



STATUTORY INSTRUMENTS.

S.I. No. 260 of 2007



SEA-FISHERIES (FIRST MARKETING OF FISH) REGULATIONS, 2007

(Prn. A7/1036)

SEA-FISHERIES (FIRST MARKETING OF FISH) REGULATIONS, 2007

I, JOHN BROWNE, Minister of State at the Department of Communications, Marine and Natural Resources, in exercise of the powers conferred on me by sections 14 and 15 of the Sea-Fisheries and Maritime Jurisdiction Act, 2006 and the Marine (Delegation of Ministerial Functions) Order 2006 (S.I. No. 82 of 2006), and for the purpose of making provision for the administration and enforcement of Article 9 of Council Regulation (EEC) No. 2847/93 of 12 October 1993¹ Article 22 of Council Regulation (EC) No. 2371/2002 of 20 December 2002² and Part A of Annex III of Council Regulation (EC) No. 41/2007 of 21 December 2006³ which impose requirements relating to the first marketing and purchasing of fish, hereby make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Sea-Fisheries (First Marketing of Fish) Regulations 2007.

(2) These Regulations come into force on 1 June 2007.

Interpretation

2. (1) In these Regulations—

“Act” means the Sea-Fisheries and Maritime Jurisdiction Act 2006;

“Article 9” means Article 9 of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy⁴ as last amended by Council Regulation (EC) No. 768/2005⁵;

“CFP Regulation” means Council Regulation No. 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy⁶;

“competent authority” for the purposes of Article 9 means, as the context may require, the Minister or a sea-fisheries protection officer;

“Department” means the Department of Communications, Marine and Natural Resources;

“first sale fish” means fish being sold for the first time;

¹O.J. No. L261, 21.10.1993, p.1

²O.J. No. L358, 31.12.2002, p.59

³O.J. No. L15, 20.01.2007, p.1

⁴O.J. No. L261, 20.10.1993, p.1

⁵O.J. No. L128, 21.05.2005, p.1

⁶O.J. No. L358, 31.12.2002, P.59

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 5th June, 2007.*

“fish” means fish landed from a fishing vessel to which Article 9 or Article 22 of the CFP Regulation applies;

“foreign sea-fishing boat” has the meaning given to it section 2 of the Act;

“Irish sea-fishing boat” has the meaning given to it in section 2 of the Act;

“licensed sea-fishing boat” means an Irish sea-fishing boat or a foreign sea fishing boat that has been licensed under fisheries-related provisions by another Member State;

“Member State” means member state of the European Communities;

“Minister” means the Minister for Communications, Marine and Natural Resources;

“registered auction centre” means a person who is registered as a fish auction centre in accordance with the provisions of Regulation (EC) No 852 of 2004 of the European Parliament and of the Council of the 28 April 2004 on the hygiene of foodstuffs⁷, as amended or substituted from time to time (including as amended by way of extension, application, adaptation or other modification thereof);

“registered fish buyer” means a person who is registered by the Minister in accordance with regulation 7;

“registered Irish fish seller” means a person who is registered by the Minister in accordance with regulation 4; and

“sea-fisheries protection officer” has the meaning given to it in section 6 of the Act.

(2) In these Regulations, any reference to a fish seller shall include an agent who sells fish on behalf of the seller.

(3) A word or expression that is used in both these Regulations and in the CFP Regulation or in Article 9 has, unless the contrary intention appears, the meaning in these Regulations that it has in the CFP Regulation or Article 9.

(4) In these Regulations—

(a) a reference to a regulation or a schedule is a reference to a regulation of, or a schedule to, these Regulations unless it is indicated that reference to some other regulations is intended,

(b) a reference to a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended,

⁷OJ L 139, 30.4.2004, p. 1-54

- (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Maintenance of records by registered auction centre

3. (1) A registered auction centre shall maintain records of each sale of first sale fish that the registered auction centre makes.

(2) The records referred to in this regulation shall include all of the following information in relation to each sale-

- (a) date and location of the sale;
- (b) quantities of each species sold;
- (c) price paid for each species sold;
- (d) name and registration number of the vessel which landed the fish;
- (e) name, address and, where available, registration number of the buyer;
- (f) reference number of the contract of sale or invoice.

(3) A registered auction centre shall, in respect of each sale of first sale fish, submit to the competent authority a sales note in the form set out in Schedule 3.

(4) Sales notes or, as appropriate, take-over declarations shall be submitted in accordance with the provisions of Article 9.

