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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 III**

**PRODUCTION AND PLACING ON THE MARKET OF FISHERY PRODUCTS**

**Registration of fishing vessels on board which shrimps or molluscs are cooked**

**21.—**(1) A person operating a fishing vessel on board which shrimps or molluscs are, for the purposes of a food business, processed by cooking shall, unless such processing is to be supplemented subsequently by cooking, comply with paragraphs (2) and (4).

(2) The person operating the fishing vessel shall, prior to engaging for the first time in such cooking, notify the food authority for the area in which the vessel is based in writing of his intention to do so, and shall at the same time supply the authority with the following information—

- (a) the name of the vessel,
- (b) the usual place of landing of the processed products,
- (c) the name and address of the owner of the vessel,

and he shall notify the food authority in writing of any changes to the information originally supplied.

(3) Each food authority shall maintain a register of all the information supplied pursuant to paragraph (2).

(4) Any cooking on board a fishing vessel of shrimps or molluscs shall be in accordance with the requirements of—

- (a) paragraph 5 of Section I of Chapter III of Schedule 3; and
- (b) paragraph 7 of Section IV of Chapter IV of Schedule 3.

**Hygiene conditions for fishing vessels**

**22.—**(1) A food business proprietor who is operating a fishing vessel on board which fishery products which are intended for placing on the market for human consumption are handled shall ensure that the applicable provisions of Part I of Schedule 4 are complied with as respects his vessel.

(2) A food business proprietor who is operating a fishing vessel—

- (a) which is designed and equipped to preserve fishery products on board under satisfactory conditions for more than 24 hours, other than those equipped for keeping fish and shellfish alive without other means of conservation on board; and
- (b) on board which fishery products which are intended for placing on the market for human consumption are handled,

shall also ensure that the applicable provisions of Part II of Schedule 4 are complied with as respects his vessel.

- (3) Ship owners, or their representatives, who are operating a fishing vessel—
- (a) which is designed and equipped to preserve fishery products on board under satisfactory conditions for more than 24 hours, other than those equipped for keeping fish and shellfish alive without other means of conservation on board; and
  - (b) on board which fishery products which are intended for placing on the market for human consumption are handled,

shall take all the measures necessary to prevent persons liable to contaminate fishery products from working on and handling them, until there is evidence that such persons can do so without risk.

(4) The Ministers shall keep up-to-date for control purposes a list of the vessels equipped in accordance with paragraphs 7 and 8 of Part II of Schedule 4, with the exception however of vessels equipped with removable containers which, without prejudice to paragraph 5 of Part II of Schedule 4, are not engaged regularly in preserving fish in chilled seawater.

### **Operation of a factory vessel or fishery products establishment without an approval**

**23.**—(1) No person shall operate a fishery products establishment unless it has been approved by the food authority for the area in which it is situated.

- (2) No person shall operate a British Islands factory vessel unless it has been approved—
- (a) by the food authority for the area which includes the place at which the vessel usually lands fishery products in Great Britain; or
  - (b) in accordance with any law in force in Northern Ireland, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved in relation to the approval of factory vessels by the Fishery Products Directive.

### **Approval of factory vessels and fishery products establishments**

**24.**—(1) An application for an approval for a factory vessel or fishery products establishment shall be made to—

- (a) in the case of an establishment, the food authority in whose area the establishment is situated; and
- (b) in the case of a factory vessel, the food authority for the area which includes the place at which the vessel usually lands fishery products in Great Britain.

(2) An application pursuant to paragraph (1) shall be—

- (a) made in writing; and
- (b) accompanied by such supplementary information, documents, plans and diagrams as are necessary to enable the food authority to determine the application.

(3) An approval in respect of a factory vessel may only be granted if the food authority is satisfied that it meets such of the conditions set out in Chapters I and II of Schedule 3 as apply to it.

(4) An approval in respect of a fishery products establishment may only be granted if the food authority is satisfied that it meets such of the conditions set out in Chapters III and IV of Schedule 3 as apply to it.

