

European Communities (common organisation of markets in fishery and aquaculture products)(financial compensation for withdrawal and carry-over aid) Regulations 2004

I, DERMOT AHERN, Minister for Communications, Marine and Natural Resources 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 Regulation (EC) No. 104/2000 of 17 December 1999(1), Commission Regulation (EC) No. 2814/2000 of 21 December 2000(2), Commission Regulation No. 2351/2002 of 20 December 2002(3) and Commission Regulation (EC) No. 428/2004(4) of 4 March 2004, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Common Organisation of Markets in Fishery and Aquaculture Products)(Financial Compensation for Withdrawal and Carry-over Aid) Regulations 2004.

Interpretation

2. In these Regulations

authorised officer means

- (i) a sea fisheries protection officer or an internal auditor, or
- (ii) a person appointed under Regulation 4 (3) (a) of these Regulations to be an authorised officer for the purposes of these Regulations;

Council Regulation means Council Regulation (EC) No. 104/2000 of 17 December 1999;

Commission Regulations means Commission Regulation (EC) No. 2814/2000 of 20 December 2000, Commission Regulation (EC) No. 2351/2002 of 20 December 2002, and Commission Regulation (EC) No. 428/2004 of 4 March 2004;

Minister means Minister for Communications, Marine and Natural Resources;

producers organisation means a producer organisation in the fishing or aquaculture industry;

sea fisheries protection officer means an officer of the Minister authorised by the Minister as a sea fisheries protection officer for the purposes of the Fisheries Acts 1959 to 2003 and these Regulations;

internal auditor means an officer of the Internal Audit Unit of the Department of Communications, Marine and Natural Resources;

transaction to which these Regulations apply means any transaction referred to in the Council Regulation or the Commission Regulations.

(1) O.J. L17 21.1.2000, p. 22

(2) O.J. L326 22.12.00, p. 34

(3) O.J. L 351 28.12.02, p. 27

(4) O J. L 70 9.3.04, p. 27

Obligations in relation to certain records

3. (1) Every person who, on his or her own behalf or on behalf of any other person, carries out in whole or in part in the State any transaction to which these Regulations apply shall keep in the State all records relating to each such transaction for the purposes of enabling an authorised officer to carry out a scrutiny of the particulars of the transaction in order to establish if the transaction has been carried out and executed correctly.

(2) Records kept pursuant to paragraph (1) of this Regulation shall be retained by the person required to keep them for a period of at least three years, starting from the end of the year in which they were drawn up.

(3) A person shall not for the purpose of or in connection with any transaction to which these Regulations apply produce, make, furnish, give, send or otherwise make use of, any incorrect or false record, statement or information.

(4) (a) A person who contravenes paragraph (1) or (2) or (3) of this Regulation is guilty of an offence.

(b) It is a defence for a person charged with contravention of paragraph (3) of this Regulation to show that he or she was not aware that the record, statement or information was incorrect or false.

(5) This Regulation does not apply to primary producers who are not in direct receipt of payments or who are not liable for charges within the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

Powers and appointment of authorised officers

4. (1) An authorised officer may, for the purpose of carrying out a scrutiny under these Regulations

(a) require any person referred to in Regulation 3 (1) to indicate to him or her the address of the premises or place in the State in which any record relating to a transaction to which these Regulations apply is kept and to indicate to him or her the address of the premises of any third party directly or indirectly connected with such a transaction,

(b) at all reasonable times enter any premises or place where he or she has reasonable grounds for believing that any record relating to such a transaction is kept or where such a transaction is carried out and executed or anything is done in connection with such a transaction either by any person referred to in subparagraph (a) of this paragraph or by any third party directly or indirectly connected with such a transaction,

(c) require any person referred to in subparagraph (a) of this paragraph or any person who is, or appears to him or her to be for the time being, in charge of the premises or place to produce any record relating to such a transaction and to give to him or her such information or assistance as he or she may reasonably require,

(d) examine and take copies of or extracts from any such record,

(e) seize and carry away any such record and retain it for such period as may be reasonable,

(f) verify the accuracy of any entry in any such record by comparison with the quantity of fishery or aquaculture products in stock.

(2) A person who fails to comply with a requirement under paragraph (1) (a) or (1) (c) of this Regulation, or who obstructs or interferes with an authorised officer when exercising a power conferred by this Regulation, is guilty of an offence.

(3) (a) The Minister may appoint such and so many of his or her officers, or officers of another Minister of the Government, or such other persons as he or she thinks fit, to be authorised officers for the purposes of these Regulations.

(b) Every authorised officer appointed under paragraph (3) (a) of this Regulation shall be furnished with a warrant of his or her appointment as an authorised officer and when exercising any power conferred on him or her by these Regulations shall, if requested by a person affected, produce the warrant or a copy thereof to that person.

(4) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising any powers conferred on him or her by these Regulations.

(5) Officials of the Commission of the European Communities are entitled to inspect all documents prepared either with a view to or following a scrutiny conducted pursuant to these Regulations. For the purposes of this Regulation documents include data stored in data processing systems.

Offences by bodies corporate and other bodies

5. Where an offence under these Regulations is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been 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, member of the committee of management or other controlling authority of any such body, or being any other similar officer of any such body, that person is guilty of an offence and is liable to be proceeded against as if he or she were guilty of the first-mentioned offence.

Penalties and Proceedings

6. (1) A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or both.

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

GIVEN under my Official Seal,

24 June 2004

L. S. DERMOT AHERN

Minister for 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 deal with the keeping by producers organisations and official scrutiny of records required in relation to transactions subject to financial compensation for withdrawal or carry-over aid under the EU Common Organisation of the Markets in Fishery and Aquaculture ml>