
WELSH STATUTORY INSTRUMENTS

2006 No. 3344

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

PART I

PRELIMINARY

Title, application and commencement

1. The title of these Regulations is the Fishery Products (Official Controls Charges) (Wales) Regulations 2006, they apply in relation to Wales and come into force on 1 January 2007.

Interpretation

2.—(1) In these Regulations —

“Directive 2004/41” (*“Cyfarwydddeb 2004/41”*), “Regulation 178/2002” (*“Rheoliad 178/2002”*), “Regulation 1642/2003” (*“Rheoliad 1642/2003”*), “Regulation 852/2004” (*“Rheoliad 852/2004”*), “Regulation 853/2004” (*“Rheoliad 853/2004”*), “Regulation 854/2004” (*“Rheoliad 854/2004”*), “Regulation 882/2004” (*“Rheoliad 882/2004”*), “Regulation 1688/2005” (*“Rheoliad 1688/2005”*), “Regulation 2073/2005” (*“Rheoliad 2073/2005”*), “Regulation 2074/2005” (*“Rheoliad 2074/2005”*), “Regulation 2075/2005” (*“Rheoliad 2075/2005”*), “Regulation 2076/2005” (*“Rheoliad 2076/2005”*) and “Regulation 776/2006” (*“Rheoliad 776/2006”*) have the meanings respectively given to them in the Schedule;

“EEA State” (*“Gwladwriaeth AEE”*) means a member State, Norway, Iceland or Liechtenstein;

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

“first placing on the market” (*“rhei gyntaf ar y farchnad”*) has the meaning that it bears in Regulation 882/2004;

“first sale in a fish market” (*“gwerthu gyntaf mewn marchnad bysgod”*) is to be construed in accordance with the phrase “first sale in a fish market” in Regulation 882/2004;

“fishery products” (*“cynhyrchion psygodfeydd”*) has the meaning given to it in point 3.1 of Annex I to Regulation 853/2004;

“food authority” (*“awdurdod bwyd”*) has the meaning that it bears by virtue of section 5(1A) of the Food Safety Act 1990(1);

“imported” (*“a fewnforir”*) means introduced into Wales other than from another part of the British Islands;

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

(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).

“processing” (“*prosesu*”) has the meaning given to it in paragraph 1(m) of Article 2 of Regulation 852/2004;

“processing establishment” (“*sefydliad prosesu*”) means an establishment at which processing occurs;

“relevant fishery products” (“*cynhyrchion pysgodfeydd perthnasol*”) means imported 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
- (d) are intended for placing on the market for human consumption, other than relevant landed fishery products and third country imports;

“relevant food authority” (“*awdurdod bwyd perthnasol*”) 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” (“*cynhyrchion pysgodfeydd sy'n cael eu glanio ac sy'n berthnasol*”) means fishery products which —

- (a) are landed in Wales;
- (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” (“*pysgod eigionol penodedig*”) 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” (“*trydedd wlad*”), 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” (“*mewnforyn trydedd wlad*”) means an import in respect of which a charge is payable under regulation 52(1) of the Products of Animal Origin (Third Country Imports) (Wales) Regulations 2004(2); and

“vendor” (“*gwerthwr*”) 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 of the Public Health (Control of Disease) Act 1984⁽³⁾; or
- (b) by an order under section 6 of the Public Health Act 1936⁽⁴⁾, to a joint board for a united district.

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

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 is 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 is calculated by multiplying that number by the Euro/sterling conversion rate specified in paragraph (3).

(3) The Euro/Sterling conversion rate is 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 is one month or such longer period not exceeding twelve months as is determined by the relevant food authority.

(2) The account period must 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 must

- (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.

(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.

(2) If the relevant food authority is satisfied that a calculation made under paragraph (1) is incorrect, it must recalculate the charge and —

- (a) where the correct amount is more than the amount calculated under paragraph (1), it must 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 must 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 must 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 will be heard by a magistrates' court and section 37(3), (5) and (6) of the Food Safety Act 1990 applies 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 will remain payable, but if after the court's decision the amount of the charge needs to be recalculated, the new amount of the charge will have effect from the date on which the original charge was made and the sum equal to that new amount will 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 paid, the relevant food authority must 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 must 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 II

OFFICIAL CONTROLS CHARGES OTHER THAN CHARGES FOR THIRD COUNTRY IMPORTS

Charge in respect of the first placing on the market or the first sale in a fish market of relevant fishery products or relevant landed fishery products

10.—(1) The first placing on the market or first sale in a fish market of relevant fishery products or relevant landed fishery products is a chargeable transaction for the purposes of this Part.

