

The Fishery Products (Official Controls
Charges) Regulations 2007

**Q & A Notes for enforcement
authorities**

(Version 1.3)

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Important Note

This Guidance has been produced with the aim of providing informal, non-statutory advice on the Fishery Products (Official Controls Charges) Regulations 2007.

The notes and examples in this Guidance should not be taken as an authoritative statement of the Law, as only the courts have this power. Ultimately, only the courts can decide whether, in particular circumstances, an offence has been committed.

Every effort has been made to ensure that these Guidance Notes are as helpful as possible. However, it is ultimately the responsibility of individual organisations to ensure their compliance with the Law.

Introduction

These Notes aim to cover the main elements of the following legislation:

- Fishery Products (Official Controls Charges) (England) Regulations 2007
- Fishery Products (Official Controls Charges) (Wales) Regulations 2007
- Fishery Products (Official Controls Charges) (Scotland) Regulations 2007
- Fishery Products (Official Controls Charges) Regulations (Northern Ireland) 2007

Please note that throughout this document, where the term 'the Regulations' is used, this should be taken as referring to The Fishery Products (Official Controls Charges) Regulations 2007

As the Regulations place obligations on those authorities responsible for hygiene inspections of direct landings of fishery products and enforcing the hygiene requirements this guidance is aimed primarily at those authorities. The guidance may also provide useful information for the fishing industry. Where it doesn't businesses should seek the advice of their local food authority.

The Notes will be published on the enforcement portal of the Food Standards Agency's website.

General Q & A

Q1. What are the Fishery Products (Official Controls Charges) Regulations 2007 about?

A1. The Regulations provide for the financing under Article 27 of Council Regulation 882/2004 of official controls (see Q4) performed to ensure the verification of compliance with food law in so far as it relates to fishery products.

Q2. Why have the Regulations been introduced?

A2. The Regulations have been introduced to replace The Fishery Products (Official Controls Charges) Regulations 2006¹, which are revoked. This was necessary to ensure the continued implementation of Article 27 of Regulation 882/2004 after the expiry on 1 January 2008 of the transitional period provided for in that Article during which EC member States were allowed to levy charges at the rates previously applicable under Directive 85/73 (as amended).

With the introduction of these Regulations, the UK must apply the new rates set out in Annex IV, Section B, Chapter V of Regulation 882/2004 from 1 January 2008.

Q3. What are the objectives of the Regulations?

A3. The Regulations provide for the continued enforcement of the requirement to pay local food authorities a contribution towards the cost of carrying out hygiene inspection and analyses for fishery products landed directly in the UK, including direct landings from Member

¹SI 2006/2904, SSI2006/579, SI 2006/3344 (W.305), SR2006/485

States, EEA States, Greenland and from fishing vessels flying the flag of a third country. As these direct landings of fishery products are not required to enter through controlled points of entry into the UK, these inspections are necessary to monitor these products and ensure that they meet EU hygiene standards and are fit for human consumption.

Q4. What are official controls?

A4. 'Official controls' under Regulation 882/2004 are specifically defined under Article 2(1) of that Regulation. In effect, these are:

- Enforcement checks carried out by the competent authorities in the Member States to monitor and verify compliance by feed and food businesses with the requirements set out in 'feed law' and 'food law', animal health and animal welfare rules. Such checks include, for example inspections, audits, surveillance, sampling and analysis etc.
- In the case of direct landings of fishery products this involves a contribution to the cost of the checks on the condition of landed fishery products; hygiene inspections aboard fishing vessels; hygiene inspections aboard factory and freezer vessels; hygiene inspections in processing establishments and costs of analyses provided for in Annex III to Regulation 854/2004.

See also FSA 'Q&A Notes for enforcement authorities on the feed and food elements':

<http://www.food.gov.uk/multimedia/pdfs/offcqaguidancenotes.pdf>

Q5. In which EU legislation are the rates for official controls charges contained?

A5. The rates contained in these Regulations are set out in Annex IV, Section B, Chapter V of Regulation 882/2004.

Q6. What is a competent authority?

