STATUTORY RULES OF NORTHERN IRELAND

2005 No. 524

FOOD

The Fishery Products (Official Controls Charges) Regulations (Northern Ireland) 2005

Made - - - -	*25th November 2005*
Coming into operation	*1st January 2006*

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

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 Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 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(**5**), there has been open and transparent public consultation during the preparation of the following Regulations.

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Fishery Products (Official Controls Charges) Regulations (Northern Ireland) 2005 and shall come into operation on 1st January 2006.

(**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.1999/2027
(**4**) O.J. No. L31, 1.2.2002, p.1
(**5**) O.J. No. L245, 29.9.2003, p.4

Interpretation

2.—(1) In these Regulations—

"chilled" means cooled to a temperature approaching that of melting ice;

"competent authority" means the authority designated under regulation 4 of the Food Hygiene Regulations (Northern Ireland) 2005(**6**);

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

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

"employers' National Insurance contributions" means those social security contributions for which employers are liable under Part I of the Social Security Contributions and Benefits Act 1992(**7**);

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

"factory vessel" and "fishery products" have the meanings respectively given to them in points 3.2 and 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;

"placing on the market" has the meaning given to it in paragraph 8 of Article 3 of Regulation 178/2002;

"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) originate in a third country;

(b) were caught in their natural environment;

(c) have 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 Northern Ireland; and

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

"relevant landed fishery products" 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 Northern Ireland; and

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

other than relevant fishery products being sold for the first time in Northern Ireland or third country imports;

(**6**) S.R. 2005 No. 356
(**7**) 1992 c. 4

"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) 2004(**8**); and

"vendor" 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) The Interpretation Act (Northern Ireland) 1954(**9**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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 official controls required under Annex III to Regulation 854/2004.

(2) The types of costs are—

(a) the salaries and fees, including overtime payments and employers' pension and National Insurance 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;

(c) travelling costs and related incidental expenses incurred in exercising the controls, except those incurred by a person attending his 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.

(**8**) S.R. 2004 No. 464
(**9**) 1954 c. 33 (N.I.)

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 2006, 1 Euro = £0.68290; 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 charges under these Regulations is imposed on either of two persons, the district council 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 district council or the competent authority 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 or the competent authority 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 or the competent authority 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(**10**) 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 or competent authority;

(b) determine any charge which is payable under these Regulations and, in particular, may reduce the amount of any charge by 55% where the relevant district council or competent 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 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 district council 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 a district council in respect of it, the overpayment shall be reimbursed by that district council.

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

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

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

PART II

OFFICAL CONTROLS CHARGES OTHER THAN CHARGES FOR DIRECT LANDINGS FROM THIRD COUNTRY VESSELS AND THIRD COUNTRY IMPORTS

General landings charge

10.—(1) The first sale in Northern Ireland of relevant landed fishery products shall be a chargeable transaction for the purposes of this Part.

(2) Where there is a chargeable transaction, the vendor shall include in the price which he charges the purchaser an amount equal to the charge referred to in this Part as "the general landings charge".

(3) Subject to paragraph (4) and regulation 11, the amount of the general landings charge shall be a contribution in respect of the expenditure incurred in exercising the official controls required

(**10**) 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, paragraph 2 of Article 2 (regarding the definition of "food") was substituted by S.R. 2004 No. 482