(5) A registered auction centre shall keep the records of each sale as required by this regulation until the end of the second calendar year following that sale.

(6) A registered auction centre shall make available for inspection at all reasonable times the records of sale of fish.

(7) A registered auction centre who fails to keep or make available the records as required by this regulation is guilty of an offence.

Sales of first sale fish by an Irish fish seller

4. (1) A person who, acting on his own behalf or as an agent for another person sells first sale fish from an Irish sea-fishing boat in a Member State other than the State may apply to the Minister to be registered as an Irish fish seller, using such form as the Minister may prescribe.

(2) An applicant for registration as an Irish fish seller shall furnish the Minister with such information as the Minister may reasonably require and, without prejudice to the generality of the foregoing, shall include with his or her application a statement of the place where he or she intends to maintain his or her records of sales.

(3) The Minister may, at his or her discretion, grant a registration, and in considering an application the Minister shall take into account whether the statement of the place where the applicant intends to maintain his or her records of purchases of first sale fish is such as to assist compliance by the Irish fish seller with these Regulations.

(4) The Minister shall notify an applicant in writing (including writing in electronic form) of the Minister's decision on an application made in accordance with this Regulation.

(5) Where the Minister grants a registration the Minister shall specify the conditions, listed at Schedule 1, subject to which the registration is granted.

Maintenance of records by registered Irish fish seller

5. (1) A registered Irish fish seller shall maintain records of each sale of first sale fish that he or she makes at the place notified to the Minister in accordance with these Regulations.

(2) A person to whom this regulation applies shall submit to the Department a sales notes that includes all of the following information in relation to each sale:

- (a) date and location of the sale;
- (b) quantities of each species sold;
- (c) price paid for each species sold;
- (d) name and registration number of the vessel which landed the fish;
- (e) name, address and, where available, registration number of the buyer; and
- (f) reference number of the contract of sale or invoice.

(3) A registered Irish fish seller shall keep the records of each sale as required by this regulation until the end of the second calendar year following that sale.

(4) Sales notes shall be submitted in accordance with the provisions of Article 9.

(5) A registered Irish fish seller shall make available for inspection at all reasonable times the records of sale of fish.

(6) A registered Irish fish seller who fails to keep or make available the records as required by this regulation is guilty of an offence.

Prohibition on sales to an unregistered buyer

6. A person who sells fish to a person who is not:

- (a) an auction centre;

(b) a registered fish buyer; or

(c) a person who buys fish for private consumption and who on the day he or she buys the fish buys not more than 10 kilogrammes;

shall be guilty of an offence.

Registration of fish buyers

7. (1) For the purposes of Article 22(2)(b) of the CFP Regulation any person may apply to the Minister to be registered as a fish buyer, using such form as the Minister may prescribe.

(2) An applicant for registration as a fish buyer shall furnish the Minister with such information as the Minister may reasonably require and, without prejudice to the generality of the foregoing, shall include with his or her application a statement of the place where he or she intends to maintain his or her records of purchases of first sale fish.

(3) The Minister may, in his or her discretion, grant a registration and in considering an application the Minister shall take into account whether the statement of the place where the applicant intends to maintain his or her records of purchases of first sale fish is such as to assist compliance by the fish buyer with Article 9 or Article 22 of the CFP Regulation and these Regulations.

(4) The Minister shall notify an applicant in writing (including writing in electronic form) of the Minister's decision on an application made in accordance with this regulation.

(5) Where the Minister grants a registration the Minister shall specify the conditions, listed at Schedule 2, subject to which the registration is granted.

(6) The Minister shall publish a list of registered buyers in such manner that the Minister sees fit.

(7) Any person who knowingly or recklessly makes a false statement for the purposes of an application under this regulation is guilty of an offence.

(8) Any registered fish buyer who fails to comply with a condition of his or her registration is guilty of an offence.

Purchase of fish by an unregistered buyer

8. (1) Any person who buys fish contrary to Article 22(2)(b) of the CFP Regulation, as read with the final sub-paragraph of Article 22(2), is guilty of an offence.

(2) Any person who—

(a) buys fish and but for the final sub-paragraph of Article 22(2) would have been guilty of an offence under paragraph (1); and

- (b) on the day he buys the fish buys a total of more than 10 kilogrammes of fish,

is guilty of an offence.

Maintenance of records by registered fish buyer

9. (1) A registered fish buyer shall maintain and make available for inspection records of every purchase of first sale fish that he makes.