A6. A 'competent authority' is the central authority of a Member State that is responsible for the organisation of official controls or any other authority to which that competence has been conferred.

Q7. Who is the competent authority in the UK?

A7. The central competent authority for enforcing Food Law is the Food Standards Agency. At the local level, in the UK the enforcement of Food Law is carried out by Environmental Health and Trading Standards Services in local authorities. Responsibility for ensuring that effect is given to the charging elements of Regulation 882/2004 lies with the FSA. Execution of this responsibility rests with local authorities throughout the UK, and includes port health authorities, which also have specific responsibilities in relation to imported foods.

Common Provisions Applying to All Charges

Q8. What are relevant fishery products?

Regulation 2, Part 1 of the Regulations

A8. 'Relevant fishery products' are those which:

- a) were caught in their natural environment;
- b) are imported (i.e. introduced into England/Wales/Scotland/Northern Ireland other than from another part of the British Islands) 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.

These products should not be confused with '**relevant landed fishery products**' or '**third country imports**'.

It is in keeping with the definition in the Regulations of the term 'third country', for the third country flags of fishing vessels in which relevant fishery products

are imported to include those of third countries that appear on the EU authorised lists, providing the products have not entered any other Member State or any other country outside the EU prior to landing in the UK.

Authorised lists of third countries can be accessed on the Food Standards Agency, 'Importing fishery products and bivalves' webpage, located at:

http://www.food.gov.uk/foodindustry/imports/want_to_import/fisheryproducts/

Q9. What are relevant landed fishery products?

Regulation 2, Part 1

A9. 'Relevant landed fishery products' are fishery products which:

- a) are landed in the UK;
- b) have not been on land previously; and
- c) are intended for placing on the market for human consumption.

These products should not be confused with '**relevant fishery products**' or '**third country imports**'.

The essential difference between "relevant landed fishery products" and 'relevant fishery products' is that the former are directly landed by vessels of EU member states, Greenland and EEA states rather than from vessels flying the flag of a third country.

Q10. Do the Regulations apply to imports from third countries?

A10. These regulations, **do not** apply to imports of fishery products from third countries where those products have been on land outside the EU prior to entry into the UK. Imported fishery products must meet the charging requirements applicable under the Products of Animal Origin (Third Country Imports) Regulations 2006² as amended.

² SI 2006/2841, SI 2006/767, SSI 2006/419, SR 2007 No. 199

Direct landings of fishery products from vessels flying the flag of a third country do not need to be accompanied by health certification nor do they need to enter through a designated border inspection post (BIP). However, when fishery products that have been caught and processed by a factory ship flying the flag of a third country are first placed on the market, they must only enter the UK through a designated BIP and be subject to the appropriate veterinary checks.

Q11. Do the Regulations apply to Live Bivalve Molluscs and landings of less than 25 tonnes of fishery products per annum?

These regulations do not apply to **live** bivalve molluscs as the definition of 'fishery products' used by these regulations has the meaning of that in Point 3.1 of Annex I to Regulation 853/2004, which excludes live bivalve molluscs, echinoderms, tunicates and marine gastropods.

During a meeting of the FSA-industry RIA working group in February 2007³ it was confirmed that small businesses and vessels landing less than 25 tonnes of fishery products a year are exempt from the charging requirements. For landings above 25 tonnes per annum, a charge will be due on the total amount of fishery products landed.

Q12. Actual costs of inspections vs. minimum legal rates?

Regulation 3 and 7 Part 1

Regulation 10 and 12, Part 2

A12. The Regulations require the fees for official controls to be charged in amounts equal to the actual costs borne by the competent authority or at the relevant rates specified in Annex IV, Section B, Chapter V of Regulation 882/2004, whichever is the lower.

³ Representatives from the FSA (Scotland and England and Wales), Seafish Industry Authority, Scottish Fishermen's Federation, National Federation of Fishermen's Organisations and Grimsby Fish Markets attended.

Where the actual costs of exercising the official controls activities is less than the landing or processing charges calculated on the rates in Annex IV (whichever is applicable) the food business operator must pay the relevant food authority the amount equal to the actual costs of the inspection, i.e. the lower of the two amounts.