(5) An approval for a factory vessel or establishment under this regulation may be granted subject to limitations as to the particular activities approved, the method of operation approved and the intensity of use approved.

(6) The food authority shall give written notification to each person who makes an application pursuant to paragraph (1) of the result of the application and, in the case of refusal, of the reasons for that refusal.

- (7) If an application pursuant to paragraph (1) is approved, the food authority shall—
- (a) designate the establishment or vessel with a unique approval number; and
  - (b) notify the Secretary of State of the approval and the approval number allocated.

### **Requirement for the registration of auction or wholesale markets**

**25.** No person shall operate an auction or wholesale market unless that market has been registered with the food authority in whose area it is situated.

### **Registration of auction and wholesale markets**

**26.—**(1) An application for registration for an auction or wholesale market shall be made to the food authority in whose area it is situated.

- (2) An application pursuant to paragraph (1) shall be—
- (a) made in writing; and
  - (b) accompanied by such supplementary information, documents, plans and diagrams as are necessary to enable the food authority to determine the application.

(3) An auction or wholesale market may only be registered if the food authority is satisfied that it meets such of the conditions set out in Chapters II and III of Schedule 3 as apply to it.

(4) The food authority shall give written notification to each person who makes an application pursuant to paragraph (1) of the result of the application and, in the case of refusal, of the reasons for that refusal.

- (5) If an application pursuant to paragraph (1) is accepted, the food authority shall—
- (a) designate the market with a unique registration number; and
  - (b) notify the Secretary of State of the registration and the registration number allocated.

### **Appeals against decisions under this Part to refuse to register or to grant an approval or against any conditions or limitations in such approvals**

- 27.—**(1) A person who is aggrieved by a decision taken by a food authority—
- (a) to refuse to grant an approval for a factory vessel or fishery products establishment;
  - (b) to impose any limitation or condition in an approval granted for a factory vessel or fishery products establishment; or
  - (c) to refuse to register an auction or wholesale market,

may appeal 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.

(2) Where an appeal against a limitation as to the particular activities approved, the method of operation approved or the intensity of use approved is brought in accordance with paragraph (1) (b), the appellant may continue to operate the establishment or vessel free of the limitation which is being appealed against while the appeal is pending, and an appeal shall be regarded as pending for these purposes until it is finally disposed of, is struck out for want of prosecution or is withdrawn.

- (3) Where an appeal is brought in accordance with paragraph (1), the court may—
- (a) affirm any decision to refuse an approval or to register;
  - (b) accept an application to register;
  - (c) grant an approval either in its original form or with such modifications as the court may in the circumstances think fit;

- (d) remit the matter to the food authority with the court's opinion on it; or
- (e) make such other order in relation to the matter as the court thinks fit.

### **Obligations upon food business proprietors operating establishments and factory vessels**

**28.**—(1) A food business proprietor who is operating an approved fishery products establishment or an approved British Islands factory vessel shall ensure that, as respects his establishment or vessel, the requirements of the approval for his establishment or vessel are complied with.

(2) A food business proprietor who is operating a factory vessel on board which fishery products which are intended for placing on the market for human consumption are handled shall ensure that the applicable provisions of Chapters I and II of Schedule 3 are complied with as respects his vessel.

(3) A food business proprietor who is operating an establishment at which fishery products which are intended for placing on the market for human consumption are handled shall ensure that the applicable provisions of Chapters III and IV of Schedule 3 are complied with as respects his establishment.

