

## EUROPEAN COMMUNITIES (TRADE IN FISH) REGULATIONS 1997

I, Seán Barrett, Minister for the Marine, in exercise of the powers conferred on me by Section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive 89/662/EEC(1) of 11 December 1989 and Council Directive 90/425/EEC(2) of 26 June 1990, insofar as fish and fishery products are concerned, hereby make the following Regulations:

(1)O.J. No. L395 of 30.12.1989, p.13

(2)O.J. No. L224 of 18.8.1990, p.29

### REG 1

1 Citation and commencement:

1. (1) These Regulations may be cited as the European Communities (Trade in Fish) Regulations, 1997.

(2) These Regulations shall come into operation on the 7th day of May, 1997.

### REG 2

Application:

2. These Regulations apply to

( a ) the importation into the State from another Member State of fish other than fish to which the European Communities (Importation of Fish from Third Countries) Regulations, 1997 (S.I. No. 192 of 1997), apply which originated in a third country and in relation to which all the checks provided for in Council Directive No.

90/675/EEC(3) of 10 December, 1990 or, as the case maybe, Council Directive No. 91/496/EEC(4) of 15 July, 1991 have not been carried out, and

(3)O.J. No. L373 of 31.12.1990. P.1

(4)O.J. No. L268 of 24.9.1991, p.56

( b ) the exportation from the State to another Member State of fish,

and "importation" and "exportation" and cognate words shall be construed accordingly.

### REG 3

Interpretation:

3. (1) In these Regulations

"authorised officer" means a person who, for the time being, stands appointed under Regulation 6;

"Council Directive 89/662" means Council Directive No. 89/662/EEC of 11 December 1989;

"Council Directive 91/496" means Council Directive No. 91/496/EEC of 15 July 1991;

"Council Directive 90/425" means Council Directive No. 90/425/EEC of 26 June 1990;

"fish" means fish, live bivalve molluscs, aquaculture animals and products, and fishery products and waste of fish and fishery products, to which Council Directive 89/662/EEC or Council Directive 90/425/EEC applies;

"Member State" means a Member State of the European Community;

" the Minister" means the Minister for the Marine

"third country" means a country which is not a Member State;

"veterinary legislation of the European Community" means the Directives of the European Community specified in the Schedule.

(2) In these Regulations

( a ) a reference to a Regulation or the Schedule is to a Regulation of or the Schedule to these Regulations, unless it appears that reference to some other provision is intended,

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

( c ) a reference to a Directive of the European Community is a reference to that Directive as amended before the making of these Regulations.

(3) A word or expression that is used in these Regulations and is also used in Council Directive 89/662 or Council Directive 90/425 has, unless the contrary intention appears, the meaning in these Regulations that it has in Council Directive 89/662 or, as the case may be, Council Directive 90/425.

#### REG 4

Restrictions on importation and exportation:

4. (1) A person shall not at any time import or export or attempt to import or export fish, unless, at that time, its importation or exportation is or would be in compliance with the veterinary legislation of the European Community.

(2) A person shall not export or attempt to export fish unless such exportation is or would be in compliance with any requirements of the Member State of destination other than those specified in the veterinary legislation of the European Community.

(3) A person shall not at any time import or attempt to import fish unless, at that time, the importation is or would be in compliance with the laws of the State.

(4) A person who intends to import fish shall give notice of such importation in writing to the Secretary, Department of the Marine, Dublin 2, at least 24 hours before the time of such importation and shall specify in such notice the quantity or number, the type or species, country of origin and estimated date and time of arrival of the fish.

#### REG 5

Register of dealers/consignees in imported fish:

5. (1) The Minister shall establish and maintain a register (referred to subsequently in this Regulation as "the register") of persons who have been approved by him as dealers in imported fish or as persons who may accept delivery as consignees of imported fish.

(2) An application for registration in the register shall be made in such form as the Minister may specify.

(3) A person applying for registration in the register shall furnish the Minister with such information as he may reasonably require for the purposes of his functions under these Regulations.

(4) The register may be established and maintained in a form that is not legible if it is capable of being converted into a legible form.

(5) A certificate purporting to be signed by a person authorised by the Minister in that behalf and to certify that on a specified day or days or during the whole of a specified period a particular person did not stand registered in the register or that on a specified day his registration had been revoked shall, without proof of the signature of the person purporting to sign the certificate or that he was so authorised by the Minister, be evidence, unless the contrary is shown, of the matters stated in the certificate.

(6) Subject to paragraph (11), a person shall not deal in, or accept delivery as consignee, of imported fish unless he is for the time being registered in the register.

(7) The Minister may, if he is not satisfied that the provisions of these Regulations or of the veterinary legislation of the European Community are being complied with by a person registered in the register or will be complied with by an applicant for such registration, revoke the registration or refuse to register the person in the register.