Q13. What sterling value of the Euro is to be used?

Regulation 4, Part 1

A13. The value of the Euro to be used when calculating the relevant charge for 2008 is; 1 Euro = £0.67575.

The rate for subsequent years will be that published in the C Series of Official Journal of the European Communities on the first working day of September of the preceding year. When no rate is published on that day, the first rate published after the first working day is to be used. **Note that Saturdays and Sundays are not considered “working days” for this purpose.**

Q14. What is an account period?

Regulation 5, Part 1

Q14. Charges for direct landings and/or tonnages of fishery products entering processing establishments must be calculated over a defined account period within 7 days of the end of which the vendor must provide to the relevant local authority a written return (see Q&A 21).

An account period is defined in the Regulation as ranging from one calendar month to any other longer period up to one year. When setting the account period, we recommend food authorities are flexible to that extent. Food authorities should also have regard to the accounting

systems of businesses so that account periods under these Regulations may coincide with other accounting cycles.

Although not specified in the legislation, we also recommend food authorities agree with the proprietor/operator a suitable period within which the charges relating to that account period should be paid.

Where a fishing vessel lands into ports under the jurisdiction of more than one local food authority, we recommend those authorities set common account periods.

Q15. What is the Appeal process?

Regulation 8, Part 1

A15. Although the Regulations allow a person to appeal against a decision made by a relevant food authority to impose charges under these Regulations, it is desirable that as far as possible disputes about non-compliance are resolved informally through open discussion with enforcement officers. Where agreement cannot be reached, appeals will be resolved by the magistrates' courts⁴ in accordance with the provisions of Section 37 of the Food Safety Act 1990 or Food Safety (NI) Order 1991 in Northern Ireland.

The courts may decide on one of three outcomes:

- a) confirm the decision made by the relevant food authority;
- b) determine the charges payable; or
- c) determine that no charge is payable.

Pending a court's decision, the original amount of any charge remains payable but if, the decision of the court is such that the charge must be recalculated, the revised amount will be effective from the date on which the original charge was determined and that new amount will be payable to the relevant food authority.

⁴Magistrates court in England and Wales, Sheriff court in Scotland, Court of Summary Jurisdiction in Northern Ireland

Where the new charge is less than the original charge, the difference must be reimbursed by the food authority.

Q16. What happens on failure to provide a written return?

Regulation 11 and 13, Part 2

A16. A proprietor or operator failing, without reasonable excuse, to submit a written return relating to the chargeable transactions to the relevant food authority within seven days after the end of an account period, to keep relevant records for the prescribed period or to supply, if requested to do so by the food authority, separate information for each batch of fishery products landed, commits an offence and is liable on conviction before a magistrates' court to a fine (up to level 5 on the standard scale).

Official Controls Charges For Direct Landings of Fishery Products

Q17. What is the landings charge?

Regulation 10, Part 2

A17. When fishery products are directly landed in the UK and first placed on the market, or first placed on the market and then first sold in a fish market, a landings charge becomes payable. This charge is to offset the cost of exercising official controls, including hygiene inspection and analysis costs as required by Regulation 854/2004 laying down specific hygiene rules for the organisation of official controls on products of animal origin.

Note: If fishery products have been directly landed in an EEA State prior to landing in the UK, a landings charge for the cost of official controls will apply in that EEA State. No landings charge under these Regulations is incurred in the UK.

Similarly, a landings charge under these Regulations can not be applied to consignments of fishery products from third countries, which must enter the UK through Border Inspection Posts (BIPs). For an explanation of third country imports see Q and A 8.

Q18. To which types of landings does the landings charge apply?

Regulation 10, Part 2

A18. The landings charge applies to ‘relevant fishery products’ and ‘relevant landed fishery products’ (see definitions above) when they are first placed on the market and, if appropriate when first sold in a fish market in the UK. Where a market directly accepts these fishery products for commercial sale a landings charge will apply.

Q19. Who is responsible for paying the landings charge?