(2) Subject to paragraph (6), where there is a chargeable transaction for the purposes of this Part, the vendor must pay the charge referred to in paragraphs (3) to (5) (“the landings charge”) to the relevant food authority.

(3) Subject to paragraphs (4) and (5), the landings charge is a contribution of 1 Euro per tonne for the first 50 tonnes of fishery products and 0.5 Euro per tonne for each additional tonne towards the expenditure incurred in exercising the official controls required under Annex III to Regulation 854/2004.

(4) Subject to paragraph (5), in respect of any consignment of specified pelagic fish which are relevant landed fishery products, the landings charge must not exceed 50 Euros.

(5) Where—

(a) the chargeable transaction is a first sale in a fish market and relates to relevant landed fishery products; and

(b) any official controls required under Annex III to Regulation 854/2004 are facilitated on the basis that —

(i) the relevant landed fishery products concerned are graded for freshness or size in accordance with relevant national or Community rules, or

(ii) such transactions are grouped together,

the landings charge is 45% of the amount that it would otherwise be under paragraph (3) or (4).

(4) 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 must 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 must 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 made referred to in paragraph (1) must include the following information —

(a) the account period to which the return relates;

(b) the place of landing and first placing on the market or first sale in a fish market of the fishery products to which it relates; and

(c) 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);

(d) 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;

(e) notification of any amount paid under regulation 10(5) 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,
- specifying under which of sub-paragraph (b)(i) or (b)(ii) of that paragraph that payment has been made;
- (f) 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
 - (g) the amount of the landings charge.
- (3) Subject to paragraph (4), during the period of 1 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 provide separate information of the kind required by paragraph (2) in respect of each transaction included in it; and
 - (b) the vendor must retain records which are sufficient to enable the vendor to supply any such information.
- (4) Paragraph (3) does not apply in relation to landings of relevant fishery products.
- (5) Any vendor who without reasonable excuse —
- (b) fails to comply with paragraph (1) or (3)(b); or
 - (c) fails to comply with a requirement made under paragraph 3(a)
- is guilty of an offence and will 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 (4), the proprietor or operator of a processing establishment must pay the charge referred in paragraphs (2) and (3) (“the processing establishment charge”) to the relevant food authority.

(2) Subject to paragraph (3), the processing establishment charge is be a contribution of 1 Euro per tonne of fishery products entering the establishment towards the expenditure incurred by the relevant food authority in exercising the official controls required under Annex III to Regulation 854/2004.

- (3) Where processing is carried out —
- (a) on the same site as that on which the first placing on the market or first sale in a fish market of the fishery products concerned is effected; or
 - (b) in an establishment in which operating conditions and guarantees as to the establishment’s own checks are such that staff requirements for the exercise of official controls can be reduced,

the processing establishment charge is 45% of the amount that it would otherwise be under paragraph (2).

(4) 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 must pay an amount equal to those costs to the relevant food authority, instead of the processing establishment charge.

Collection and remittance of charges 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 must make a written return in respect of that charge 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) A return made under this regulation must include the following information —

- (a) the account period to which the return relates;
- (b) the weight of the fishery products entering the establishment;
- (c) notification of any amount paid under regulation 12(3), specifying under which of subparagraph (a) or (b) of that paragraph that payment has been made; and
- (d) 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 provide 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 must retain records which are sufficient to enable him or her to supply any such information.

(4) Any proprietor or operator who without reasonable excuse —

- (a) fails to comply with paragraph (1) or (3)(b); or
- (d) fails to comply with a requirement made under paragraph (3)(a),

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

Revocation

14. The Fishery Products (Official Controls Charges) (Wales) Regulations 2005⁽⁵⁾ are revoked.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁶⁾

13 December 2006

D. Elis-Thomas
The Presiding Officer of the National Assembly

⁽⁵⁾ S.I. 2005/3297 (W.255).

⁽⁶⁾ 1998 c. 38.