STATUTORY RULES OF NORTHERN IRELAND

2005 No. 419

AGRICULTURE

The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations (Northern Ireland) 2005

Made - - - -	*6th September 2005*
Coming into operation	*30th September 2005*

The Department of Agriculture and Rural Development, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Community(**1**), and in exercise of the powers conferred upon it by section 2(2) of the European Communities Act 1972(**2**), and every other power enabling it in that behalf makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations (Northern Ireland) 2005 and shall come into operation on 30th September 2005.

(2) These Regulations shall not form part of the law of Scotland, Wales or England.

(3) Proceedings for an offence under these Regulations may be taken, and for all incidental purposes the offence may be treated as having been committed, in any place in the United Kingdom.

Interpretation

2.—(1) In these Regulations—

"Article 9" means Article 9 of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy(**3**) as last amended by Council Regulation (EC) No. 2846/98(**4**);

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**5**) or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;

(**1**) S.I.1972/1811
(**2**) 1972 c. 68
(**3**) O.J. No. L261, 20.10.1993, p. 1
(**4**) O.J. No. L358, 31.12.1998, p. 5
(**5**) 1995 c. 21

"the CFP Regulation" means Council Regulation (EC) No. 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(**6**);

"document" includes information recorded in any form;

"equivalent provisions" means any provision in any other regulations made under section 2(2) of the European Communities Act 1972 for the purposes of implementing Article 9, or Article 22 of the CFP Regulation, extending to any part of the United Kingdom, which has equivalent effect to any provision in these Regulations;

"first sale fish" means fish being marketed for the first time;

"fish" means fishery products landed from a fishing vessel to which Article 9 or Article 22 of the CFP Regulation applies;

"licensed fishing vessel" means a fishing vessel in respect of which a licence has been issued under section 4 of the Sea Fish (Conservation) Act 1967(**7**) or under similar fisheries related provisions by another Member State or by the appropriate authorities in the Channel Islands, Isle of Man or another country;

"Northern Ireland fishing boat" means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;

"PLN" means a vessel's port number within the meaning of regulation 31 of the Merchant Shipping (Registration of Ships) Regulations 1993(**8**);

"registered fish buyer" means a person who is registered by the Department of Agriculture and Rural Development in accordance with regulation 7;

"registered fish seller" means a person who is registered by the Department of Agriculture and Rural Development in accordance with regulation 3;

"Northern Ireland zone" has the same meaning as in the Northern Ireland Act 1998(**9**);

"the Department" means the Department of Agriculture and Rural Development.

(2) In these Regulations, any reference to a fish seller shall include—

(a) an agent who sells fish on behalf of the seller; and

(b) an auction trader.

(3) Expressions used in these Regulations, which are not defined in paragraphs (1) or (2) above and which appear in the CFP Regulation or Article 9 of Council Regulation (EC) No. 2847/93, have the same meaning in these Regulations as they have for the purposes of the CFP Regulation or Article 9 of Council Regulation (EC) No. 2847/93.

(4) The Interpretation Act (Northern Ireland) 1954(**10**), except section 20(2) and (3), shall apply to this Order as it applies to an Act of the Northern Ireland Assembly.

Registration of fish sellers

3.—(1) A registered fish seller is authorised for the purposes of Article 9, insofar as he sells first sale fish by any form of competitive bidding at a designated auction site either on his own behalf or as the seller's agent.

(2) Any person may apply, using such form as the Department may prescribe, to the Department to be registered as a fish seller.

(**6**) O.J. No. L358, 31.12.2002, p. 59
(**7**) 1967 c. 84
(**8**) S.I. 1993/3138; the relevant amending instrument is 1999/3206
(**9**) 1998 c. 47
(**10**) 1954 c. 33 (NI)

(3) An applicant for registration as a fish seller shall include with his application a statement of the facilities and the proposed methods of operation he intends to use and of the place where he intends to maintain his records of sales of first sale fish.

(4) In considering an application for registration the Department shall take into account whether the statement as to the facilities and proposed methods of operation of the fish seller, and of the place where he intends to maintain his records of sales of first sale fish, are such as to assist compliance by the fish seller with Article 9, Article 22 of the CFP Regulation and these Regulations.

(5) The Department shall notify an applicant in writing of its decision on an application made to her in accordance with this regulation.

(6) Where the Department grants a registration the Department shall specify the conditions, listed at Schedule 1, subject to which the registration is granted.

(7) The Department shall publish a list of registered fish sellers in such manner as it sees fit.

(8) The registration of a fish seller may be suspended where, in the view of the Department, the registered fish seller has not —

(a) complied with a condition of registration; or

(b) complied with any requirement of Article 9, Article 22 of the CFP Regulation or these Regulations.

(9) Any person who knowingly or recklessly makes a false statement for the purposes of an application under this regulation is guilty of an offence.

(10) Any registered fish seller who sells first sale fish in breach of a condition of his registration is guilty of an offence.

Sale of fish by unregistered seller

4. Any person who—

(a) sells first sale fish by any form of competitive bidding at a designated auction site, either on his own behalf or as an agent of the seller; and

(b) is not a registered fish seller,

is guilty of an offence.

