

Explanatory Memorandum to The Fishery Products (Official Controls Charges) (Wales) Regulations 2007

This Explanatory Memorandum has been prepared by the Food Standards Agency Wales and is laid before the National Assembly for Wales

1. Description

The Fishery Products (Official Controls Charges) (Wales) Regulations 2006 provide powers for local food authorities to recover certain costs from the fishing industry in respect of official sampling, testing and inspections of direct landings of fish and certain fishery products. These landings are not required to pass through specified landing points in Wales. The objectives of such EU-wide controls are to monitor that such fish and fishery products comply with EU food hygiene rules and are fit for human consumption.

New rates for charging to pay towards the costs of these official controls will come into effect from 1 January 2008. The Fishery Products (Official Controls Charges) (Wales) Regulations 2007 will implement Article 27 of EC Regulation 882/2004 on Official Feed and Food Controls by applying the minimum rates specified in Annex IV, Chapter V. These relate to activities for which fees are already collected pursuant to Directive 85/73, which originally established a system of charging for various veterinary inspections and controls on certain animal products (including fishery products).

2. Matters of Special Interest to the Subordinate Legislation Committee

None.

3. Legislative Background

The powers enabling this Instrument to be made are contained in section 2(2) of the European Communities Act 1972. The Welsh Ministers, in exercise of the powers designated to the National Assembly for Wales by virtue of the European Communities (Designation) (No.2) Order 2005 (SI 2005/1971) and now vested in them by virtue of section 162 and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006, in relation to measures relating to food (including drink) including the primary production of food. This Instrument is subject to the negative resolution procedure.

4. Purpose and Intended Effect of the Legislation

The objective of the proposed regulations is to implement in the UK from 1 January 2008 those provisions of Council Regulation 882/2004 on Official Feed and Food Controls (the OFFC Regulation) that relate to the requirement to charge food business operators for official hygiene controls on direct landings of fish and fishery products according to the rates specified in Chapter V of Annex IV of the OFFC Regulation.

The key elements of this proposal are:

- i. to apply the rates in the OFFC Regulation for the collection of charges for direct landings in the UK of fish and fishery products from 1 January 2008;
- ii. to require charges relating to the controls applicable to the first sale of fish and fishery products in a fish market and the first placing on the market to be calculated

on the basis of the tonnage of fish and fishery products landed by fishermen per month (rather than per consignment as is the current practice). This requirement for aggregate landings does not apply to direct landings of specified pelagic fish and those fishery products entering a processing establishment;

- iii. to maintain the current maximum charging rate (50 Euro per consignment) for direct landings of specified pelagic fish; and
- iv. to amend the 'processing establishment charge' from 1 Euro per tonne to 0.5 Euro per tonne.

Existing charges regulations, the Fishery Products (Official Controls Charges) (Wales) Regulations 2006 (SI No.3344 (W.305)), require fees for official controls (including hygiene inspection and analyses) of fish and fishery products to be collected under Article 27 of the OFFC Regulation at the Community rates specified in Council Directive 85/73/EEC (as amended by Directive 2004/41/EC). This system of charging was introduced to require contributions towards the costs incurred by Local Food Authorities in carrying out official controls on directly landed fishery products. These direct landings of fishery products are not required to enter through controlled points of entry into the UK (via Border Inspection Posts) and are therefore not subject to hygiene checks at that stage.

A new framework for the financing of official feed and food controls (as set out in the OFFC Regulation) came into force on 1 January 2007. A transitional derogation in the OFFC Regulation has allowed for the retention of the rates in Directive 85/73 (as amended) until 31 December 2007. This derogation will expire on 1 January 2008 when the new charge rates for official controls for fishery products, set out in Chapter V, Annex IV of the OFFC Regulation, will apply.

Similarly, the OFFC Regulation will also require from this date that fees are calculated on the basis of the tonnage of fishery products directly landed by fishermen per month rather than per consignment, as in the current arrangements. As a result, landings of less than one tonne will now be included in the charging system. This requirement for aggregate landings does not apply to direct landings of specified pelagic fish or to fishery products directly entering a processing establishment.