Regulation 10 Part 2

A19. The landings charge is paid for by the consignment vendor, which can be either the master or owner of the ship landing ‘relevant fishery products’ or ‘relevant landed fishery products’, or person acting on behalf of the master or owner. The vendor can seek to reclaim the landings charge from the purchaser(s), but only under a commercial arrangement to that effect as this is not provided for in the Regulations.

Q20. What is the amount of the charge and how is it calculated?

Regulation 10 Part 2

A20. When a consignment of relevant fishery products or relevant landed fishery products is first placed on the market and, where appropriate when first sold in a fish market a chargeable transaction has occurred and a ‘landings charge’ is due.

(i) First placing on the market of relevant fishery products and relevant landed fishery products

(Regulation 10(3))

The landings charge for these products is set at 1 Euro per tonne for the first 50 tonnes of fishery products and 0.5 Euro per tonne for each additional tonne placed on the market in a calendar month. This is payable by the vendor of the consignment, i.e. the owner or master of the vessel from which the fishery products are landed or any other person(s) acting on their behalf e.g. a fish sales agent.

(ii) First sale in a fish market of relevant fishery products

(Regulation 10(4))

The landings charge for these products is set at 1 Euro per tonne for the first 50 tonnes of fishery products and 0.5 Euro per tonne for each additional tonne first sold in a calendar month. This is payable by the vendor of the consignment, i.e. the owner or master of the vessel from which the fishery products are landed or any other person(s) on their behalf e.g. a fish sales agent.

(iii) First sale in a fish market of relevant landed fishery products

(Regulation 10(5))

The landings charge for these products is set at 0.5 Euro per tonne for the first 50 tonnes and 0.25 Euro for each additional tonne sold in a calendar month. This is payable by the vendor of the consignment, i.e. the owner or master of the vessel from which the fishery products are landed or any other person(s) on their behalf e.g. a fish sales agent.

(Regulation 10(6))

The previous fish charging legislation provided for a 55% reducible element for relevant landed fishery products that have been appropriately graded. This no longer applies. However,

where these products are inadequately or not graded for freshness and/or size in accordance with Community standards then the landings charge is set at 1 Euro per tonne for the first 50 tonnes and 0.5 Euro for each additional tonne sold in a calendar month.

(iv) Specified Pelagic Fish

(Regulation 10(7))

For any consignment of “specified pelagic fish” which are also ‘relevant landed fishery products’, the charge must not exceed 50 Euros. This is payable by the vendor of the consignment, i.e. the owner or master of the vessel from which the fishery products are landed or any other person(s) on their behalf e.g. a fish sales agent.

Having received the return from a vendor (see Q21), the food authority should confirm the calculation of the charge. In general, this will need no more than a check of the vendor’s calculations based on the transactions itemized in the return, but in certain circumstances may also take account of any other information requested from the vendor. Once the charge has been calculated the food authority may issue an invoice to the vendor for payment, based against the cost of official controls carried out. Where the charge due was sent with the written return a receipt should be issued. The Regulations provide for the food authority to invoice the vendor for any additional amount due or to refund where the vendor has paid too much.

Where a food business carries out both a first placing on the market and a first sale in a fish market a landings charge is due for the official controls carried out at each stage. As a result, the written returns to the relevant food authority will need to account for the tonnages of these products when first placed on the market and when first sold in a fish market (see below Q and A 29).

Q21. What are the arrangements for making a written return?

Regulation 11, Part 2

A21. Within 7 days of the end of the account period the vendor must submit a written return to the relevant food authority for verifying the calculated charge. The return from the vendor must give summary information related to the consignment(s) landed, and include the following:

- a) The account period.
- b) The place and date of landing of fishery products.
- c) The place and date of first placing on the market or first sale in a fish market of the products, as appropriate.
- d) Landings of 'relevant fishery products' or '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;
 - iii. the aggregate weight of consignments landed which exceed 50 tonnes where those consignments are more than 50 tonnes; and
 - iv. the aggregate weight of all consignments less those of the previous aggregates of (ii) and (iii) above.
- e) For landings of relevant landed fishery products which are specified pelagic fish the same information as in (d) (i) – (iii) is required.
- f) An indication of any amount paid in relation to the first sale in a fish market of consignments of relevant landed fishery products which are fish other than pelagic fish or consignments of specified pelagic fish only..
- g) The total weight of all relevant fishery products landed and the charge payable.
- h) The amount of the landings charge.

