

2005 No. []

FOOD, ENGLAND

**The Fishery Products (Hygiene Charges) (England)
Regulations 2005**

<i>Made</i>	- - - -	2005
<i>Laid before Parliament</i>		2005
<i>Coming into force</i>		1st January 2006

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to food (including drink) including the primary production of food, in exercise of the powers conferred on him by that section, after consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c) as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council(d), makes the following Regulations:

PART I
PRELIMINARY

Title, commencement and application

1. These Regulations may be cited as the Fishery Products (Hygiene Charges) (England) Regulations 2005, come into force on 1st January 2006, and apply in relation to England only.

Interpretation

2. In these Regulations —

“chilled” means cooled to a temperature approaching that of melting ice;

“competent authority” means the authority designated under regulation 4 of the Food Hygiene (England) Regulations 2005(e);

“EEA State” means a member State, Norway, Iceland or Liechtenstein;

(a) S.I. 2003/2901.
(b) 1972 c. 68.
(c) OJ No. L31, 1.2.2002, p.1.
(d) OJ No. L245, 29.9.2003, p.4.
(e) [].

“establishment” has the meaning given to it in paragraph 1(c) of Article 2 of Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(a);

“factory vessel” and “fishery products” have the meanings respectively given to them in points 3.2 and 3.1 of Annex I to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(b);

“food authority” has the meaning given in section 5 of the Food Safety Act 1990(c) except that it does not include the appropriate Treasurer referred to in subsection (1)(c) of that section (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(a) of Article 2 of Regulation 854/2004;

“placing on the market” has the meaning given to it in paragraph 8 of Article 3 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council;

“processing” has the meaning given to it in paragraph 1(m) of Article 2 of Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs;

“Regulation 854/2004” means Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(d);

“relevant fishery products” means imported fishery products which —

- (a) originate in a third country;
- (b) were caught in their natural environment;
- (c) have not been on land prior to their proposed importation, or had not been on land prior to their importation, into an EEA State or Greenland;
- (d) are or will be landed in England; and
- (e) are intended for placing on the market for human consumption;

“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) were caught in their natural environment;
- (b) have not or had not been on land prior to being landed;
- (c) are or will be landed in England; and
- (d) are intended for placing on the market for human consumption,

other than relevant fishery products being sold for the first time in England 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*;

(a) OJ No. L139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.3).

(b) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22).

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

(d) OJ No. L155, 30.4.2004, p.206. The revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.83).

- (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 52(1) of the Products of Animal Origin (Third Country Imports) (England) (No. 4) Regulations 2004(a); and

“vendor” means —

- (a) where an agent sells fishery products on behalf of the owner or master of a vessel, that agent; and
- (b) in any other case, the owner or master of the vessel.

Actual costs

3.—(1) For the purposes of these Regulations, the actual costs of exercising official controls are the aggregate of costs of the types specified in paragraph (2) directly incurred in the exercise of the official controls required under Annex III to Regulation 854/2004.

(2) The types of costs are —

- (a) the salaries and fees, together with overtime payments and employers’ national insurance and superannuation contributions, of all staff directly involved in the exercise of the controls and of all staff engaged in the management or administration of the controls;
- (b) the costs of in-service training for staff directly involved in the exercise of the controls;
- (c) travelling costs and related incidental expenses incurred in exercising the controls, except those incurred by a person attending his normal place of work;
- (d) the costs of office accommodation, equipment and services for staff involved in exercising the controls, including depreciation of any office furniture and equipment and the cost of information technology, stationery and forms;
- (e) the costs of protective clothing and equipment used in exercising the controls;
- (f) the costs of laundering protective clothing used in exercising the controls;
- (g) sampling and analysis costs incurred in exercising the controls; and
- (h) the routine administrative costs of accounting and collecting charges and of providing pay-roll and personnel services in connection with the employment of staff exercising the controls.

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 2006, 1 Euro = £0.x; 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.

(a) S.I. 2004/3388.

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 or the competent 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 or the competent 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 or the competent 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 authority concerned;
- (b) determine any charge which is payable under these Regulations and, in particular, may reduce the amount of any charge by 55% where the authority concerned is required to make that reduction under regulation 11, 14, 18 or 22 but has not done so; 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 authority concerned.

(5) If the court determines that the amount of any charge imposed under these Regulations is less than the amount which any person has paid to an authority in respect of it, the overpayment shall be reimbursed by that authority.

Fees 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 official controls on vessels and on conditions of landing (“authority A”), or the food authority responsible for the exercise of the official controls required under Chapter II of Annex III to Regulation 854/2004 (“authority B”), is not the relevant food authority to which a charge is required to be paid under these Regulations (“authority C”), authority C shall remit —

- (a) to authority A, a sum equal to any amount received by authority C which is referable to official controls exercised by authority A; and
- (b) to authority B, a sum equal to any amount received by authority C which is referable to official controls exercised by authority B.