The 'processing establishment charge' (applied to fish and fishery products entering processing establishments) will now decrease from 1 Euro per tonne to 0.5 Euro per tonne. It should be noted that the current practice of applying a 55% reducible element for fish that has been appropriately graded in processing establishments will no longer be applicable. However, in real terms this equates to a relatively small increase of 0.05 Euro per tonne. We would view this as having minimal impact.

Furthermore, fish markets, which are not required to pay official controls charges under the current Regulations, will now be included under the proposals to account for official hygiene controls carried out on fishery products sold at this point. The existing Regulations will therefore need to be revoked and replaced by a new SI, to which this RIA relates, to reflect these changes.

Fees for hygiene inspections on direct landings of fish and fishery products are to be calculated on the basis of the tonnages landed. The catching sector and fish markets will be charged for official controls on the basis of the tonnage of fishery products landed directly in the UK whilst operators of approved establishments processing fishery

products will be charged according to the throughput of fishery products entering these establishments. Please note that the draft regulations **do not** apply to landings of live bivalve molluscs such as mussels and cockles.

The current rates for charging have remained unchanged since 1998. The proposed increase in rates for fish hygiene charges from 1 January 2008 are relatively small and remain below the increase in inflation throughout this period. The rates have neither increased in-line with inflation, nor with the actual costs of implementation throughout this time.

5. Implementation

It is intended that these Regulations should come into force on 1 January 2008. Separate, parallel legislation is being made in England, Scotland and Northern Ireland with the same coming into force date.

6. Consultation

A formal consultation on the proposals with over 30 interested parties in Wales ended on 17 September 2007. No responses were received. In England, approximately 200 organisations were consulted on these proposals, including representatives of the fish and shellfish trade and industry, enforcement authorities and other non-government organisations. Five substantive responses were received, which were generally favourable with the proposals.

7. Regulatory Impact Assessment

7.1 Options

- i. **Option 1: Do nothing** – this would breach an EU obligation to apply the OFFC Regulation and leave the UK open to infraction proceedings by the Commission for failing to comply with the fish hygiene official controls charges requirements of the Regulation (which might have cost implications). It would also continue to widen the gap between the cost of controls and the charges for those controls.
- ii. **Option 2: Apply the charges prescribed in the OFFC Regulation** – this would ensure continuing compliance with EU law. It would partly offset the cost of exercising official controls. It should be noted that food business operators will continue to pay the lesser of the cost of carrying out the official controls or the specified new rates. There would be no social or environmental impacts (on businesses) associated with this option.
- iii. **Option 3: Apply a higher set of charges to seek full cost recovery for costs incurred by Local Food Authorities** - this would allow Local Food Authorities to recover the actual costs of conducting official controls. However, this would put UK food business operators at a disadvantage as compared with their competitors in the fishing industry in other Member States.

7.2 Sectors and Groups Affected

- i. The catching sector, fish markets and approved establishments processing fish and fishery products will be affected by the proposed changes in rates.

ii. Voluntary organisations and charities are unlikely to be affected by the charging provisions of the OFFC Regulation.

iii. No impacts on health, racial equality, social, animal welfare or environmental issues due to the proposals have been identified.

7.3 Benefits

i. **Option 1:** There are no benefits from Option 1 over and above those already of assistance to businesses (i.e. principally, that costs charged are lower than the actual costs of implementation).

ii. **Option 2:** Local authorities carrying out official control checks and hygiene inspections on direct landings of fishery products, at the point of first placing on the market and at the point of first sale in a fish market, will benefit from the regulations, which will enable a greater percentage of the actual cost of exercising these controls to be recovered from industry. At present a high percentage of the cost of exercising the controls is borne by the budgets of authorities in England and Wales, Scotland and Northern Ireland.

All businesses will pay either the lower of the specified legal minimum rates or according to the actual cost of the inspection.

iii. **Option 3:** Local authorities will be able to recover the full cost of carrying out the official controls on directly landed fish and fishery products. There are no benefits to industry in applying full cost recovery.

