

SCHEDULE 6

Regulation 12

AMENDMENTS TO THE PRINCIPAL REGULATIONS

1. In paragraph (1) of regulation 2 of the principal Regulations (interpretation)—
 - (a) after the definition of “the Act” there shall be inserted the following definition—

““approved import conditions” has the same meaning as in the Import Conditions Regulations;”;
 - (b) after the definition of “batch” there shall be inserted the following definition—

““bivalve molluscs” means any filter-feeding lamellibranch molluscs;”;
 - (c) in the definition of “the Council Directive”, after the words “fishery products” there shall be inserted the words “, as adapted for the purposes of the EEA Agreement(1)”;;
 - (d) after the definition of “establishment” there shall be inserted the following definitions—

““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(2) as adjusted by the Protocol signed at Brussels on 17th March 1993(3);

““EEA State” means a State which is a Contracting Party to the EEA Agreement, but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein(4);”;
 - (e) for the definition of “fishery products” there shall be substituted the following definition—

““fishery products” means—

 - (a) all seawater or freshwater animals, including their roes; and
 - (b) parts of such animals, except in circumstances where they—
 - (c) are combined (in whatever way) with other foodstuffs, and
 - (ii) comprise less than 10% of the total weight of the combined foodstuffs, but excluding aquatic mammals, frogs and aquatic animals covered by Community Acts other than the Council Directive, and parts of such mammals, frogs and aquatic animals;”;
 - (f) after the definition of “frozen products” there shall be inserted the following definitions—

““the Import Conditions Regulations” means the Food Safety (Fishery Products) (Import Conditions and Miscellaneous Amendments) Regulations 1994;

““imported” means imported into Great Britain, but only if the product in question was not imported from another part of the British Islands(4);”;
 - (g) after the definition of “means of transport” there shall be inserted the following definition—

““other shellfish” means echinoderms, tunicates or marine gastropods;”;
 - (h) for the definition of “processed product” there shall be substituted the following definition—

““processed” means—

 - (a) except in relation to bivalve molluscs or other shellfish, having undergone a chemical or physical process such as the heating, smoking, salting, dehydration

(1) See paragraph 24 of the basic texts in Annex I to the EEA Agreement.

(2) OJ No. L 1, 3.1.94, p.3.

(3) OJ No. L 1, 3.1.94, p.572.

(4) See article 1(2) of the Protocol Adjusting the Agreement on the European Economic Area.

(4) See article 1(2) of the Protocol Adjusting the Agreement on the European Economic Area.

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or marinating of chilled or frozen products, or a combination of these various processes;

- (b) in relation to bivalve molluscs or other shellfish, any process or any combination of processes such as those referred to in sub-paragraph (a) above, unless as a result of that process or combination of processes the bivalve molluscs or other shellfish remain alive;”.

2. For regulation 3 of the principal Regulations, there shall be substituted the following regulation—

“Placing fishery products on the market

3.—(1) Subject to paragraph (2), no person shall place on the market for human consumption any fishery products, unless—

- (a) if they have been handled on board a British Islands fishing vessel, the applicable requirements of the Fishing Vessels Directive, as provided for in—
 - (i) the Food Safety (Fishery Products on Fishing Vessels) Regulations 1992⁽⁵⁾,
 - (ii) The Food Safety (Fishery Products on Fishing Vessels) Regulations (Northern Ireland) 1993⁽⁶⁾, or
 - (iii) any law passed by the legislature of any of the Channel Islands or of the Isle of Man which is intended to give effect to the results to be achieved by that Directive, in so far as it applies to those islands,

are satisfied in relation to those fishery products which he places on the market;

- (b) if they have been handled on board a British Islands factory vessel, the applicable requirements of the Annex and the Council and Commission Decisions, as provided for in—
 - (i) Chapter I of the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992,
 - (ii) Chapter I of the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations (Northern Ireland) 1992⁽⁷⁾, or
 - (iii) any law passed by the legislature of any of the Channel Islands or of the Isle of Man which is intended to give effect to the results to be achieved in relation to the conditions applicable to factory vessels by that Annex and those Decisions, in so far as they apply to those islands,

are satisfied in relation to those fishery products which he places on the market;

- (c) if they were landed in the British Islands, during and after landing the applicable requirements of the Annex which relate to landings, as provided for in—
 - (i) Chapter II of the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992, or
 - (ii) Chapter II of the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations (Northern Ireland) 1992, or

(5) S.I. 1992/3165.
(6) S.R. 1993 No. 53.
(7) S.R. 1993 No. 296.

