WELSH STATUTORY INSTRUMENTS

2005 No. 3297 (W.255)

FOOD, WALES

The Fishery Products (Official Controls Charges) (Wales) Regulations 2005

Made - - - - 30 November 2005

Coming into force - - 1 January 2006

The National Assembly for Wales, being designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to food (including drink) including the primary production of food, in exercise of the powers conferred by that section, after open and transparent public consultation during the preparation of these Regulations 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(**3**), as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council(**4**), makes the following Regulations:

PART I

PRELIMINARY

Title, commencement and application

1. The title of these Regulations is the Fishery Products (Official Controls Charges) (Wales) Regulations 2005, they come into force on 1 January 2006, and apply in relation to Wales.

Interpretation

2. In these Regulations—

"chilled" ("*wedi'u hoeri*") means cooled to a temperature approaching that of melting ice;

(**1**) S.I.2005/1971.
(**2**) 1972 c. 68.
(**3**) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).
(**4**) OJ No. L245, 29.9.2003, p.4.

"competent authority" ("*awdurdod cymwys*") means the authority designated under regulation 4 of the Food Hygiene (Wales) Regulations 2005(**5**)

"Directive 2004/41" ("*Cyfarwyddeb 2004/41*"), "Regulation 178/2002" ("*Rheoliad 178/2002*"), "Regulation 852/2004" ("*Rheoliad 852/2004*"), "Regulation 853/2004" ("*Rheoliad 853/3004*"), "Regulation 854/2004" ("*Rheoliad 854/2004*"), "Regulation 882/2004" ("*Rheoliad 882/2004*"), "Regulation A" ("*Rheoliad A*"), "Regulation B" ("*Rheoliad B*"), "Regulation C" ("*Rheoliad C*"), "Regulation D" ("*Rheoliad D*") and "Regulation E" ("*Rheoliad E*") have the meanings respectively given to them in the Schedule;

"EEA State" ("*Gwladwriaeth AEE*") means a member State, Norway, Iceland or Liechtenstein;

"employers' National Insurance contributions" ("*cyfraniadau cyflogwyr at Yswiriant Gwladol*") means those social security contributions for which employers are liable under Part I of the Social Security Contributions and Benefits Act 1992(**6**);

"establishment" ("*sefydliad*") has the meaning given to it in paragraph 1(c) of Article 2 of Regulation (EC) No. 852/2004;

"factory vessel" ("*llestr ffatri*") and "fishery products" ("*cynhyrchion pysgodfeydd*") have the meanings respectively given to them in points 3.2 and 3.1 of Annex I to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(**7**);

"food authority" ("*awdurdod bwyd*") has the meaning given in sub-section 1A of section 5 of the Food Safety Act 1990(**8**);

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

"official controls" ("*rheolaethau swyddogol*") is to be construed in accordance with the definition of the term "official control" in paragraph 1(a) of Article 2 of Regulation 854/2004;

"placing on the market" ("*rhoi ar y farchnad*") has the meaning given to it in paragraph 8 of Article 3 of Regulation (EC) No. 178/2002;

"port health authority" "*awdurdod iechyd porthladd*") means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984(**9**), a port health authority for that district constituted by order under section 2(4) of that Act;

"processing" ("*prosesu*") has the meaning given to it in paragraph 1(m) of Article 2 of Regulation (EC) No. 852/2004;

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

"relevant fishery products" ("*cynhyrchion pysgodfeydd perthnasol*") means imported fishery products which—

(a) originate in a third country;

(b) were caught in their natural environment;

(c) have not or had not been on land prior to their proposed importation, or had not been on land prior to their importation, into an EEA State or Greenland;

(d) are or will be landed in Wales; and

(**5**) S.I. 2005/3292 (W.252)
(**6**) 1992 c. 4.
(**7**) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22).
(**8**) 1990 c. 16; section 5 was amended by paragraphs 8 and 9 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28).
(**9**) 1984 c. 22.

(e) are intended for placing on the market for human consumption;

"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) were caught in their natural environment;

(b) have not or had not been on land prior to being landed;

(c) are or will be landed in Wales; and

(d) are intended for placing on the market for human consumption,

other than relevant fishery products being sold for the first time in Wales and third country imports;

"specified pelagic fish" ("*pysgod eigional 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;

(e) anchovies; and

(f) picarels of the species *Maena smaris*;

"third country" ("*trydedd wlad*"), except in the expression "third country import" ("*mewnforyn trydedd wlad*"), 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 a charge is payable under regulation 52(1) of the Products of Animal Origin (Third Country Imports) (Wales) Regulations 2004(**10**);

"vendor" ("*gwerthwr*") means—

(a) where an agent sells fishery products on behalf of the owner or master of a vessel, that agent; and

(b) in any other case, the owner or master of the vessel.

(2) Any reference in these Regulations to a food authority includes a reference to a port health authority and in the context of such a reference any reference to a food authority's area includes a reference to a port health authority's district.

Actual costs

3.—(1) For the purposes of these Regulations, the actual costs of exercising official controls are the aggregate of costs of the types specified in paragraph (2) directly incurred in the exercise of the official controls required under Annex III to Regulation 854/2004.

(2) The types of costs are—

(a) the salaries and fees, together with overtime payments and employers' National Insurance contributions and pension contributions, of all staff directly involved in the exercise of the controls and of all staff engaged in the management or administration of the controls;

(b) the costs of in-service training for staff directly involved in the exercise of the controls;

(**10**) S.I. 2004/1430 (W.144).

(c) travelling costs and related incidental expenses incurred in exercising the controls, except those incurred by a person attending his or her normal place of work;

(d) the costs of office accommodation, equipment and services for staff involved in exercising the controls, including depreciation of any office furniture and equipment and the cost of information technology, stationery and forms;

(e) the costs of protective clothing and equipment used in exercising the controls;

(f) the costs of laundering protective clothing used in exercising the controls;

(g) sampling and analysis costs incurred in exercising the controls; and

(h) the routine administrative costs of accounting and collecting charges and of providing pay-roll and personnel services in connection with the employment of staff exercising the controls.

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 will be—

(a) for 2006, 1 Euro = £0.68335; 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 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 any duty to pay a charge is imposed under these Regulations 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 any 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 or competent 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), 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 may only 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 an 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 authority concerned;

(b) determine any charge which is payable under these Regulations and, in particular, may reduce the amount of any charge by 55% where the authority is required to make that reduction under regulation 11, 14, 18 or 22 but has not done so; 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 authority concerned.

(5) If the court determines that the amount of any charge imposed under these Regulations is less than the amount which any person has paid to an authority in respect of it, the overpayment must be reimbursed by that authority.

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 official controls on vessels and on conditions of landing ("authority A"), or the food authority responsible for the exercise of the official controls required under Chapter II of Annex III to Regulation 854/2004 ("authority B"), is not the relevant food authority to which a charge is required to be paid under these Regulations ("authority C"), authority C must remit—

(a) to authority A, a sum equal to any amount received by authority C which is referable to official controls exercised by authority A; and

(b) to authority B, a sum equal to any amount received by authority C which is referable to official controls exercised by authority B.