7.4 Costs

i. **Option 1:** There are no additional costs from Option 1 over and above those already incurred. There may be cost implications if the Commission decide to initiate infraction proceedings against the UK for failing to comply with EU legislation.

ii. **Option 2:** The catching sector and operators of establishments first placing fishery products on the market will be affected by the draft regulations. Based on the responses received during the consultation and the work of the FSA/industry working group (paragraph 7.3), the effect on the catching sector of applying the minimum rates specified in the regulations, for direct landings into the UK, is shown in the Table 1. This includes the breakdown of the charges across England and Wales, for which we were unable to separately apportion the cost to industry. Appendix 1 sets out the rates proposed under the draft Regulations whilst Appendices 2a and 2b illustrate where the charges will apply across the various sectors of the fishing industry.

The revenue raised from charges will still not fully reflect the cost of exercising hygiene inspections. However this shortfall will be lower than if the current charges are retained.

iii. **Option 3:** The catching sector, fish markets and operators of establishment's first placing fishery products on the market will be required to pay the full cost of an actual inspection. This would be anti-competitive and put the UK industry at a disadvantage as compared with their competitors in other Member States. Given the variety of inspections and the different costing structures in local authorities across the UK, we have not been able to estimate the impact of this option on industry.

7.5 Administrative Burdens

No new administrative burdens to business have been identified in these regulations. Under the proposed regulations, fish markets will need to provide written returns to their local authorities relating to the throughput of fish and fishery products. This information must already be provided by this sector under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2006 (SI No.1495 (W.145) and therefore no new administrative costs will be incurred.

7.6 Small Firms Impact Test

We do not believe that the proposed Regulations will disproportionately impact small businesses as the charging requirements do not apply to vessels directly landing less than 25 tonnes of fish per annum. This accounts for approximately 83% of vessels in England and Wales. During consultation, industry representatives confirmed this view. Similarly, land based businesses regarded as small, marginal and restricted, handling less than 25 tonnes per annum of fishery products, which are exempt from the requirements of Regulation 853/2004 will also fall outside the scope of the Regulations.

7.7 Competition Assessment

The Regulations apply to the catching sector and operators of approved establishments processing fishery products. All sectors will pay the lesser of actual inspections costs or throughput charges. With the exception of UK fish markets, the recommended Option 2 to apply the rates for official controls charges in the OFFC Regulation would tend to maintain the present proportions of businesses that pay fish hygiene charges and thus have a minimal effect on competition.

It can be stated that the new Regulation is unlikely to impose significant negative impact on competition across Wales, and when compared with other Member States. Our discussions with industry and stakeholders did not provide any information to the contrary in response to the public consultation.

7.8 Consultation

A formal consultation on the proposals with over 30 interested parties in Wales took place between 9 July and 17 September 2007. No responses were received from any of the interested bodies in Wales. In England, approximately 200 organisations were consulted on these proposals, including representatives of the fish and shellfish trade and industry, enforcement authorities and other non-government organisations. Five substantive responses were received, which were generally favourable with the proposals.

The FSA has also been consulting industry representatives through informal discussions on the proposed new rates since early 2006. More recently, a working group involving representatives from various sectors of the fishing industry was set up in January 2007 to progress work on the impact of the proposed draft Instrument. The work of the group has encouraged positive discussion and addressed issues relating to the practical implementation of Article 27 of the Regulation 882/2004. It is with the assistance of members of this group that we have been able to assimilate data to calculate the figures used in Table 1

7.9 Implementation and Review

The Agency will implement the proposal in Wales in accordance with usual procedures. This includes ensuring the food business operators are alerted to the new minimum rates that may affect them.

7.10 Summary

The proposed regulations would ensure compliance with the OFFC Regulation with regards to the fish hygiene official controls charges.

