Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Fishery Products (Official Controls Charges) (Wales) Regulations 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

2007 No. 3462 (W.307)

FOOD, WALES

The Fishery Products (Official Controls Charges) (Wales) Regulations 2007

Made - - - -	*5 December 2007*
Laid before the National Assembly for Wales - -	*10 December 2007*
Coming into force - -	*1 January 2008*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1].

The Welsh Ministers have been designated [F2] for the purposes of that section in relation to measures relating to food (including drink) including the primary production of food.

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 [F3] there has been open and transparent public consultation during the preparation of the following Regulations.

F1 1972 c. 68.

F2 S.I. 2005/1971. By virtue of section 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006, functions conferred on the National Assembly for Wales by this designation are exercisable by the Welsh Ministers.

F3 OJ No. L31, 1.2.2002, p.1, as last amended by Commission Regulation (EC) No. 575/2006 amending Regulation (EC) No. 178/2002 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 (OJ No. L100, 8.4.2006, p.3).

PART 1

PRELIMINARY

Title, application and commencement

1. The title of these Regulations is the Fishery Products (Official Controls Charges) (Wales) Regulations 2007, they apply in relation to Wales and come into force on 1 January 2008.

Interpretation

2.—(1) In these Regulations —

[[F4]"Directive 2004/41" ("*Cyfarwyddeb 2004/41*"), "Regulation 2406/96" ("*Rheoliad 2406/96*"), "Regulation 852/2004" ("*Rheoliad 852/2004*"), "Regulation 853/2004" ("*Rheoliad 853/2004*"), "Regulation 1688/2005" ("*Rheoliad 1688/2005*"), "Regulation 2073/2005" ("*Rheoliad 2073/2005*"), "Regulation 2074/2005" ("*Rheoliad 2074/2005*"), "Regulation 2015/1375" ("*Rheoliad 2015/1375*"), "Regulation 2017/185" ("*Rheoliad 2017/185*"), "Regulation 2017/625" ("*Rheoliad 2017/625*"), "Regulation 2019/624" ("*Rheoliad 2019/624*") and "Regulation 2019/627" ("*Rheoliad 2019/627*") have the meanings respectively given to them in the Schedule;**]**

"establishment" ("*sefydliad*") has the meaning given to it in paragraph 1(c) of Article 2 of Regulation 852/2004;

"first placing on the market" ("*rhoi gyntaf ar y farchnad*") has the meaning that it bears in **[**[F5]Regulation 2017/625**]**;

"first sale in a fish market" ("*gwerthu gyntaf mewn marchnad bysgod*") is construed in accordance with the phrase "first sale in fish market" in **[**[F6]Regulation 2017/625**]**;

"fishery products" ("*cynhyrchion pysgodfeydd*") has the meaning given to it in point 3.1 of Annex I to Regulation 853/2004;

"food authority" ("*awdurdod bwyd*") has the meaning that it bears by virtue of section 5(1A) of the Food Safety Act 1990 [F7];

"imported" ("*a fewnforir*") means introduced into Wales other than from another part of the British Islands;

[[F8]"official controls" ("*rheolaethau swyddogol*") has the meaning given to it in Article 2(1) of Regulation 2017/625;**]**

"processing" ("*prosesu*") has the meaning that it bears in **[**[F9]Regulation 2017/625**]**;

"processing establishment" ("*sefydliad prosesu*") means an establishment at which processing occurs;

"relevant fishery products" ("*cynhyrchion pysgodfeydd perthnasol*") 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" ("*awdurdod bwyd perthnasol*") 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" ("*cynhyrchion pysgodfeydd sy'n cael eu glanio ac sy'n berthnasol*") means fishery products which —

(a) are landed in Wales;

(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" ("*pysgod eigionol penodedig*") 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.);

(f) picarels of the species Maena smaris; and

(g) sprat of the species Sprattus sprattus;

"third country" ("*trydedd wlad*"), except in the expression "third country import" ("*mewnforyn trydydd gwlad*"), means any country or territory, other than Greenland, which does not comprise the whole or part of an EEA State;

"third country import" ("*mewnforyn trydedd wlad*") means an import in respect of which **[**F10a charge set out in Annex 4 to Regulation 2017/625 is payable**]**; and

"vendor" ("*gwerthwr*") 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 another person on behalf of the owner or master of a vessel, that other person; 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.

(2) Where any functions under the Food Safety Act 1990 are assigned —

(a) by an order under section 2 F11...of the Public Health (Control of Disease) Act 1984 F12, to a port health authority; or

(b) by an order under section 6 of the Public Health Act 1936 F13, to a joint board for a united district,

any reference in these Regulations to a food authority is construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

[F14(3) In these Regulations, any reference to an EU instrument defined in the Schedule is a reference to that instrument as amended from time to time.**]**

F4 Words in reg. 2(1) substituted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **3(a)(i)**

F5 Words in reg. 2(1) substituted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **3(a)(ii)**

F6 Words in reg. 2(1) substituted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **3(a)(iii)**

F7 1990 c. 16; section 5 was amended by paragraphs 8 and 9 of Schedule 5 to the Food Standards Act 1999 (c. 28).

F8 Words in reg. 2(1) substituted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **3(a)(iv)**

F9 Words in reg. 2(1) substituted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **3(a)(v)**

F10 Words in reg. 2(1) substituted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **3(a)(vi)**

F11 Words in reg. 2(2)(a) omitted (26.7.2018) by virtue of The Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018 (S.I. 2018/806), regs. 1(3), **14(2)(b)**

F12 1984 c. 22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990 (1990 c. 16).
F13 1936 c. 49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.
F14 Reg. 2(3) inserted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **3(b)**

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 **[**[F15]referred to in Articles 81 and 82 of Regulation 2017/625**]** directly incurred in the exercise of the official controls required under **[**[F16]Title 6 of and Annex 6 to Regulation 2019/627**]**.

F15 Words in reg. 3 substituted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **4(a)**
F16 Words in reg. 3 substituted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **4(b)**

Sterling equivalents of Euro

4.—(1) Any reference in these Regulations to a specified number of Euros is 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 is calculated by multiplying that number by the Euro/Sterling conversion rate specified in paragraph (3).

(3) The Euro/Sterling conversion rate is —

(a) for 2008, 1 Euro = £0.67575; and

(b) in each subsequent year, **[**[F17]until the coming into force of the Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019**]** 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;

[[F18](c) after the coming into force of the Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019, the average of the rates published in the C Series of the Official Journal of the European Union for each of the days during the period of charge when the rate is published.**]**

F17 Words in reg. 4(3)(b) inserted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **5(a)**
F18 Reg. 4(3)(c) inserted (14.12.2019) by The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 (S.I. 2019/1481), regs. 1(2), **5(b)**

Account period

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

(2) The account period must 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 must —

(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 must recalculate the charge and —

(a) where the correct amount is more than the amount calculated under paragraph (1), it must 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 must 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 must 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 will be heard by a magistrates' court and section 37(3), (5) and (6) of the Food Safety Act 1990 applies 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 will remain payable, but if after the court's decision the amount of the charge needs to be recalculated, the new amount of the charge will have effect from the date on which the original charge was made and the sum equal to that new amount will 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 must reimburse the overpayment to the successful appellant.

Sums remitted from one food authority to another

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 **[**F19Title 6 of and Annex 6 to Regulation