The LFA will evaluate the returns submitted to verify the estimated charges and assess these against the actual cost of the official controls carried out within that account period. Charges cannot be applied where no official controls have taken place.

A model return form can be found in the Annex. The form may be adapted to suit local circumstances e.g. for vessels landing part of a catch on to a fish market. Other forms may be used providing they provide all the information specified in (a) – (h) above. Food authorities are encouraged to discuss and seek to agree the use of the model form with vendors as this will help trade calculate the charge on a consistent basis and aid collection.

Although the return only provides a summary of the information relating to landed consignments, a food authority may require the vendor to provide separate information for each or any transaction. Vendors must therefore retain information which is sufficient to supply the required information for a period of one year beginning on the day that the vendor makes the return. Under normal circumstances food authorities should not need to request the more detailed information unless, for example, information is available to suggest that the charge due for the period covered by the return has not been calculated correctly.

Q22. What are the possible arrangements if the landings charge is payable to more than one food authority?

Regulation 9, Part 1

A22. The landings charge should normally be paid to the local authority which has jurisdiction over where the consignment is landed.

However, there may be cases where charges are received by a food authority, which is not the relevant food authority for exercising official controls e.g. if consignments are landed in one food authority for

immediate transfer to an auction market, wholesale market, or to a fishery products establishment in another area.

This receiving food authority should pay to the relevant food authority an amount pro rata to the controls it has undertaken. The collecting authority should therefore factor in their own collection costs when evaluating the actual costs of official controls.

Official Controls Charges in Respect of Processing Establishments

Q23. What is the applicable charge?

Regulation 12, Part 2

A23. The charge, known as the “processing establishment charge”, is payable on fishery products entering an approved processing establishment during an account period.

Q24. What is the amount of the charge?

Regulation 12, Part 2

A24. The processing establishment charge is 0.5 Euro per tonne entering the establishment during an account period for the purpose of processing. The charge is incurred on each occasion fishery products enter an approved establishment for that purpose. The charge should not be levied on the same identical product re-entering an establishment (for example, where product is returned by a purchaser who no longer wants it or where processing orders are cancelled and storage of the product away from the establishment is required prior to new orders being placed and the return of the product for processing).

Q25. What are the arrangements for making a written return?

Regulation 13, Part 2

A25. Within 7 days of the end of the account period the food business operator/owner of the business must send a written return to the food authority to which the charge is due setting out the amount of the charge that the operator/owner has calculated is payable. The return from the operator/owner must give summary information related to the fishery products entering the establishments during the account period.

The return must include the following information:

- (a) the account period;
- (b) the weight of the fishery products entering the establishment;
and
- (c) the amount of the charge payable.

The LFA will evaluate the returns submitted to verify the estimated charges and assess these against the actual cost of the official controls carried out within that account period. Charges cannot be applied where no official controls have taken place.

A model return form can be found in the Annex. The form may be adapted to suit local circumstances. Food authorities are encouraged to discuss and seek to agree the use of the model form with processors as this will help the trade calculate the charge on a consistent basis and aid collection.

Although the return only provides a summary of the information relating to fishery products entering an establishment, under the legislation food authorities can also require operators/owners to provide separate information for each or any batch of fishery products entering an establishment. Operators/owners must therefore retain information which is sufficient to supply the required information for a period of one year beginning on the day that they make a return. Under normal

circumstances, food authorities should not need to request the more detailed information unless there are concerns that the operator/owner has wrongly calculated the charge due for the period covered by the return.

Q26. How is the charge calculated?

A26. Having received the return from the operator/owner the food authority should check the calculation of the charge. In normal circumstances this will need no more than a check of the calculations in the return, but it might also take account of any other information requested from the owner/operator as described above. Once the charge has been calculated the food authority should issue an invoice to the owner/operator for payment, or alternatively a receipt if the charge due was sent to the food authority with the return. The Regulations provide for the food authority to invoice the owner/operator for any additional amount due or to refund money where too much has been paid.