Maintenance of records by registered fish seller

5.—(1) A registered fish seller shall maintain records, of each sale of first sale fish that he makes, at the place notified to the Department in accordance with these Regulations.

(2) The records referred to in this regulation shall include all of the following information in relation to each sale—

(a) date and location of the sale;

(b) quantities of each species sold;

(c) price paid for each species sold;

(d) name and PLN of the vessel which landed the fish;

(e) name, address and, where available, registration number of the buyer;

(f) reference number of the contract of sale or invoice.

(3) A registered fish seller shall keep the records of each sale, as required by this regulation, and at a place notified to the Department, until the end of the second calendar year following that sale.

(4) A registered fish seller shall make available for inspection at all reasonable times the records of sale of fish at the place notified to the Department.

(5) A registered fish seller who does not operate his business from or is not established in the United Kingdom shall —

(a) either—

(i) nominate a place in the United Kingdom where his records will be made available to the Department until the end of the second year following the sale to which the records relate; or

(ii) submit his records annually from the date of registration; and

(b) submit his records within 28 days of a demand by the authorities.

(6) A registered fish seller who does not operate his business from or is not established in the United Kingdom shall keep the records of each sale as required by this regulation until the end of the second calendar year following that sale.

(7) A registered fish seller who fails to keep or make available the records as required by this regulation is guilty of an offence.

Designation of fish auction sites

6.—(1) Any person may apply to the Department, using such form as she may prescribe, to have a place designated for the purposes of Article 9, and Article 22 of the CFP Regulation as a fish auction site.

(2) An applicant for designation shall include with his application a statement as to the facilities and proposed methods of operation he will use at the site.

(3) In considering an application for designation the Department shall take into account whether the statement as to the facilities and proposed methods of operation at the site are such as to assist compliance with Article 9, Article 22 of the CFP Regulation and these Regulations.

(4) The Department shall notify an applicant in writing of its decision on an application for designation made in accordance with this regulation.

(5) Where the Department grants a designation it shall specify the conditions, listed at Schedule 2, subject to which the designation is granted.

(6) The Department shall publish a list of designated fish auction sites in such a manner that it sees fit.

(7) The designation of a site may be suspended where in the view of the Department—

(a) a condition subject to which the designation was granted has not been complied with; or

(b) the methods of operation and facilities at the site do not comply with the requirements of Article 9, Article 22 of the CFP Regulation or these Regulations.

(8) Any person who knowingly or recklessly makes a false statement for the purposes of this regulation is guilty of an offence.

(9) Any person who has control over a designated site, or part of a site, and breaches a condition of the site's designation, is guilty of an offence.

(10) In this regulation—

"person who has control of a designated site" includes, in relation to the site or a part of the site, the owner of the site or that part, or his agent, or any person who exercises any control over or is in possession of the site or that part.

Registration of fish buyers

7.—(1) For the purposes of Article 22(2)(b) of the CFP Regulation any person may apply to the Department to be registered as a fish buyer, using such form as the Department may prescribe.

(2) An applicant for registration as a fish buyer shall include with his application a statement of the facilities and the proposed methods of operation he intends to use and of the place where he intends to maintain his records of purchases of first sale fish.

(3) In considering an application the Department shall take into account whether the statement as to the proposed methods of operation of the fish buyer, and of the place where he intends to maintain his records of purchases of first sale fish, are such as to assist compliance by the fish buyer with Article 9, Article 22 of the CFP Regulation and these Regulations.

(4) The Department shall notify an applicant in writing of its decision on an application made to her in accordance with this regulation.

(5) Where the Department grants a registration the Department shall specify the conditions, listed at Schedule 3, subject to which the registration is granted.

(6) The Department shall publish a list of registered buyers in such manner that it sees fit.

(7) The registration of a fish buyer may be suspended where, in the view of the Department, the registered fish buyer has not—

(a) complied with a condition of registration; or

(b) conducted his business in a manner that complies with the requirements of Article 9, Article 22 of the CFP Regulation or these Regulations.

(8) Any person who knowingly or recklessly makes a false statement for the purposes of an application under this regulation is guilty of an offence.

(9) Any registered fish buyer who fails to comply with a condition of his registration is guilty of an offence.

Purchase of fish by an unregistered buyer

8.—(1) Any person who buys fish contrary to Article 22(2)(b) of the CFP Regulation, as read with the final sub-paragraph of Article 22(2), is guilty of an offence.

(2) Any person who—

(a) buys fish and but for the final sub-paragraph of Article 22(2) would have been guilty of an offence under paragraph (1); and

(b) on the day he buys the fish buys a total of more than 25 kilogrammes of fish,

is guilty of an offence.

(3) Any person who, on its first sale, buys fish other than from a registered fish seller and is not a registered buyer, is guilty of an offence.

(4) A person is not guilty of an offence under paragraph (3) if—

(a) he does not buy more than 25 kilogrammes of fish on the day in question; and

(b) he can show that all of the fish that he buys is for private consumption.

Maintenance of records by registered fish buyer

9.—(1) A registered fish buyer shall maintain and make available for inspection records of every purchase of first sale fish that he makes.

(2) The records referred to in this regulation shall include all of the following information in relation to each individual purchase—

(a) date and location of the purchase;

(b) quantity of each species purchased;

(c) price paid for each species purchased;