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- (iii) any law passed by the legislature of any of the Channel Islands or of the Isle of Man which is intended to give effect to the results to be achieved in relation to landing requirements by that Annex, in so far as it applies to those islands,
- are satisfied in relation to those fishery products which he places on the market;
- (d) at establishments on land in the British Islands, they have been handled and, where appropriate, packaged, prepared, processed, frozen, defrosted, stored hygienically and inspected in accordance with the applicable requirements of Chapters III and IV of the Annex and of the Council and Commission Decisions, as provided for in—
 - (i) Chapters III and IV of the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992,
 - (ii) Chapters III and IV of the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations (Northern Ireland) 1992, or
 - (iii) any law passed by the legislature of any of the Channel Islands or of the Isle of Man which is intended to give effect to the results to be achieved by those Chapters of that Annex and those Decisions, in so far as they apply to those islands;
 - (e) they—
 - (i) in Great Britain, have been subject to such of the health control and monitoring described in Schedule 1 as is appropriate in the particular circumstances of the case,
 - (ii) if they have been in Northern Ireland, have been subject to such of the health control and monitoring described in Schedule 1 to the Food Safety (Fishery Products) Regulations (Northern Ireland) 1993⁽⁸⁾ as is appropriate in the particular circumstances of the case, or
 - (iii) if they have been in the Channel Islands or the Isle of Man, have been subject to such of the health control and monitoring described in Chapter V of the Annex, as provided for in any law passed by the legislature of any of the Channel Islands or of the Isle of Man which is intended to give effect to the results to be achieved by that Chapter, in so far as it applies to those islands and as is appropriate in the particular circumstances of the case,unless the competent authority authorised the transfer of those fishery products ex quay to an approved establishment or registered auction or wholesale market to be checked there, in which case a check on the conditions of landing is not required;
 - (f) they shall have been appropriately packaged in accordance with Schedule 2;
 - (g) they comprise or form part of a consignment which bears an identification mark—
 - (i) unless head (ii), (iii) or (iv) applies, which is in accordance with Schedule 3,
 - (ii) which, if they comprise or form part of a consignment which has been given an identification mark in accordance with Schedule 3 of the Food Safety (Fishery Products) Regulations (Northern Ireland) 1993, is in accordance with that Schedule,
 - (iii) which, if they comprise or form part of a consignment which has been given an identification mark in accordance with any law of another EEA State, the Isle of Man or the Channel Islands, and that law is intended to give effect to

⁽⁸⁾ S.R. 1993 No. 51.

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the results to be achieved by Chapter VII of the Annex, in so far as it applies to those territories, is in accordance with that law,

- (iv) which, if those fishery products originate in a country in respect of which the European Commission has adopted approved import conditions, is in accordance with those approved import conditions,

but an identification mark is not required in relation to fishery products which have been landed in a third country in respect of which the European Commission has not adopted any approved import conditions;

- (h) they have been stored and transported under satisfactory conditions of hygiene, in accordance with Schedule 4;
- (i) if they are imported products, prior to importation such of the requirements specified in regulations 3 and 4 of the Import Conditions Regulations as are applicable to his case are satisfied in relation to those fishery products which he places on the market; and
- (j) any additional requirements contained in regulations 4 to 7 which relate to those fishery products are satisfied in relation to those products which he places on the market.

(2) Sub-paragraphs (a) to (c) of paragraph (1) shall not apply to aquaculture products or to processed bivalve molluscs or other shellfish.”