(2) The records referred to in this regulation shall include all of the following information in relation to each individual purchase-

- (a) date and location of the purchase;
- (b) quantity of each species purchased;
- (c) price paid for each species purchased;
- (d) name and registration number of the vessel which landed the fish;
- (e) name, address, and where available, the registration number of the seller;
- (f) reference number of the invoice or contract of sale.

(3) A registered fish buyer shall keep the records of each purchase, as required by this regulation, and at the place notified to the Minister in accordance with these Regulations until the end of the second calendar year following that purchase.

(4) A registered fish buyer shall, in respect of each sale of first sale fish, submit to the competent authority a sales note in the form set out in Schedule 3.

(5) Sales notes or, as appropriate, take-over declarations shall be submitted in accordance with the provisions of Article 9.

(6) A registered fish buyer who does not operate his business from or is not established in Ireland shall either-

- (a) nominate a place in Ireland where his records will be made available to the authorities until the end of the second year following purchase; or
- (b) submit his records within 28 days of a demand by or on behalf of the Minister.

(7) A registered fish buyer who does not operate his business from Ireland shall keep the records of each purchase as required by this regulation until the end of the second calendar year following that purchase.

(8) A registered fish buyer who fails to keep, or to produce on the request by the relevant authority, the records required by this Regulation is guilty of an offence.

Grant of registrations

10. (1) Conditions under regulation 4(5) or 7(5) may be attached to a registration at the time it is granted or at any time thereafter.

(2) A condition may be altered at any time while the registration is still in force and further conditions may be added.

(3) Notification of any condition or alteration shall be made in writing (including writing in electronic form) to the holder of the registration and to any organisation which the Minister considers to be representative of the holder.

(4) Any condition attached or altered comes into force as specified in the notification to the holder of the registration, being a period not earlier than 24 hours after the notification is sent.

(5) The Minister may authorise such officers of the Department or such other persons as the Minister considers necessary to grant registrations under regulations 4 or 7, as the case may be, and to add or alter conditions to such registrations.

Renewal of registration

11. (1) The Minister may renew, subject to this regulation, without application, at the Minister's discretion, a registration granted under regulations 4 or 7 for such period as may be stated in the renewed registration.

(2) Without prejudice to the Minister's discretion to refuse to grant or renew a registration, the Minister may refuse to grant or renew a registration where the applicant for or holder of a registration has previously had such a registration held by him or her revoked.

Revocation or withdrawal of a registration

12. (1) The Minister may revoke or withdraw for a period a registration granted under regulation 4 where, in the view of the Minister, the registered Irish fish seller has not complied with a condition of registration.

(2) The registration of a fish buyer under regulation 7 may be revoked or withdrawn for a period where, in the view of the Minister, the registered fish buyer has not-

(a) complied with a condition of registration; or,

(b) conducted his business in a manner that complies with the requirements of Article 9 or Article 22 of the CFP Regulation or these Regulations.

(3) Where the Minister proposes to revoke or withdraw for a period a registration or designation granted under regulations 4 or 7, the Minister shall notify in writing the person concerned of the proposal and the reasons for it.

(4) The holder may within 14 days of being sent the notification make representations to the Minister about the proposal.

(5) The Minister shall consider such representations before making a decision to revoke or withdraw for a period the registration.

(6) Any decision of the Minister to revoke or withdraw for a period the registration takes effect 24 hours after notification in writing is sent to the holder.

(7) A notification under this regulation shall be addressed to the person concerned and sent or given in any of the following ways:

(a) by delivering it to the registered person; or

(b) by leaving it at the address at which the registered person ordinarily resides or carries on business; or

(c) by sending it by prepaid registered post to the registered person at any such address.

Prohibition on sale of first sale fish unless landed from a licensed sea-fishing boat

13. Any person who sells first sale fish which has been landed in Ireland otherwise than by a licensed sea-fishing boat is guilty of an offence.

Prohibition on purchase of first sale fish unless landed from a licensed fishing vessel

14. (1) Any person who buys first sale fish which has been landed otherwise than by a licensed sea-fishing boat is guilty of an offence.

(2) In any proceedings for an offence under paragraph (1), it shall be a defence for a person to show that-

(a) he did not know; and

(b) it was reasonable for him not to suspect,

that the fish had not been landed by a licensed sea-fishing boat.