PART II

INSPECTION CHARGES OTHER THAN CHARGES FOR DIRECT LANDINGS FROM THIRD COUNTRY VESSELS AND FOR THIRD COUNTRY IMPORTS

General landings charge

10.—(1) The first sale in England of relevant landed fishery products shall be a chargeable transaction for the purposes of this Part.

(2) Where there is a chargeable transaction, the vendor shall include in the price which he charges the purchaser an amount equal to the charge referred to in this Part as “the general landings charge”.

(3) Subject to paragraph (4) and regulation 11, the amount of the general landings charge shall be a contribution in respect of the expenditure incurred in exercising the official controls required under Chapter II of Annex III to Regulation 854/2004 of 1 Euro per tonne for the first 50 tonnes of relevant landed fishery products and 0.5 Euro per tonne for each additional tonne of such products.

(4) Where the actual costs attributable to the exercise of official controls in relation to an unloaded consignment of specified pelagic fish do not exceed 50 Euros, the general landings charge in respect of that consignment shall not exceed that amount.

(5) The vendor shall pay the general landings charge to the relevant food authority.

Reduction of the general landings charge

11. The relevant food authority to which a charge is payable under regulation 10(5) shall reduce that charge by 55% where any of the official controls required under Chapter II of Annex III to Regulation 854/2004 are facilitated on the basis that —

- (a) the fish are graded for freshness or size in accordance with relevant national or Community rules; or
- (b) the first sale transactions are grouped together.

Collection and remittance of charges relating to general landings

12.—(1) Within 7 days of the end of each account period in which a vendor enters into a chargeable transaction, he shall make a written return in respect of that transaction to the relevant food authority to which the general landings charge is payable.

(2) The return shall give information which relates to the chargeable transaction entered into during that account period or, if there has been more than one such transaction, information in respect of the aggregate of the transactions.

(3) A return made under this regulation shall include the following information —

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

- (b) the place of landing and first sale of the fishery products to which it relates; and
 - (c) for landings of 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 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) the amount of any reduction under regulation 11 which has been made in respect of —
 - (i) consignments of fish consisting only of fish other than specified pelagic fish, and
 - (ii) consignments of specified pelagic fish only,
 specifying under which of paragraph (a) or (b) of that regulation that reduction has been made; and
 - (f) the amount of the general landings charge.
- (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 (3) in respect of each transaction included in it; and
 - (b) the vendor shall retain records which are sufficient to enable him to supply any such information.

Charge for fishery products landed from factory vessels

13.—(1) Subject to paragraph (2), by way of contribution in respect of the expenditure incurred by the relevant food authority in exercising the official controls required under Annex III to Regulation 854/2004 in respect of a factory vessel, the owner or master of the vessel shall pay to that authority 1 Euro per tonne of fishery products which is landed.

(2) The charge payable under paragraph (1) shall be payable in addition to the charge payable under regulation 10(5) but shall not apply in relation to third country imports or relevant fishery products which are sold for the first time in England.

Reduction of the charge in respect of products landed from factory vessels

14. The relevant food authority to which a charge is payable under regulation 13(1) shall reduce that charge by 55% where —

- (a) first sale and preparation or processing is carried out on the same factory vessel; or
- (b) operating conditions on a factory vessel, and guarantees as to the ship's own checks, are such that inspection staff requirements can be reduced.

Collection and remittance of the factory vessel charge

15.—(1) Within 7 days of the end of each account period in which fishery products in respect of which a charge is payable under regulation 13(1) have been landed from a factory vessel, the owner or master of the vessel who is responsible for paying that charge shall make a written return in respect of it to the relevant food authority to which it is payable.

(2) The return shall give information which relates to the landing of fishery products from a factory vessel during that account period or, if there has been more than one such landing, information in respect of the aggregate of them.

(3) A return made under this regulation shall include the following information —

- (a) the account period to which the return relates;
- (b) the name of each factory vessel from which fishery products are landed and each place of landing;
- (c) the number of landings during that account period;
- (d) the weight of the fishery products landed;
- (e) the amount of any reduction made under regulation 14, specifying under which of paragraph (a) or (b) of that regulation that reduction has been made; and
- (f) the amount of the charge payable under regulation 13(1).

(4) During the period of 1 year beginning on the day on which an owner or master makes a return under this regulation —

- (a) the relevant food authority to which the return was made may require him to provide separate information of the kind required by paragraph (3) in respect of each landing included in it; and
- (b) he shall retain records which are sufficient to enable him to supply any such information.

