STATUTORY RULES OF NORTHERN IRELAND

2006 No. 485

FOOD

The Fishery Products (Official Controls Charges) Regulations (Northern Ireland) 2006

Made - - - - 29th November 2006

Coming into operation 1st January 2007

The Department of Health, Social Services and Public Safety(**1**) makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**2**).

The Department of Health, Social Services and Public Safety has been designated(**3**) 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(**4**) 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(**5**) there has been open and transparent public consultation during the preparation of the following Regulations.

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Fishery Products (Official Controls Charges) Regulations (Northern Ireland) 2006 and shall come into operation on 1st January 2007.

(**1**))Formerly the Department of Health and Social Services; *see*S.I.1999/283 (N.I. 1), Article 3
(**2**) 1972 c. 68
(**3**) S.I. 2003/2901
(**4**) OJ No. L31, 1.2.2002, p.1
(**5**) OJ No. L100, 8.4.2006, p.3

Interpretation

2.—(1) In these Regulations —

"Directive 2004/41", "Regulation 178/2002", "Regulation 1642/2003", "Regulation 852/2004", "Regulation 853/2004", "Regulation 854/2004", "Regulation 882/2004", "Regulation 1688/2005", "Regulation 2073/2005", "Regulation 2074/2005", "Regulation 2075/2005", "Regulation 2076/2005" and "Regulation 776/2006" have the meanings respectively given to them in the Schedule;

"EEA State" means a member State, Norway, Iceland or Liechtenstein;

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

"first placing on the market" has the meaning that it bears in Regulation 882/2004;

"first sale in a fish market" shall be construed in accordance with the phrase "first sale in fish market" in Regulation 882/2004;

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

"imported" means introduced into Northern Ireland other than from another part of the British Islands;

"official controls" shall be construed in accordance with the definition of the term "official control" in paragraph 1 of Article 2 of Regulation 882/2004;

"processing" has the meaning given to it in paragraph 1(m) of Article 2 of Regulation 852/2004;

"processing establishment" means an establishment at which processing occurs;

"relevant district council" means the district council in whose district there arises an obligation under these Regulations to pay a charge to that district council;

"relevant fishery products" means imported 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 landed fishery products" means fishery products which —

(a) are landed in Northern Ireland;

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

"third country import" means an import in respect of which a charge is payable under regulation 52(1) of the Products of Animal Origin (Third Country Imports) Regulations (Northern Ireland) 2006(**6**); and

"vendor" 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 an agent on behalf of the owner or master of a vessel, that agent; 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 circumstances, the owner or master of the vessel from which they are landed.

(2) The Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to an Act of the Assembly.

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 listed in Annex IV to Regulation 882/2004 directly incurred in the exercise of the official controls required under Annex III to Regulation 854/2004.

Sterling equivalents of Euro

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

(3) The Euro/Sterling conversion rate shall be —

(a) for 2007, 1 Euro = £0.67410; 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 shall be one month or such longer period not exceeding twelve months as is determined by the relevant district council.

(2) The account period shall 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 district council to which the charge is payable may recover it —

(**6**) S.R. 2006 No. 291
(**7**) 1954 c.33 (N.I.)

(a) jointly from both of them; or

(b) separately from either of them.

Calculation, payment and repayment of charges

7.—(1) Where the relevant district council becomes aware that a charge is due to it under these Regulations it shall —

(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 district council is satisfied that a calculation made under paragraph (1) is incorrect, it shall recalculate the charge and —

(a) where the correct amount is more than the amount calculated under paragraph (1), it shall 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 shall 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 shall repay the difference.

Appeals

8.—(1) A person may appeal against any decision of the relevant district council imposing a charge under these Regulations.

(2) The appeal shall be heard by a court of summary jurisdiction and Article 37(2), (2A) and (3) of the Food Safety (Northern Ireland) Order 1991(**8**) shall apply in relation to such an appeal as it applies in relation to an appeal under Article 37(1)(c) of that Order.

(3) On any such appeal, the court may —

(a) confirm the decision of the relevant district council;

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

(5) If the court determines that a charge payable under these Regulations is less than the charge that has been paid, the relevant district council shall reimburse the overpayment to the successful appellant.

Charges payable to more than one district council

9. In any case where the exercise of official controls is deferred and the district council responsible for the exercise of the official controls required under Annex III to Regulation 854/2004 ("district council A") is not the relevant district council to which a charge is required to be paid under these Regulations ("district council B"), district council B shall remit to district council A a sum

(**8**) S.I. 1991/762 (N.I.7) as amended by S.I.1996 /1633 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c.28 and S.R. 2004 No. 482. The definition of "food" in Article 2(2) of S.I. 1991/762 (N.I.7) was substituted by S.R. 2004 No. 482

equal to any amount received by district council B which is referable to official controls exercised by district council A.

PART 2

OFFICIAL CONTROLS CHARGES OTHER THAN CHARGES FOR THIRD COUNTRY IMPORTS

Charge in respect of the first placing on the market or the first sale in a fish market of relevant fishery products or relevant landed fishery products

10.—(1) The first placing on the market or first sale in a fish market of relevant fishery products or relevant landed fishery products shall be a chargeable transaction for the purposes of this Part.

(2) Subject to paragraph (6), where there is a chargeable transaction for the purposes of this Part, the vendor shall pay the charge determined in accordance with paragraphs (3) to (5) ("the landings charge") to the relevant district council.

(3) Subject to paragraphs (4) and (5), the landings charge shall be a contribution of 1 Euro per tonne for the first 50 tonnes of fishery products and 0.5 Euro per tonne for each additional tonne towards the expenditure incurred in exercising the official controls required under Annex III to Regulation 854/2004.

(4) Subject to paragraph (5), in respect of any consignment of specified pelagic fish which are relevant landed fishery products, the landings charge shall not exceed 50 Euros.

(5) Where—

(a) the chargeable transaction is a first sale in a fish market and relates to relevant landed fishery products only; and

(b) any official controls required under Annex III to Regulation 854/2004 are facilitated on the basis that —

(i) the relevant landed fishery products concerned are graded for freshness or size in accordance with relevant national or Community rules, or

(ii) such transactions are grouped together,

the landings charge shall be 45% of the amount that it would otherwise be under paragraph (3) or (4).

(6) Where the actual costs of exercising the official controls required under Annex III to Regulation 854/2004 are less than the landings charge, the vendor shall pay an amount equal to those costs to the relevant district council, instead of the landings charge.

Returns and records relating to relevant fishery products or relevant landed fishery products

11.—(1) Within 7 days of the end of each account period, the vendor shall make a written return to the relevant district council to which the landings charge is payable in respect of the aggregate of chargeable transactions that he has entered into during that period.

(2) The return referred to in paragraph (1) shall include the following information —

(a) the account period to which the return relates;

(b) the place of landing and first placing on the market or first sale in a fish market of the fishery products to which it relates;