
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 537

The Fishery Products (Official Controls Charges) (Scotland) Regulations 2007

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Fishery Products (Official Controls Charges) (Scotland) Regulations 2007 and come into force on 1st January 2008.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“Directive 2004/41”, “Regulation 2406/96”; “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 854/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005”, “Regulation 2075/2005” and “Regulation 2076/2005” have the meanings respectively given to them in the Schedule;

“establishment” has the meaning given by 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” has the meaning that the phrase “first sale in fish market” bears in Regulation 882/2004;

“fishery products” has the meaning given by point 3.1 of Annex I to Regulation 853/2004;

“food authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹⁾;

“imported” means introduced into Scotland other than from another part of the British Islands;

“official controls” is to be construed in accordance with the definition of “official control” in paragraph 1 of Article 2 of Regulation 882/2004;

“processing” has the meaning that it bears in Chapter V of Section B of Annex IV to Regulation 882/2004;

“processing establishment” means an establishment at which processing occurs;

“relevant fishery products” means 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

(1) 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232.

(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 Scotland;
- (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 (*Trachurus* spp.);
- (e) anchovies (*Engraulis* spp.);
- (f) picarels of the species *Maena smaris*; and
- (g) sprat of the species *Sprattus sprattus*;

“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 48(1) of the Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2007(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 on behalf of the owner or master of a vessel by another person, that other person; 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.

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 2008, 1 Euro = £0.67575; and
- (b) in each subsequent year, the rate published in the C Series of the Official Journal of the European Union 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 any duty is imposed under these Regulations on more than one person, the authority to which the duty is owed may enforce that duty—

- (a) jointly against any two or more of them, or
- (b) separately against any one 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;
- (b) give notice of the amount so calculated to any person from whom it may be collected; and
- (c) seek recovery of the amount so notified from that person.

(2) If that authority is satisfied that a calculation made under paragraph (1) is incorrect, it shall recalculate the charge and notify the recalculated charge to any person from whom it may be collected.

(3) Where a recalculated charge is notified under paragraph (2) and—

- (a) the recalculated charge is more than the amount notified under paragraph (1), the authority shall recover the recalculated charge;
- (b) the recalculated charge is less than the amount notified under paragraph (1) and that amount has not been recovered, the authority shall recover the lesser amount; or
- (c) the recalculated charge is less than the amount notified under paragraph (1) or no charge is payable and, in either case, the amount notified under paragraph (1) has been recovered, the authority shall repay the difference between the recalculated charge and the amount recovered.

Appeals

8.—(1) A person may appeal to the sheriff against any decision of the relevant food authority imposing a charge under these Regulations.

(2) Section 37(4) to (6) of the Food Safety Act 1990(3) shall apply in relation to an appeal under paragraph (1) as it applies in relation to an appeal under section 37(1)(c) of that Act.

(3) 1990 c. 16.

- (3) On an appeal under paragraph (1), the sheriff 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 an appeal under paragraph (1) the original amount of the charge shall remain payable, but if, pursuant to the sheriff's decision, the amount of the charge is recalculated, the recalculated charge shall be payable to the food authority concerned from the date on which the original charge was made.

(5) If the sheriff determines that the amount of any charge payable under these Regulations is less than the amount which any person has so paid, the overpayment shall be reimbursed by the relevant food authority.

Sums remitted from one food authority to another

9. In any case where the exercise of official controls is deferred and the food authority responsible for the exercise of 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.

PART 2

OFFICIAL CONTROLS CHARGES OTHER THAN CHARGES FOR THIRD COUNTRY IMPORTS

Payment of landings charge in respect of the first placing on the market and the first sale in a fish market of fishery products

10.—(1) Each of the following is a chargeable transaction for the purposes of this regulation and regulation 11—

- (a) the first placing on the market of relevant fishery products;
- (b) the first placing on the market of relevant landed fishery products;
- (c) the first sale in a fish market of relevant fishery products; and
- (d) the first sale in a fish market of relevant landed fishery products.

(2) Subject to paragraph (8), where there is a chargeable transaction for the purposes of this regulation and regulation 11, the vendor shall pay the charge determined in accordance with paragraphs (3) to (7) ("the landings charge") to the relevant food authority.

(3) Subject to paragraph (7), where the chargeable transaction is the first placing on the market of relevant fishery products or relevant landed fishery products, the landings charge shall be a contribution towards the expenditure incurred in exercising the official controls required under Annex III to Regulation 854/2004, calculated at the rate of 1 Euro per tonne for the first 50 tonnes and 0.5 Euro per tonne for each additional tonne of relevant fishery products or relevant landed fishery products first placed on the market in a calendar month.

(4) Where the chargeable transaction is the first sale in a fish market of relevant fishery products, the landings charge shall be a contribution towards the expenditure incurred in exercising the official controls required under Annex III to Regulation 854/2004, calculated at the rate of 1 Euro per tonne for the first 50 tonnes and 0.5 Euro per tonne for each additional tonne of relevant fishery products first sold in a fish market in a calendar month.