(8) Where the Minister proposes to revoke a registration, or to refuse to register a person, in the register, he shall

( a ) notify the person concerned in writing of the proposal and of the reasons therefor,

( b ) notify the person in writing that he, or a person acting on his behalf, may make representations to the Minister in relation to the proposal within 14 days of the receipt by him of the notification, and

( c ) consider any such representations duly made before deciding whether to proceed with the proposal or not.

(9) ( a ) A person who is or has been registered in the register shall keep, for a period of three years following the date of the importation by him of any fish

(i) a record of the country of origin and the date of importation of the fish,

(ii) a record of the quantity or number and type or species, and

(iii) a record of the name and address of any person to whom the fish has been given, whether following a sale or in any other circumstances.

( b ) The Minister may specify the forms of records for the purposes of subparagraph (a) and, if he does so, records under that subparagraph shall be in the forms so specified.

(10) The person who first accepts delivery of imported fish shall keep for a period of three years following the date of importation of the fish or fishery products all health certificates or other documents which accompanied the product pursuant to the veterinary legislation of the European Community unless such certificates or other documents have been taken up by an authorised officer under Regulation 7.

(11) Paragraph (6) shall not apply to a person who imports fish for his own personal or domestic consumption.

## REG 6

### Appointment of Authorised Officers:

6. (1) The Minister may appoint such and so many persons as he thinks fit to be authorised officers for the purposes of these Regulations.
- (2) An authorised officer, when exercising any power conferred on him by these Regulations, shall, if so requested by any person affected produce evidence in writing of his appointment as an authorised officer or inspector.
- (3) A member of the Garda Síochána, or an officer of Customs and Excise, not in uniform, when exercising any such power, shall, if so requested by any person affected, produce evidence in writing that he is such a member or officer.

## REG 7

### Powers of Authorised Officers:

7. (1) An authorised officer, member of the Garda Síochána or officer of Customs and Excise may, for the purposes of these Regulations, Council Directive 89/662 and Council Directive 90/425 -
- ( a ) at all reasonable times, enter any premises or place, and any vehicle, wagon, vessel, aircraft or other means of transport (other than a premises, place, or means of transport, consisting of a dwelling or other than so much thereof as consists of a dwelling) where he reasonably suspects that there are or have been fish intended for export or which is being or has been imported,
- ( b ) there examine and inspect any live fish and carry out a clinical inspection of the fish,
- ( c ) take, without payment of compensation, such samples of any fish or of any article, substance or liquid at the premises or place or on or in the means of transport as he may reasonably require for the purposes of his functions under these Regulations, Council Directive 89/662 or Council Directive 90/425 and carry out or have carried out on the samples such analyses, examinations, checks and inspections as he considers necessary or expedient for the purposes of such functions,
- ( d ) there or at any other place, carry out or have carried out such examinations, checks and inspections of the premises, place or means of transport and any equipment, machinery or plant and any other article, substance or liquid found there as he reasonably considers necessary or expedient for the purposes of such functions,
- ( e ) require any person at the premises or place or on or in the means of transport and the owner or person in charge thereof and any person employed in connection therewith to give to him such information and to produce to him such books, certificates, documents and other records within the power or procurement of the person as he may reasonably require for the purposes of such functions,
- ( f ) examine and take copies of, or of extracts from, any such records as aforesaid,
- ( g ) require the production of, take up and retain, where required for the purposes of such functions, any health certificates or other documents which have accompanied or are accompanying fish pursuant to the veterinary legislation of the European Community and

are within the power or procurement of a person referred to in subparagraph (e),

- ( h ) seize and detain any fish found there
- (i) which he reasonably believes to be intended for exportation or is being or has been imported and which he reasonably believes does not comply with the requirements of the veterinary legislation of the European Community, or
- (ii) where requirements in relation to the exportation or importation of the product are not laid down by the said legislation

(I) if he reasonably believes that the fish is intended for export and that it does not comply with the requirements of the Member State of destination in relation to importation into that Member State,

(II) if he reasonably believes that the fish is or has been imported and that it does not comply with the requirements of the State in relation to importation into the State,

- (i) seize and detain anything found there which he reasonably believes to be evidence of an offence under these Regulations.

(2) A person shall not, in purported compliance with a requirements under paragraph (1)(e), give information to an authorised officer, member of the Garda Síochána or officer of Customs and Excise that he knows to be false or misleading in a material respect.

(3) A person shall not obstruct or impede an authorised officer, member of the Garda Síochána or officer of Customs and Excise in the due exercise of any of the functions of the officer or member under these Regulations.