Charge in respect of factory vessels abroad

16. In respect of the expenditure incurred by the competent authority in exercising the official controls required under paragraphs 2(c) and (3)(a) (insofar as they apply in relation to factory vessels) and 3(b) of Chapter I of Annex III to Regulation 854/2004, the owner or master of a fishery vessel shall pay to that authority the actual costs of the official controls.

Charge in respect of preparation or processing establishments

17. By way of contribution in respect of the expenditure incurred by the relevant food authority in exercising the official controls required under Annex III to Regulation 854/2004 in respect of a preparation or processing establishment, the proprietor or operator of the establishment shall pay to that authority 1 Euro per tonne of fishery products entering that establishment.

Reduction of the charge in respect of preparation or processing establishments

18. The relevant food authority to which a charge is payable under regulation 17 shall reduce that charge by 55% where preparation or processing is carried out —

- (a) on the same site as the first sale; or
- (b) in an establishment in which operating conditions and guarantees as to the establishment's own checks are such that inspection staff requirements can be reduced.

Collection and remittance of charges relating to preparation or processing establishments

19.—(1) Within 7 days of the end of each account period in which fishery products have entered a preparation or processing establishment, the proprietor or operator who is responsible for paying the charge under regulation 17 relating to that establishment shall make a written return in respect of that charge to the relevant food authority to which it is payable.

(2) The return shall give information which relates to the fishery products which have entered that establishment during that account period.

(3) A return made under this regulation shall include the following information —

- (a) the account period to which the return relates;
- (b) the weight of the fishery products entering the establishment;

- (c) the amount of any reduction made under regulation 18, specifying under which of paragraph (a) or (b) of that regulation that reduction has been made; and
 - (d) the amount of the charge payable under regulation 17.
- (4) 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 him to provide separate information of the kind required by paragraph (3) in respect of each batch of fishery products included in it; and
 - (b) he shall retain records which are sufficient to enable him to supply any such information.

Charges in respect of other establishments

20. In respect of the expenditure incurred by the relevant food authority in carrying out a programmed inspection for the purposes of the official controls required under Annex III to Regulation 854/2004, the proprietor of an establishment in which fishery products are only chilled, frozen, packaged or stored shall pay to that authority the actual costs of that programmed inspection.

PART III

INSPECTION CHARGES FOR DIRECT LANDINGS FROM THIRD COUNTRY VESSELS

Charge in respect of official checks on third country direct landings

21.—(1) When any relevant fishery products are sold for the first time in England (referred to in this Part as a “chargeable transaction”), the vendor shall include in the price which the purchaser is required to pay for them an amount equal to the charge referred to in this Part as “the third country direct landings charge”.

- (2) Subject to regulation 22, the amount of the third country direct landings charge shall be —
- (a) in respect of the expenditure incurred in exercising the official controls required under Chapter II of Annex III to Regulation 854/2004, 1 Euro per tonne of relevant fishery products for the first 50 tonnes and 0.5 Euro per tonne for each additional tonne of such products, except that where the actual costs attributable to the exercise of the official controls in relation to an unloaded consignment of specified pelagic fish do not exceed 50 Euros, the third country direct landings charge in respect of that consignment shall not exceed that amount; and
 - (b) in respect of the expenditure incurred in exercising official controls on vessels and on conditions of landing, 1 Euro per tonne.
- (3) The vendor shall pay the third country direct landings charge to the relevant food authority.

Reduction of the third country direct landings charge

22. The relevant food authority to which a charge is payable under regulation 21(3) shall reduce by 55% the part of the third country direct landings charge which is calculated in accordance with regulation 21(2)(a) where any of the official controls required under Chapter II of Annex III to Regulation 854/2004 are facilitated on the basis that —

- (a) the fish are graded for freshness and/or size in accordance with relevant national or Community rules; or
- (b) the first sale transactions are grouped together.

Collection and remittance arrangements

23.—(1) A vendor who has entered into a chargeable transaction shall within 7 days of the end of the account period during which the chargeable transaction took place make a return in respect of it to the relevant food authority to which the third country direct landings charge is payable or, if there has been more than one such transaction, information in respect of the aggregate of the transactions.

(2) The vendor shall include in that return the following information —

- (a) the account period to which the return relates;
- (b) the place of landing and first sale of the fishery products to which it relates;
- (c) for landings of 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 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) the amount of any reduction made under regulation 22 in respect of —
 - (i) consignments of fish consisting only of fish other than specified pelagic fish, and
 - (ii) consignments of specified pelagic fish only,specifying under which of paragraph (a) or (b) of that regulation that reduction has been made; and
- (f) the amount of the third country direct landings charge.

(3) The vendor shall, in addition to the information required under paragraph (2), include in the return information on —

- (a) the total weight of all fishery products landed, including specified pelagic fish; and
- (b) the amount of the charge in respect of those products.

Signed by authority of the Secretary of State for Health

2005

Parliamentary Under Secretary of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)