Table 1: Official Controls Charges for Fish and Fishery Products on Catching Sector in England and Wales – present and proposed* (Option 2)

2006 Data	England and Wales
Total landings (000s tonnes) (A)	73
% UK landings (B)	19
Total number of businesses affected (vessels landing > 25T per annum) (C)	624
Current annual impact across industry (total landings charges) (£s to the nearest hundred) (D)	33,000
Proposed annual impact across industry (total landings charges) (£s to the nearest hundred) (E)	38,000 [60,000]*
Change in annual impact across industry (£s to nearest hundred) (F)	5,000 [27,000]*
Current annual impact: average charge per business (£s) (G)	53
Proposed annual impact: average charge per business (£s) (H)	61 [96]*
Change in annual impact: average per business (£s) (I)	8 [43]*

*[Figures in square brackets represent impact of full compliance; the other figure in those cells provides a more accurate impact assessment according to the current level of compliance.]

Basis of calculations

A, B and C = 2006 fish landings data, UK Sea Fisheries Statistics 2005, Marine Fisheries Agency (MFA)

D = Seafish Industry Authority; Consideration of the impact of the new EU minimum hygiene inspection charges for fishery products and of the operation of border inspection posts

E = Seafish Industry Authority: Estimate provided during consultation

$$F = E - D$$

$$G = D / C$$

$$H = E / C$$

$$I = H - G$$

Industry representatives were also able to provide estimates during the consultation relating to the impact on individual vessels. Although the relative impact of the new rates appears to vary significantly according to the size of the vessel, stakeholders agree that the total financial impact on industry is unlikely to be significant for the large majority of fishing vessels, and industry in general.

The table above does not include the impact to landings of specified pelagic fish, the rates for which remain unchanged (paragraph 4). Similarly it also does not include the impact to processing establishments or to fish markets as we have not been able to obtain this information. Furthermore, given the variability of the throughput it was not possible for us to produce a representative figure. However, stakeholders have confirmed that the likely impact to these sectors is considered to be minimal.

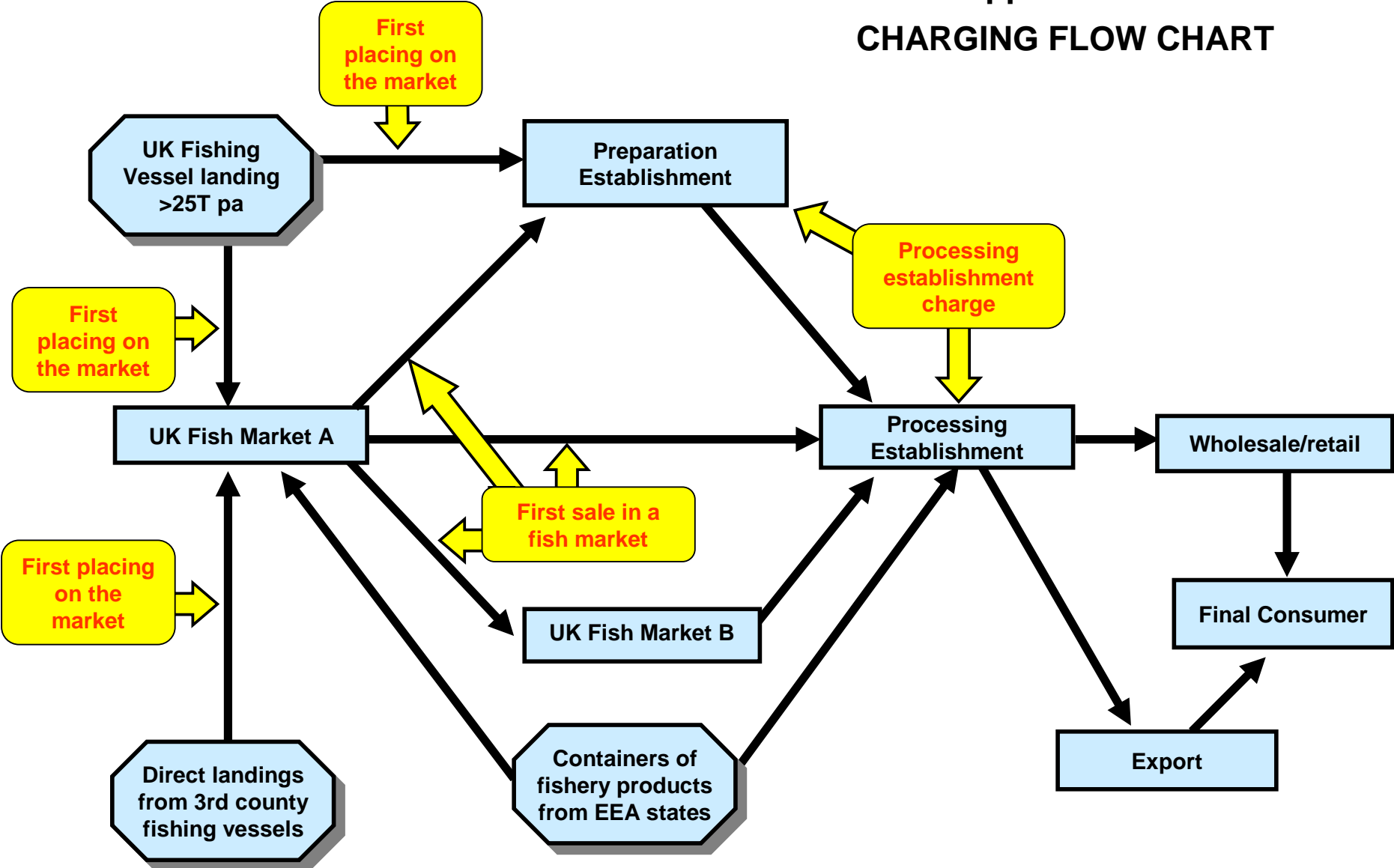
The revenue raised from charges will still not fully reflect the cost of exercising hygiene inspections. However this shortfall will be lower than if the current charges are retained. The responses received from industry and stakeholders agree that contributions closer to full cost recovery will be possible for businesses handling higher throughputs of fish. Option 2 was considered by stakeholders to be the most favourable.