## REG 8

### Issue of Search Warrant:

8. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer, member of the Garda Síochána or officer of Customs and Excise that there is reasonable cause for suspecting that

- ( a ) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found in, on or under any land or premises or in or on any vehicle,
- ( b ) there is or was or is intended to be in, on or under any land or premises or in or on any vehicle any which in relation to which a contravention of these Regulations is being or has been or is intended to be committed, or
- ( c ) a document directly or indirectly relating to, or connected with, a transaction or dealing which was, or an intended transaction or dealing which would if carried out be, an offence under these Regulations, is in the possession or under the control of a person in, on or under any land or premises or in or on any vehicle, and that such land, premises or vehicle or any part thereof consists of a dwelling,

such judge may issue a search warrant under this Regulation.

(2) A search warrant issued under this Regulation shall be expressed and operate to authorise a named authorised officer, a named member of the Garda Síochána or a named officer of Customs and Excise, accompanied by such authorised officers, members of the Garda Síochána and officers of Customs and Excise as the named officer or member thinks necessary, at any time or times within one month from

the date of the issue of the warrant, on production if so requested of the warrant, to enter (if necessary by force) the land, premises or vehicle named in the warrant.

(3) Where any premises, land or vehicle is entered pursuant to a warrant issued under this Regulation, an authorised officer, a member of the Garda Síochána or an officer of Customs and Excise so entering may

( a ) stop and detain any person found in, on or under such land or premises, or in or on such vehicle, for the purpose of searching that person and may search the person or cause him to be searched, and

( b ) exercise all or any of the powers specified in Regulation 7.

## REG 9

Detention of fish:

9. Fish may be detained by or at the direction of an authorised officer pursuant to paragraph (1)(h) of Regulation 7 pending the outcome of any criminal proceedings which may be instituted in relation to the fish concerned, or

( a ) in the case of fish intended for export, until such time as the authorised officer is satisfied either that the fish will not be exported or that it will be exported in accordance with these Regulations,

( b ) in the case of fish which is being imported, until such time as a notice has been served on the importer or person in control for the time being of the fish pursuant to Regulation 10 or until he is satisfied that the fish is being or has been imported in compliance with the requirements of the veterinary legislation of the European Community or the provisions for the time being in force in the State in respect of the importation of the fish, as the case may be.

## REG 10

Issue of Notice on suspicion of disease and appeal of Notice:

10. (1) Where an authorised officer is of opinion that there is present in any fish which has been or is being imported an agent responsible for a disease referred to in Council Directive No. 82/894/EEC(5) of 21 December 1982, a zoonosis or other disease or phenomenon, likely to present a serious threat to fish, animal or human health, or that the fish comes from a region contaminated by an epizootic disease, he shall serve or cause to be served on the importer or any person who is or who appears to the officer to be for the time being in control of the fish a notice stating that opinion and directing officer to be for the time being in control of the fish a notice stating that opinion and directing -  
(5)O.J. No. L378 of 31.12.1982, p. 58.

( a ) in the case of live fish, that the fish be -

(i) moved to and kept in such place as the officer shall specify in the notice, or

(ii) destroyed in such manner and at such place as the officer shall specify in the notice,

( b ) in the case of other fish, that the fish be -

(i) destroyed in such manner and at such place as the officer shall specify in the notice, or

(ii) used or disposed of in such other manner as the officer shall specify in the notice.

(2) Without prejudice to paragraph (1), where, in relation to fish which has been or is being imported, an authorised officer is of opinion that the fish does not comply with the provisions of Article 3 of Council Directive 89/662 or, as may be appropriate. Article 3 of Council Directive 90/425, he shall serve or cause to be served on a person who is the importer or is or appears to such officer to be in control for the time being of the fish, after consultation with the person, a notice stating that opinion and

( a ) requiring, where public or fish health considerations so permit at the option of the importer or person aforesaid, that the fish be dealt with in accordance with the provisions of Article 7(1)(b) of Council Directive 89/662 or, as may be appropriate. Article 8(1)(b) of Council Directive 90/425, and

( b ) stating that, within 5 days of the service of the notice, an appeal may be made to the District Court in accordance with paragraph (7).

(3) A requirement specified in a notice under paragraph (1) or (2) may specify a time limit within which it is to be complied with.

(4) A requirement specified in a notice under paragraph (1) or (2) (in this paragraph referred to as "the earlier notice") may be modified or withdrawn by a further such notice and in that event the earlier notice shall have effect subject to such modification or withdrawal.

(5) A notice under paragraph (1) or (2) may require the importer or, as the case may be, the person for the time being in charge of the fish concerned to choose between two or more of the requirements specified in the notice.

(6) A notice under paragraph (1) or (2) may be served on a person by delivering it by hand to the person or by sending it by prepaid registered post to or by leaving it at his last known place of abode or business.

(7) ( a ) A person may, within 5 days of the service on him of a notice under paragraph (2), appeal against the notice to the judge of the District Court assigned to the District Court district in which the fish concerned is being kept or where the person ordinarily resides or carries on business.