3. For regulation 5 of the principal Regulations (placing aquaculture products on the market) there shall be substituted the following regulation—

“Placing aquaculture products on the market

5. No person shall place fishery products which are aquaculture products on the market for human consumption, unless—

- (a) they have been slaughtered under appropriate conditions of hygiene within the meaning of article 3(3)(a) of the Council Directive;
- (b) they have not been soiled with earth, slime or faeces;
- (c) if they were not processed immediately after being slaughtered, they have been kept chilled.”

4. For regulation 6 of the principal Regulations (placing processed bivalve molluscs and other shellfish on the market) there shall be substituted the following regulation—

“Placing processed bivalve molluscs or other shellfish on the market

6.—(1) Subject to paragraphs (2) and (3), no person shall place fishery products which are processed bivalve molluscs or other shellfish on the market for human consumption unless prior to processing there were satisfied in relation to those processed bivalve molluscs or other shellfish those of the requirements set out in regulation 11 of the Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations 1992⁽⁹⁾ to which those products would have been subject if, when they were processed, they had instead been placed on the market as live bivalve molluscs or other shellfish.

(2) For the purposes of paragraph (1), regulation 11 of the Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations 1992 shall apply as if, where reference is made in regulation 11(1)(b) and (4) of those Regulations to transportation to an approved dispatch

(9) S.I. 1992/3164; as amended by S.I. 1994/ .

centre, reference had also been made to transportation to an establishment or factory vessel which has been approved in accordance with—

- (a) regulation 9;
- (b) regulation 8 of the Food Safety (Fishery Products) Regulations (Northern Ireland) 1993;
- (c) any law passed by the legislature of any of the Channel Islands or of the Isle of Man which is intended to give effect to the results to be achieved in relation to the approval of establishments on land and factory vessels by the Council Directive, in so far as it applies to those islands,

and the requirements in relation to movement documents or permanent transport authorisations set out in regulation 11(1)(b) and Schedule 2 of the Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations 1992 shall apply as if modified accordingly.

(3) Paragraph (1) shall not apply to imported fishery products which were processed before they were imported.”.

5. In paragraph (7) of regulation 9 of the principal Regulations (approval of factory vessels and establishments) for the word “centre” there shall be substituted the words “factory vessel or establishment which is”.

6.—(1) In regulation 11 of the principal Regulations (obligations on proprietors of establishments and factory vessels), after the words “specified in Schedule 5” there shall be inserted the words “as apply to an establishment or a factory vessel”.

(2) After regulation 11 of the principal Regulations, there shall be inserted the following regulation—

“Additional obligation for masters of certain third country vessels

11A. Without prejudice to article 4 of Council Regulation (EC) No. 1093/94 setting the terms under which fishing vessels of a third country may land directly and market their catches at Community ports⁽¹⁰⁾, the master of a factory vessel of a third country shall, before landing any fishery products in Great Britain which are for placing on the market, give the food authority for the port at which he intends to land those fishery products notice of arrival of at least 24 hours.”.

7.—(1) For paragraphs (1) and (2) of regulation 13 of the principal Regulations (registration of wholesale and auction markets that are not establishments), there shall be substituted the following paragraphs—

“(1) Subject to any applicable derogation, no person shall operate a wholesale or auction market which is not an establishment for the purposes of these Regulations because fishery products are only displayed for sale or sold by wholesale there, unless that market has been registered with the relevant food authority.

(1A) An application for registration pursuant to paragraph (1) shall be in writing and shall be accompanied by such supplementary information, documents, plans and diagrams as are necessary to enable the food authority to determine the application, having regard to the requirements of paragraphs 3 to 7 of Chapter II of the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992 (requirements during and after landing).

(1B) In every case the food authority shall notify the applicant in writing of the result of the application and in the case of refusal of the reasons for that refusal.

⁽¹⁰⁾ OJ No. L 121, 12.5.94, p.3.

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(2) The relevant food authority shall register a market in respect of which an application is made only if it is satisfied that the market meets such of the requirements in the Council Directive as apply to it, save in so far as—

- (a) there is in force in respect of that market any derogation; and
- (b) the terms on which that derogation was granted are complied with.”.

