
STATUTORY INSTRUMENTS

2006 No. 2904

The Fishery Products (Official Controls Charges) (England) Regulations 2006

PART 1

PRELIMINARY

Title, application and commencement

1. These Regulations may be cited as the Fishery Products (Official Controls Charges) (England) Regulations 2006, apply in relation to England only and come into force on 1st January 2007.

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;

“food authority” has the meaning that it bears by virtue of section 5(1) of the Food Safety Act 1990(1), except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of that Act (which deals with the Inner Temple and Middle Temple);

“imported” means introduced into England 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 fishery products” means fishery products which —

(a) were caught in their natural environment;

(1) 1990 c.16; section 5 was amended by paragraphs 8 and 9 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28).

- (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” 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” means fishery products which —

- (a) are landed in England;
- (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 54 of the Products of Animal Origin (Third Country Imports) (England) Regulations 2006(2); 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 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 or 7 of the Public Health (Control of Disease) Act 1984(3), to a port health authority;
- (b) by an order under section 6 of the Public Health Act 1936(4), to a joint board for a united district; or
- (c) by an order under paragraph 15(6) of Schedule 8 to the Local Government Act 1985(5), to a single authority for a metropolitan county,

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

(2) S.I. 2006/2841.

(3) 1984 c.22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990 (1990 c.16).

(4) 1936 c.49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

(5) 1985 c.51; paragraph 15(6) was amended by paragraph 31(b) of Schedule 3 to the Food Safety Act 1990.

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 VI 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 food authority.

(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 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 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 food 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 food authority imposing a charge under these Regulations.

(2) The appeal shall be heard by a magistrates' court and section 37(3), (5) and (6) of the Food Safety Act 1990 shall apply 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 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 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 shall reimburse the overpayment to the successful appellant.

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 the official controls required under Annex III to Regulation 854/2004 ("authority A") is not the relevant food authority to which a charge is required to be paid under these Regulations ("authority B"), authority B shall remit to authority A a sum equal to any amount received by authority B which is referable to official controls exercised by authority A.