(b) Notice of an appeal under subparagraph (a)

(i) shall be given to the authorised officer concerned by serving it on him personally, or by leaving it at the place and in the manner specified in the notice under paragraph (2), at least 48 hours prior to the hearing of the appeal, and

(ii) shall contain a statement of the grounds upon which it is alleged that the notice under paragraph (2) or any of the terms thereof are not justified.

( c ) A copy of a notice under subparagraph (b) shall be lodged with the District Court clerk for the District Court area in which the appeal concerned falls to be heard and shall be served on the Minister, in the manner specified in the relevant notice under paragraph (2), at least 48 hours prior to the hearing of the appeal.

( d ) The Minister and the authorised officer concerned shall, as well as the appellant, be entitled to be heard and to adduce evidence at the hearing of an appeal under this paragraph.

(8) On the hearing of an appeal under paragraph (7), a judge of the District Court may, at his discretion, confirm, with or without modification, or annul, the notice under paragraph (2) concerned.

(9) ( a ) Where a notice under paragraph (2) (including such a notice confirmed with or without modification under paragraph (8)) has not been complied with, an authorised officer may, without payment of compensation, at any time seize and destroy or otherwise dispose of the fish concerned, or cause the fish to be destroyed or otherwise disposed of, at such premises or place as he considers appropriate in the circumstances of the case.

( b ) Where an authorised officer has reason for believing that such a notice as aforesaid will not be complied with, the officer may, without payment of compensation, seize and destroy or otherwise dispose of the fish concerned, or cause it to be seized or otherwise destroyed, at such premises or place as he considers appropriate in the circumstances of the case.

( c ) Any monies arising out of the disposal of fish pursuant to subparagraph (a) or (b) shall be paid to the owner of the fish after deducting any expenses reasonably incurred in connection with the disposal.

(10) ( a ) No person shall deal with fish the subject of a notice under paragraph (1) or (2) otherwise than in accordance with the notice.

( b ) In the event of an appeal under paragraph (7), no person shall deal with the fish concerned pending the determination of the appeal otherwise than in accordance with such directions (if any) as may be given in writing to the appellant by an authorised officer.

( c ) Where, on the hearing of an appeal under paragraph (7), the terms of a notice under paragraph (2) are confirmed, with or without modification, no person shall deal with the fish concerned otherwise than in accordance with the notice as so confirmed.

## REG 11

### Recovery of cost of detention and disposal:

11. The cost of the detention and disposal by or on behalf of the Minister of fish under these Regulations may be recovered by the Minister from the person who was the owner of the product at the time of the disposal as a simple contract debt in any court of competent jurisdiction.

## REG 12

### Failure to comply with Regulations:

12. (1) A person who contravenes a provision of these Regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both.

(2) An offence under these Regulations may be prosecuted by the Minister.

(3) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent



or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence.

## **SCHEDULE**

Regulation 3 (1)

### **1. VETERINARY LEGISLATION**

1. Council Directive 90/667/EEC of 27 November 1990 (6)  
(6) O.J. No. L363 of 27/12/90, p51
2. Council Directive 91/492/EEC of 15 January 1991 (7)  
(7) O.J. No. L46 of 19/1/91, p1
3. Council Directive 91/67/EEC of 28 January 1991 (8)  
(8) O.J. No. L268 of 24/9/91, p1
4. Council Directive 91/493/EEC of 22 July 1991 (9)  
(9) O.J. No. L268 of 24/9/91. p15
5. Council Directive 92/65/EEC of 13 July 1992 (10)  
(10) O.J. No. L268 of 14/9/92, p54
6. Council Directive 92/118/EEC of 17 December 1992 (11)  
(11) O.J. No. L62 of 15/3/93, p49
7. Council Directive 93/53/EEC of 24 June 1993 (12)  
(12) O.J. No. L175 of 19/07/93, p34
8. Council Directive 93/54/EEC of 24 June, 1993, (13)  
(13) O.J. No. L175 of 19/07/93, p23
9. Council Directive 95/22/EEC of 22 June 1995 . (14)  
(14) O.J. No. L243 of 11/10/95 p

GIVEN under my Official Seal, this 7th day of May, 1997

Seán Barrett T.D.,

Minister for the Marine.

### **EXPLANATORY NOTE**

These Regulations implement (i) Council Directive 89/662/EEC of 11 December, 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market and (ii) Council Directive 90/425/EEC of 26 June, 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market.

They also provide for (a) the application of the requirements of the veterinary and zootechnical legislation of the European Community to trade with other EC Member States of fishery products; (b) the registration of consignees and other persons involved in trade with other EC Member States; (c) approval of authorised officers to implement and enforce the Regulations and (d) the prosecution of offences.