FISH HYGIENE CHARGING RATES

	Current Actual Rate	Sterling equivalent	Proposed 2008 Rate	Sterling equivalent*
Sector/Activity				
First placing on the market (per tonne)	€1/T for first 50T €0.5/T >50T	£0.67/T £0.34/T	€1/T for first 50T per month €0.5/T >50T	
First sale in a fish market (per tonne)	n/a		€0.5/T for first 50T per month €0.25/T >50T	
Processing establishment charge (per tonne)	€1/T	£0.67/T	€0.5/T	
Pelagic landings (max/consignment)	€50	£33.5	€50	
¹ Reducible element (%)	55%		[see note 1]	
(per tonne)	€0.45/T for first 50T €0.225/T >50T	£0.3/T £0.15/T	[see note 1] [see note 1]	
* Official EU rate not yet readily available				

Note 1: The reducible element for relevant landed fishery products which have been suitably graded or grouped together as in the current Statutory Instrument will no longer apply. Under the proposed Regulations, the reduction is replaced by the requirement that the charge for the first sale in a fish market of relevant landed fishery products will be doubled where these activities are not carried out.

Appendix 2a
CHARGING FLOW CHART



Appendix 2b

CHARGING BANDS APPLICABLE UNDER THE DRAFT UK FISHERY PRODUCTS (OFFICIAL CONTROLS CHARGES) REGULATIONS 2007

ACTIVITY	CHARGE APPLICABLE
Exports Landings in other Member States, EEA (Norway, Faeroes and Iceland) and Greenland	Not applicable in the UK
UK fishing vessels landing >25 tonne per annum 3 rd country vessels landing direct to UK Member State vessels direct to UK Aquaculture	First placing on the market (charge)
First sale in a fish market	First sale in a fish market (charge)
Fish preparation and processing Aquaculture	Processing establishment (charge)
Second sale on fish market Wholesale/retail	No charge applicable in UK