(4) A food business proprietor who is operating a factory vessel or fishery products establishment shall carry out checks at his vessel or establishment based on the following principles—

- (a) identification of points critical to ensuring safe and hygienic production in his vessel or establishment on the basis of the manufacturing processes used, and for these purposes a critical point is any point, step or procedure at which control can be applied and a food safety hazard can be prevented, eliminated or reduced to acceptable levels;
- (b) establishment and implementation of methods for monitoring and checking such critical points;
- (c) taking samples for analysis in a laboratory recognised by the food authority for the purpose of checking—
  - (i) cleaning and disinfection methods, and
  - (ii) compliance with the standards established by this Part of these Regulations,and in deciding whether or not to recognise a laboratory, food authorities shall have regard to any relevant guidance issued by the Ministers;
- (d) keeping a written record or a record registered in an indelible fashion of the preceding points which shall be made available to the food authority on request, and that record shall—
  - (i) satisfy any applicable requirements of article 6.2 of the Health Checks Decision, and
  - (ii) include results of the different checks for a period going back at least 2 years,and in the course of so doing, he shall have regard to any relevant recommendations in the Annex to the Health Checks Decision.

(5) The proprietor shall ensure that all staff involved in checks under paragraph (4) receive adequate training in order to participate effectively in their implementation.

(6) If the results of the proprietor's checks under paragraph (4) reveal a serious health risk or suggest one might exist, the proprietor shall immediately notify the food authority of that risk or possible risk and such notification shall be confirmed in writing by the proprietor within 48 hours.

### **Notice of arrival obligation for masters of third country factory vessels**

**29.** The master of a factory vessel of a third country shall, before landing any fishery products in Great Britain which are for placing on the market, give the food authority for the port at which he intends to land those fishery products notice of arrival of at least 24 hours.

### **Obligations upon food business proprietors operating auction or wholesale markets**

**30.** A food business proprietor who is operating an auction or wholesale market at which fishery products which are intended for placing on the market for human consumption are handled shall ensure that the applicable provisions of Chapters II and III of Schedule 3 are complied with as respects his market.

### **Variation of approvals for factory vessels or establishments**

**31.—**(1) A person may at any time apply to a food authority for it to vary any term or limitation in any approval for a factory vessel or fishery products establishment granted to him, and the food authority may vary any such term or limitation.

(2) Any person who is aggrieved by a decision of a food authority to refuse to vary a term or limitation in any approval for a factory vessel or fishery products establishment may appeal 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 any appeal under section 37(1)(c) of the Act.

(3) Where an appeal is brought in accordance with paragraph (2), the court may—

- (a) affirm any decision to refuse to vary the term or limitation in the approval;
- (b) vary the term or limitation in the approval;
- (c) remit the matter to the food authority with the court's opinion on it; or
- (d) make such other order in relation to the matter as the court thinks fit.

### **Revocation of approvals for factory vessels or establishments and cancellation of market registrations**

**32.—**(1) A food authority may revoke an approval of an establishment situated in its area or a factory vessel which they approved if, after inspection of or any inquiry into the method of operation of the establishment or vessel, they are satisfied that—

- (a) there has been a serious (on animal or public health grounds) and manifest breach of the conditions or limitations subject to which the approval was granted or of the applicable provisions of Chapters I to IV of Schedule 3;
- (b) the food business proprietor who is operating the establishment or vessel is either unable or not prepared to ensure that the breach is remedied; and
- (c) there is in force in relation to that establishment or vessel—
  - (i) a prohibition order under section 11 of the Act, or
  - (ii) an emergency prohibition order under section 12 of the Act,and as a consequence of the order, commercial operations with regard to fishery products which are for placing on the market for human consumption may not be carried out at that establishment or on board that vessel.

(2) A food authority may cancel the registration of an auction or wholesale market situated in their area if, after inspection of or any inquiry into the method of operation of the market, they are satisfied that—

- (a) there has been a serious (on animal or public health grounds) and manifest breach of the applicable provisions of Chapter II or III of Schedule 3;
- (b) the food business proprietor who is operating the market is either unable or not prepared to ensure that the breach is remedied; and
- (c) there is in force in relation to that market—
  - (i) a prohibition order under section 11 of the Act, or

(ii) an emergency prohibition order under section 12 of the Act,

and as a consequence of the order, commercial operations with regard to fishery products which are for placing on the market for human consumption may not be carried out at that market.