SCHEDULE 1

CONDITIONS APPLICABLE TO REGISTRATIONS OF IRISH FISH SELLERS

1. The Minister shall be informed of any changes to the information contained in the application for registration within 28 days of the change occurring.
2. Sales notes shall be submitted in accordance with the provisions of Article 9 of Council Regulation (EEC) 2847/1993 as if references therein to fish buyers were references to Irish fish sellers registered in accordance with regulation 4. In accordance with Part A of Annex III, to Council Regulation (EC) No. 41/2007⁸ of 21 December 2006, processors or buyers of all pelagic fish landed shall submit a copy of the sales note or take-over declaration to the competent authority on demand but in any event no later than 48 hours after the completion of the weighing.
3. Without prejudice to the generality of condition 2,
 - (a) sales notes or take-over declarations shall be in the form set out in Schedule 3 or in such other form as the Minister may decide;
 - (b) sales notes or take-over declarations shall be submitted electronically to such secure internet address as may from time to time be notified in writing (including writing in electronic form) by the Department.

⁸Council Regulation (EC) No. 41/2007 of 21 December 2006 on fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required

SCHEDULE 2

Regulation 7.

CONDITIONS APPLICABLE TO REGISTRATIONS OF FISH BUYERS

1. The Minister shall be informed of any changes to the information contained in the application for registration within 28 days of the change occurring.
2. Sales notes shall be submitted in accordance with Article 9 of Council Regulation (EEC) No. 2897/1993 and with Article 22(2) of Council Regulation (EC) 2371/2002. In accordance with Part A of Annex III, to Council Regulation (EC) No. 41/2007 of 21 December 2006, processors or buyers of all pelagic fish landed shall submit a copy of the sales note or take-over declaration to the competent authority on demand but in any event no later than 48 hours after the completion of the weighing.
3. Without prejudice to the generality of condition 2,
 - (a) sales notes or take-over declarations in the form set out in Schedule 3 or in such other form as the Minister may decide shall be submitted prior to collection of the landed fish;
 - (b) sales notes or take-over declarations shall be submitted electronically to such secure internet address as may from time to time be notified in writing (including writing in electronic form) by the Department.

GIVEN under my hand,
29 May 2007

JOHN BROWNE
Minister for State at the Department of Communications,
Marine and Natural Resources

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations are made under sections 14 and 15 of the Sea-Fisheries and Maritime Jurisdiction Act 2006. The Regulations provide for the administration and enforcement of certain provisions of EC law, which impose requirements relating to the first marketing and purchasing of fish (first sale fish), namely, Article 9 of Council Regulation (EEC) No 2847/93 (O.J. NO. L 261, 20.10.93, p.1.), Article 22 of Council Regulation (EC) No 2371/2002, the "CFP Regulation", (O.J. No. L 358, 31.12.02, p.59) and Part A of Annex III of Council Regulation (EC) NO. 41/2007 (O.J. No. L15, 20.01.07, p.1). The Minister, in exercise of his powers under section 15 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 has prescribed measures in relation to sales of first sale fish from Irish sea-fishing boats outside Ireland.

The Regulations come into force on 1 June 2007.

The Regulations make provision for the registration by the Minister of sales of first sale fish by persons selling first sale fish from an Irish sea-fishing boat in a Member State other than Ireland (regulation 4) and registration of buyers of first sale fish (regulation 7).

Regulation 3 requires registered fish auction centres to maintain records of their sales of first sale fish. Regulation 5 requires Irish fish sellers to maintain records of their sales of first sale fish in a Member State other than Ireland and regulation 9 requires buyers of first sale fish to maintain records of their purchases of first sale fish.

By virtue of section 14(3) of the Sea-Fisheries and Maritime Jurisdiction Act 2006, any contravention of these Regulations is an offence. In particular, the Regulations provide offences in relation to the sale and purchase of first sale fish. By regulation 6, it is an offence to sell first sale fish landed, otherwise than to a registered auction seller, a registered fish buyer or a person for private consumption. By regulation 8 it is an offence to buy first sale fish contrary to Article 22(2)(b) of the CFP Regulation (requirement that buyers of first sale fish are registered) as read with the final sub-paragraph of that article 22(2), which provides an exception for fish bought for private consumption. By regulation 13 it is an offence to sell first sale fish landed otherwise than by a licensed fishing vessel. And by regulation 14 it is an offence to buy first sale fish unless the fish has been landed by a licensed fishing vessel.

Penalties for these offences are set out in the Sea-Fisheries and Maritime Jurisdiction Act 2006.

The Regulations may be enforced by sea-fisheries protection officers exercising their powers under the Sea-Fisheries and Maritime Jurisdiction Act 2006.

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DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
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€3.81

ISBN 1-4064-1836-6



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