Q27. Who is responsible for paying the processing establishment charge?

Regulation 12, Part 2

A27. The charge must be paid by the food business operator or owner of the approved establishment to the food authority in whose area the establishment is situated.

Miscellaneous

Q28. Are preparation establishments exempt from the Regulations?

A28. Establishments carrying out only preparation activities as defined in Article 2 of Regulation 852/2004 are exempt from the charging requirement of the Regulations. **Unlike processing establishments, charging provisions for preparation establishments are not stipulated in Annex IV, Chapter V of Regulation 882/2004.**

Where processing establishments also carry out preparation on the same site, Food Authorities should assess the cost of official controls accordingly, i.e. charges should be associated with the inspection of the processing activities only.

Q29. What are the arrangements for food businesses carrying out both a 'first placing on the market' and a 'first sale in a fish market'?

A29. Council Regulation 178/2002 on General Food Law defines "placing on the market" as "the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution and other forms of transfer themselves".

Under this definition holding food for the purposes of sale constitutes a placing on the market. As a result where a food business operator holds fishery products before sale, either on the vessel, quayside storage or any other type of storage, with the intention to sell, a first placing on the market is deemed to have taken place. A charge for first placing on the market may be incurred for any official controls carried

out by the LFA at this stage and the operator is required to account for each such consignment in the written return.

When the same consignment of fishery products is to be sold in a fish market for the first time, a “first sale in a fish market” is deemed to have taken place and the corresponding charge for official controls at this stage is incurred. The vendor of this consignment is required to submit a written return to the LFA in relation to this transaction.

This interpretation is consistent with the requirements in Regulation 854/2004 for inspections to be carried out at regular intervals, including at fish auctions and wholesale markets and for organoleptic checks to be carried out at all stages of production, processing and distribution.

At the end of each account period, the LFA will evaluate the returns submitted to verify the estimated charges and assess these against the actual cost of the official controls carried out within that account period. Charges cannot be applied where no official controls have taken place.

Q.30. What is the difference between ‘preparation’ and ‘processing’ activities?

A.30 The EU Hygiene legislation⁵ provides legal definitions of these terms, as follows:

- A *prepared fishery product* is an unprocessed fishery product that has undergone an operation affecting its anatomical wholeness, such as heading, gutting, slicing, filleting and chopping e.g. fresh fishery products, breaded or battered fillets of fish.
- *Processing* is an action that substantially alters the initial product, including heating, smoking, curing, maturing, drying, marinating, extraction, extrusion or a combination of those processes e.g. smoked fish, marinated fish.

⁵ EC Regulations 852/2004, 853/2004 and 854/2004

For more information and a non-exhaustive list of processed and unprocessed fishery products we recommend referring to the Commission's Guidance to Regulation 853/2004 which can be accessed via the following link:

http://ec.europa.eu/food/food/biosafety/hygienelegislation/guidance_doc_853-2004_en.pdf

Annex

Draft Local Authority Return for Chargeable Transactions

As Required by the Fishery Products (Official Controls Charges) Regulations 2007

Relevant Local Authorities: _____

Account Period: from _____ to _____

The Landings Charge for consignments between 1 and 50 tonnes

Vessel	No of Consignments	Place of landing	Place of first sale [*]	Aggregate weight in tonnes	Charge @ 1 Euro per tonne	Total Cost (Euros)
Total Cost For All Vessels (A) in Euros						

The Landings Charge For Consignments Above 50 Tonnes

Vessel	No of Consignments	Place of landing	Place of first sale ²	Aggregate weight in tonnes	Charge @ 0.25 Euro per tonne. 1st sale of Relevant Landed Products Only	Charge @ 0.5 Euro per tonne over 50 tonnes.	Total Cost (Euros)
Total Cost for all vessels (B) in Euros							

Charges For Processing Establishments

Consignment	Weight in tonnes	Charge @ 0.5 Euro per tonne	Total Cost (Euros)
Total Cost for all consignments (C) in Euros			

Total Landings And Processing Charges Due in Euros (A + B + C)

^{*} or first placing on the market, as appropriate