(3) A proprietor who is aggrieved by a decision to revoke an approval for a factory vessel or a fishery products establishment or cancel the registration of an auction or wholesale market may appeal 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.

(4) A revocation or cancellation under this regulation shall take effect—

(a) after the time for appealing against it has elapsed; or

(b) if an appeal is brought, after the appeal is finally disposed of, struck out for want of prosecution or withdrawn,

and when a food authority informs a food business proprietor operating a factory vessel or fishery products establishment of a decision to revoke the approval for the vessel or establishment or a food business proprietor operating an auction or wholesale market of a decision to cancel the registration of that market, they shall explain to the proprietor in writing when the revocation or cancellation will take effect (including when it will take effect if an appeal is brought).

### **Gutting of fishery products**

33. Where gutting of a fishery product which is intended for placing on the market for human consumption is possible from a technical and commercial standpoint, a food business proprietor who has control over the timing of the gutting of the product shall ensure that it is carried out as soon as possible after the product has been caught or landed.

### **Packaging of fishery products**

34. A proprietor of a food business in the course of which fishery products which are intended for placing on the market for human consumption are packaged shall ensure that the packaging of such products is in accordance with the applicable requirements of those set out in Chapter VI of Schedule 3.

### **Storage and transportation of fishery products**

35. A proprietor of a food business in the course of which fishery products which are intended for placing on the market for human consumption are stored or transported shall ensure that such products are stored, except at cold stores where only the handling of wrapped products takes place, and transported in accordance with any applicable requirements of those set out in Chapter VIII of Schedule 3.

### **Placing fishery products on the market**

36.—(1) Subject to paragraph (2), no person shall place on the market for human consumption any fishery products, unless—

(a) if they have been handled on board a British Islands fishing vessel, the applicable requirements of—

(i) Schedule 4, or

(ii) any law in force in Northern Ireland, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by the Fishing Vessels Directive,

- have been satisfied in relation to those fishery products;
- (b) if they have been handled on board a British Islands factory vessel, the applicable requirements of—
- (i) Chapter I of Schedule 3, or
  - (ii) any law in force in Northern Ireland, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by Chapter I of the Annex to the Fishery Products Directive,
- have been satisfied in relation to those fishery products;
- (c) if they were landed in the British Islands, during and after landing the applicable requirements of—
- (i) Chapter II of Schedule 3, or
  - (ii) any law in force in Northern Ireland, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by Chapter II of the Annex to the Fishery Products Directive,
- have been satisfied in relation to those fishery products;
- (d) where gutting of those fishery products is or was possible from a technical and commercial viewpoint, gutting was carried out as quickly as possible after the products were caught or landed;
- (e) at an establishment on land in the British Islands, they have been handled and, where appropriate, packaged, prepared, processed, frozen, defrosted, stored hygienically and inspected in accordance with the applicable requirements of—
- (i) Chapters III and IV of Schedule 3, or
  - (ii) any law in force in Northern Ireland, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by Chapters III and IV of the Annex to the Fishery Products Directive;
- (f) they—
- (i) in Great Britain, have been subject to such of the health control and monitoring of production conditions described in Chapter V of Schedule 3 as is appropriate in the particular circumstances of the case, or
  - (ii) in Northern Ireland, the Channel Islands or the Isle of Man, have been subject to such of the health control and monitoring of production conditions described in Chapter V of the Annex to the Fishery Products Directive, as provided for in any law in force in Northern Ireland, the Channel Islands or the Isle of Man which is intended to give effect to the results to be achieved by that Chapter, as is appropriate in the particular circumstances of the case,
- unless the competent authority authorised the transfer of those fishery products *ex quay* to an approved establishment or registered auction or wholesale market to be checked there, in which case a check on the conditions of landing is not required;
- (g) they have been appropriately packaged in accordance with Chapter VI of Schedule 3;
- (h) they comprise or form part of a consignment which bears an identification mark—
- (i) unless head (ii) or (iii) applies, which is in accordance with Chapter VII of Schedule 3,
  - (ii) which, if they comprise or form part of a consignment which has been given an identification mark in accordance with any law in force in another EEA State, Northern Ireland, the Channel Islands or the Isle of Man which is intended to give

effect to the results to be achieved by Chapter VII of the Annex to the Fishery Products Directive, is in accordance with that law,