(5) Subject to paragraphs (6) and (7), where the chargeable transaction is the first sale in a fish market of relevant landed fishery products, the landings charge shall be a contribution towards the expenditure incurred in exercising the official controls required under Annex III to Regulation 854/2004, calculated at the rate of 0.5 Euro per tonne for the first 50 tonnes and 0.25 Euro per tonne for each additional tonne of relevant landed fishery products first sold in a fish market in a calendar month.

(6) Subject to paragraph (7), where—

- (a) the chargeable transaction is the first sale in a fish market of relevant landed fishery products; and
- (b) the relevant landed fishery products concerned are not, or are insufficiently, graded for freshness and/or size in accordance with Regulation 2406/96,

the landings charge shall be a contribution towards the expenditure incurred in exercising the official controls required under Annex III to Regulation 854/2004, calculated at the rate of 1 Euro per tonne for the first 50 tonnes and 0.5 Euro per tonne for each additional tonne of relevant landed fishery products first sold in a fish market in a calendar month.

(7) In respect of any consignment of relevant landed fishery products consisting of specified pelagic fish, the landings charge shall not exceed 50 Euros.

(8) 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 food authority, 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 food authority to which the landings charge is payable in respect of the aggregate of chargeable transactions that the vendor 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 and date of landing of the fishery products to which it relates;
- (c) the place and date of first placing on the market or first sale in a fish market, as the case may be, of those products;
- (d) for landings of relevant fishery products and for landings of relevant landed fishery products other than specified pelagic fish—
 - (i) the name of each vessel and the number of consignments landed from it,
 - (ii) the aggregate weight of consignments landed by each vessel which do not exceed 50 tonnes and the first 50 tonnes of consignments the weight of which exceeds that amount, and
 - (iii) the aggregate weight of consignments less the weight calculated under paragraph (ii);
- (e) for landings of relevant landed fishery products which are specified pelagic fish—
 - (i) the name of each vessel and the number of consignments landed from it, and
 - (ii) the aggregate weight of consignments landed by each vessel which do not exceed 50 tonnes and the first 50 tonnes of consignments the weight of which exceeds that amount;
- (f) notification of any amount paid by virtue of paragraph (4) of regulation 10 which has been paid in respect of—
 - (i) consignments of fish consisting only of fish other than specified pelagic fish, or

- (ii) consignments of specified pelagic fish only, identifying the circumstances that led to the payment of that amount;
 - (g) in relation to consignments of relevant fishery products–
 - (i) the total weight of all relevant fishery products landed, and
 - (ii) the total amount of the charge payable under regulation 10 in respect of those products; and
 - (h) the amount of the landings charge.
- (3) During the period of one year beginning on the day on which a vendor makes a return under this regulation–
- (a) the relevant food authority to which it was made may require the vendor to supply separate information of the kind required by paragraph (2) in respect of each transaction included in it; and
 - (b) the vendor shall retain records which are sufficient to enable the vendor to supply any such information.
- (4) Any vendor who without reasonable excuse–
- (a) fails to comply with paragraph (1) or (3)(b); or
 - (b) fails to comply with a requirement made under paragraph (3)(a),

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Charge in respect of processing establishments

12.—(1) Subject to paragraph (3), the proprietor or operator of a processing establishment shall pay the charge determined in accordance with paragraph (2) (“the processing establishment charge”) to the relevant food authority.

(2) The processing establishment charge shall be a contribution towards the expenditure incurred by the relevant food authority in exercising the official controls required under Annex III to Regulation 854/2004, calculated at the rate of 0.5 Euro per tonne of fishery products entering the establishment for the purpose of processing.

(3) Where the actual costs of exercising the official controls required under Annex III to Regulation 854/2004 are less than the processing establishment charge, the proprietor or operator shall pay an amount equal to those costs to the relevant food authority, instead of the processing establishment charge.

Returns and records relating to processing establishments

13.—(1) Within 7 days of the end of each account period, the proprietor or operator who is responsible for paying the processing establishment charge shall make a written return to the relevant food authority to which that charge is payable in respect of the fishery products which have entered the establishment concerned 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 weight of the fishery products entering the establishment; and
- (c) the amount of the charge payable under regulation 12.

(3) During the period of one year beginning on the day on which a proprietor or operator makes a return under this regulation–

- (a) the relevant food authority to which the return was made may require the proprietor or operator to supply separate information of the kind required by paragraph (2) in respect of each batch of fishery products included in it; and
 - (b) the proprietor or operator shall retain records which are sufficient to enable the supply of any such information.
- (4) Any proprietor or operator who without reasonable excuse—
- (a) fails to comply with paragraph (1) or (3)(b); or
 - (b) fails to comply with a requirement made under paragraph (3)(a),
- shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Revocation

14. The Fishery Products (Official Controls Charges) (Scotland) Regulations 2006(4) are revoked.

St Andrew's House,
Edinburgh
28th November 2007

SHONA ROBISON
Authorised to sign by the Scottish Ministers