or will be landed in Great Britain; and
- (e) are intended for placing on the market for human consumption;

“third country direct landings charge” shall be construed in accordance with regulation 48(1);

“vendor” includes an agent selling fishery products on behalf of the owner or master of a fishing vessel.

(2) The sterling equivalent of any amount expressed in this Part as a number of ECU shall be converted to sterling at the official rate, which is published annually in the C Series of the Official Journal of the European Communities normally on the first working day of the month of September.

**Charge in respect of official checks on third country direct landings**

48.—(1) When any relevant fishery products are sold for the first time in Great Britain (referred to in this Part as a “chargeable transaction”), the vendor of those products shall include in the price which the first purchaser is required to pay for them an amount referred to in this Part as the “third country direct landings charge”.

(2) Subject to regulation 50, the amount of the third country direct landings charge shall be—

- (a) in respect of allaying the expenditure incurred in carrying out the checks mentioned in Section II of Chapter V of Schedule 3 (special checks), ECU 1 per tonne of relevant fishery

products for the first 50 tonnes and ECU 0.5 per tonne thereafter, except that any charge in respect of—

- (i) herring of the species *Clupea harengus*,
- (ii) sardines of the species *Sardina pilchardus*,
- (iii) mackerel of the species *Scomber scombrus* or *Scomber japonicus*,
- (iv) horse mackerel,
- (v) anchovies,
- (vi) picarels of the species *Maena smaris*,

shall not exceed ECU 50 per consignment unloaded, if the actual costs do not exceed that amount; and

- (b) in respect of allaying the expenditure incurred in carrying out checks on vessels and on conditions of landing, ECU 1 per tonne,

and the vendor of the products to which the amount relates shall be entitled to recover the amount from the first purchaser as a civil debt.

#### **Sum payable by vendors to food authorities**

**49.**—(1) Subject to paragraph (2), a sum equal to the amount of any third country direct landings charge which a vendor is required to include in the purchase price of any relevant fishery products shall be payable by him to the food authority in whose area the chargeable transaction takes place.

(2) If the chargeable transaction takes place before the fishery products are landed in Great Britain, a sum equal to the amount of any third country direct landings charge which a vendor is required to include in the purchase price shall be payable by him to the food authority responsible for the checks provided for in Section II of Chapter V of Schedule 3 in respect of those products.

(3) Any sum payable to a food authority under this regulation shall be recoverable as a civil debt.

#### **The reducible element of the charge**

**50.**—(1) A vendor who enters into a chargeable transaction may, with the consent of the food authority for the area where the chargeable transaction takes place, reduce by such amount as the food authority considers reasonable the part of the third country direct landings charge which is calculated in accordance with regulation 48(2)(a) (referred to in this Part hereafter as “the reducible element”) in circumstances where any of the checks mentioned in Section II of Chapter V of Schedule 3 are or were facilitated by one or more of the following factors—

- (a) the fish are or were graded for freshness and/or size in accordance with relevant national or Community rules;
- (b) the first sale transactions are or were grouped together, in particular at an auction or wholesale market,

except that the reducible element shall not be reduced by more than 55% of the total amount that the reducible element would be, if it were not reduced.

(2) A vendor who considers that in respect of a chargeable transaction a food authority has unreasonably refused to consent—

- (a) to a reduction in the reducible element of the charge; or
- (b) to a reduction in the reducible element of the charge by a larger amount than the amount by which the food authority has agreed that the reducible element of the charge may be reduced,

may appeal against the food authority's decision to a magistrates' court or, in Scotland, to the sheriff, and section 37(3) to (6) of the Act shall apply in relation to such an appeal as it applies in relation to an appeal under section 37(1)(c) of the Act.

- (3) On an appeal, the court may—
  - (a) confirm the decision of the food authority;
  - (b) reduce the amount of the reducible element of the charge to the level it thinks fit, except that the court shall not reduce the reducible element by an amount which results in a total reduction of more than 55% of the total amount that the reducible element would be, if it were not reduced.
- (4) Pending the outcome of the appeal—
  - (a) the original amount of the charge shall remain payable by the first purchaser to the vendor; and
  - (b) a sum equal to the original amount of the charge shall remain payable by the vendor to the food authority,

but if after the court's decision the amount of the charge needs to be recalculated, the new amount of the charge, and the sum equal to that new amount which is payable to the food authority, shall have effect from the date on which the original charge was made.

(5) If, as a result of the recalculation of the amount of a third country direct landings charge by a court, a vendor of relevant fishery products has made an overpayment to a food authority in respect of a sum payable under this Part, the food authority shall reimburse the vendor as appropriate.

### **Collection and remittance arrangements**

**51.**—(1) A vendor who has entered into a chargeable transaction shall within seven days after the end of the week during which the chargeable transaction took place make a return to the food authority in respect of the chargeable transaction, and he shall include in that return the following information—

- (a) the date of the chargeable transaction;
  - (b) a description of the fishery products sold (sufficient for the purposes of identifying whether any of the products fall into one of the categories listed in regulation 48(1)(a));
  - (c) the net weight of each description of fishery products sold;
  - (d) the purchaser;
  - (e) the amount of the third country direct landings charge;
  - (f) the amount of any reduction in the reducible element of the charge; and
  - (g) the place of landing of the fishery products sold and the country or territory in which the products originate<sup>(1)</sup>.
- (2) In any case where, in respect of any relevant fishery products—
- (a) the food authority responsible for checks on vessels and on conditions of landing (“the general monitoring authority”); or
  - (b) the food authority responsible for the checks provided for in Section II of Chapter V of Schedule 3 (“the special checks authority”),

is different from the food authority to which the first vendor of the products is required to pay a sum equal to the amount of the third country direct landings charge (“the recipient authority”), the recipient authority shall remit to the general monitoring authority or, as the case may be, the special

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(1) See Council Regulation (EEC) No. 2193/92 establishing the Community Customs Code (OJ No. L302, 19.10.92, p.1), Title II, Chapter 2 (Origin of Goods).

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checks authority a sum equal to any amount received from the vendor which is referable to checks for which the general monitoring authority or, as the case may be, the special checks authority is responsible.