(2) After paragraph (3) of regulation 13 of the principal Regulations there shall be inserted the following paragraph—

“(4) Where an appeal against a refusal by a food authority to register a market is made to a magistrates' court or the sheriff in accordance with section 37(1)(c) of the Act as applied by regulation 18(3), the applicant may continue to operate the market to which the appeal relates until such time as the appeal is finally determined.”.

8. In the table in paragraph (2) of regulation 14 of the principal Regulations (sales by fishermen of small quantities of fishery products)—

- (a) in Column (a) (species), above the word “Oysters” there shall be inserted the word “Cockles”; and
- (b) in Column (b) (maximum amount), opposite the word “Cockles” in Column (a) there shall be inserted the words “25.0 tonnes”.

9. Paragraph (2) of regulation 15 of the principal Regulations (functions of Ministers and food authorities) shall be omitted.

10. In paragraph (2) of regulation 16 of the principal Regulations (offences and penalties), after the word “11,” there shall be inserted the word “11A,”.

11.—(1) In paragraph (1) of regulation 18 of the principal Regulations (application of provisions of the Act), the words “section 32 (powers of entry);” shall be omitted.

(2) After paragraph (2) of regulation 18 of the principal Regulations, there shall be inserted the following paragraph—

“(2A) Section 32 of the Act (powers of entry) shall apply for the purposes of these Regulations as though—

- (a) any reference to premises included a reference to a fishing or factory vessel (in so far as it does not already do so(**11**)); and
- (b) any reference to the occupier included a reference to the master or other person in charge of the fishing or factory vessel (in so far as it does not already do so).”.

(3) In paragraph (3) of regulation 18 of the principal Regulations, after the words “under regulation 9” there shall be inserted the words “or in relation to a decision to refuse an application for registration under regulation 13”.

12. In regulation 20 of the principal Regulations (amendment of regulations providing for derogations) after the word “amended” there shall be inserted the word “by”.

13.—(1) In sub-paragraph (c) of the unnumbered paragraph in Part I of Schedule 1 to the principal Regulations (health control and monitoring of production conditions)—

- (a) for the words “registered in a member State of the European Community” there shall be substituted the words “wherever registered”;
- (b) in head (i), after the words “conditions of approval” there shall be inserted the words “(where applicable)”; and

(11) See the definition of “premises” in section 1(3) of the Food Safety Act 1990, and the transitional provision contained in paragraph 1 of Schedule 4 to the 1990 Act. No orders have yet been made under section 1(3) of the 1990 Act.

(c) in head (iv), before the words “identification marks” there shall be inserted the words “any necessary”.

(2) After Section C of Part II of Schedule 1 to the principal Regulations, there shall be inserted the following Section—

“D. Microbiological analyses

1.—(1) Subject to sub-paragraph (2), the microbiological standards applicable to the production of cooked crustaceans and molluscan shellfish are those set out in Commission Decision 93/51/EEC on the microbiological criteria applicable to the production of cooked crustaceans and molluscan shellfish⁽¹²⁾.

(2) For the purposes of sub-paragraph (1), the reference in article 2 of Commission Decision 93/51/EEC to a processing plant shall be treated as if it were a reference to an establishment or factory vessel which has been approved for processing fishery products in accordance with regulation 9.

2.—(1) The sampling programme to be established in accordance with article 3 of Commission Decision 93/51/EEC, as provided for in—

- (a) paragraph 5A of Section II of Chapter I; and
- (b) paragraph 7(c) of Section IV of Chapter IV,

of the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992 shall be monitored by the food authority which approved the establishment or factory vessel in question.

(2) For the purposes of sub-paragraph (1)—

- (a) the reference in article 3(1) of Commission Decision 93/51/EEC to the requirements of article 6 of Directive 91/493/EEC shall be treated as if it were a reference to the provisions of Schedule 5; and
- (b) the reference in the first indented paragraph of article 3(2) of that Commission Decision to competent authorities shall be treated as if it were a reference to the food authority mentioned in sub-paragraph (1).”.

14. In the third indented paragraph of Schedule 5 to the principal Regulations (obligations of the proprietor), for the words “advice issued by the Ministers concerning suitable performance assessment schemes” there shall be substituted the words “guidance issued by the Ministers”.

(12) OJ No. L 13, 21.1.93, p.11.