- (iii) which, if those fishery products originate in a country in respect of which the European Commission has adopted approved import conditions for fishery products, is in accordance with those approved import conditions,

but an identification mark is not required in relation to any fishery products which have been landed in a third country in respect of which the European Commission has not adopted any approved import conditions;

- (i) except at cold stores where only the handling of packaged products takes place, they have been stored and transported in accordance with Chapter VIII of Schedule 3;
  - (j) if they are imported products, prior to importation the requirements specified in regulations 42 and 43 which are applicable to his case are satisfied in relation to those fishery products;
  - (k) any additional requirements in regulations 37 and 38 which are applicable to his case are satisfied in relation to those fishery products.
- (2) Paragraph (1)(a) to (c) shall not apply to aquaculture products.

#### **Placing aquaculture products on the market**

**37.** No person shall place fishery products which are aquaculture products on the market for human consumption, unless—

- (a) they have been slaughtered under appropriate conditions of hygiene;
- (b) they have not been soiled with earth, slime or faeces;
- (c) if they were not processed immediately after being slaughtered, they have been kept chilled.

#### **Placing processed shellfish on the market**

**38.—**(1) Subject to paragraphs (2) and (3), no person shall place fishery products which are processed shellfish on the market for human consumption unless, prior to processing, there were satisfied in relation to those processed shellfish those of the requirements of regulation 19 to which those products would have been subject if, when they were processed, they had instead been kept for placing on the market as live shellfish.

(2) For the purposes of paragraph (1), regulation 19 shall apply as if, where reference is made in regulation 19(1)(b) to transportation to an approved dispatch centre, reference had also been made to transportation to a processing plant, and the requirements in relation to movement documents and permanent transport authorizations set out in regulation 19(1)(b).

(3) Paragraph (1) shall not apply to imported fishery products which were processed before they were imported.

#### **Fishery products to be placed on the market alive**

**39.** A person with control over the survival conditions of a fishery product for human consumption which is to be placed on the market alive shall ensure that it is at all times kept under the most suitable survival conditions.

#### **Prohibition on placing certain fishery products on the market**

**40.** No person shall sell, supply in the course of a food business or place on the market for human consumption—



- (a) poisonous fish of any of the following families: Tetraodontidae, Molidae, Diodontidae, and Canthigasteridae; or
- (b) fishery products containing biotoxins such as ciguatera toxins or muscle-paralysing toxins.

#### **Direct transfers of fishery products on local markets**

**41.**—(1) Regulations 33 to 39 shall not apply to a direct transfer to a retailer or final consumer in the United Kingdom of a small quantity of fishery products by a fisherman.

(2) For the purposes of paragraph (1), a “small quantity” means an amount which comprises part of the fisherman’s annual allowance.

(3) For the purposes of paragraph (2), a fisherman’s annual allowance is a total amount of not more than 25 tonnes of fishery products in a calendar year, and although the total amount may comprise of amounts of one or more species, in that total amount the amount of processed shellfish of any species listed in column (a) of the table below shall not exceed the maximum amount for that species mentioned in column (b) of that table—

**Table**

<i>(a)</i> <i>Species</i>	<i>(b)</i> <i>Maximum amount</i>
Cockles	25.0 tonnes
Oysters	5.0 tonnes
King Scallops	5.0 tonnes
Queen Scallops	10.0 tonnes
Mussels	20.0 tonnes
Other Bivalve Molluscs	10.0 tonnes
Marine Gastropods	20.0 tonnes.