

Statutory Instrument 1992 No. 3163

The Food Safety (Fishery Products) Regulations 1992

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STATUTORY INSTRUMENTS

1992 No. 3163

FOOD FOOD SAFETY

The Food Safety (Fishery Products) Regulations 1992

Made 11th December 1992

Laid before Parliament 11th December 1992

Coming into force in accordance with regulation 1

for certain purposes 1st January
1993

for all other purposes 15th January
1993

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales, acting jointly in relation to England and Wales, and the Secretary of State for Scotland in relation to Scotland, in exercise of the powers conferred upon them by sections 6(4), 16(1), 17(1), 26(3), 48(1) and 49(2) of, and paragraphs 2, 5(1) and (2), 6(1) and 7(1) of Schedule 1 to of the Food Safety Act 1990⁽¹⁾ and all other powers enabling them

in that behalf, after consultation in accordance with section 48(4) of that Act with such organisations as appear to them to be representative of interests likely to be substantially affected, hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Food Safety (Fishery Products) Regulations 1992 and shall come into force—

- (a) for the purposes of regulation 9(2) to (8) and 10, and so much of regulation 9(1) as provides conditions for the approval of vessels or establishments, on 1st January 1993;
- (b) for all other purposes, on 15th January 1993.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires "the Act" means the Food Safety Act 1990;

"aquaculture products" means—

- (a) all fishery products born or raised in controlled conditions until placed on the market as a foodstuff, and
- (b) all seawater fish, freshwater fish or crustaceans caught in their natural environment when juvenile and kept until they reach the desired commercial size for human consumption, other than fish or crustaceans of commercial size caught in their natural environment and kept alive to be sold at a later date, if they are merely kept alive without any attempt being made to increase their size or weight;

"batch" means a quantity of fishery products obtained under practically identical circumstances;

"chilling" means the process of cooling fishery products to a temperature approaching that of melting ice;

"clean seawater" means seawater or briny water which is free from any microbiological contamination, harmful substances or toxic marine plankton in such quantities as may affect the health quality of fishery products, and which is used under the conditions laid down in these Regulations;

"consignment" means a quantity of fishery products bound for one or more customers in the country of destination and conveyed at any one time by a single means of transport;

"the Council Directive" means Council Directive 91/493/EEC^[2] of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products;

"derogation" means a derogation under either the Food Safety (Fishery Products) (Derogation) Regulations 1992^[3] or the Food Safety (Fishery Products on Fishing Vessels) Regulations 1992^[4];

"drinking water" means water within the meaning of Council Directive 80/778/EEC^[5] (quality of water intended for human consumption);

"establishment" means any premises where fishery products are prepared, processed, chilled, frozen, packaged or stored, including auction or wholesale markets where any such preparation or processing of fishery products takes place but not such auction or wholesale markets where only display and sale by wholesale takes place;

"factory vessel" means any vessel on which fishery products undergo one or more of the following operations followed by packaging, namely, filleting, slicing, skinning, mincing, freezing or processing but does not include a fishing vessel in which only shrimps and molluscs are cooked on board or a fishing vessel on board which only freezing is carried out;

"final consumer" means a person who buys fishery products—

- (a) for his own consumption or consumption by his partner, family or other person in a solely domestic context;
- (b) for direct transport to, and consumption on, premises either in his

ownership or under his personal supervision or in the ownership or under the personal supervision of a person employed by him; or

(c) for cooking on premises either in his ownership or under his personal supervision or in the ownership or under the personal supervision of a person employed by him for sale as take-away food for consumption off those premises;

"fishery products" means all seawater or freshwater animals or parts thereof, including their roes but excluding aquatic mammals, frogs and aquatic animals covered by Community Acts other than the Council Directive;

"the Fishing Vessel Directive" means Council Directive 92/48/EEC^[6] of 16th June 1992 laying down minimum hygiene rules applicable to fishery products caught on board certain vessels in accordance with Article 3(1)(a)(i) of the Council Directive;

"food authority" means an authority specified in regulation 19 as an authority which is to enforce and execute these Regulations;

"fresh products" means any fishery products, whether whole or prepared, including products packaged under vacuum or in a modified atmosphere, which have not undergone any treatment to ensure preservation other than chilling;

"frozen products" means fishery products which have undergone a freezing process;

"means of transport" means those parts of road or rail vehicles, aircraft or ships, including containers and trailers used in conjunction with any such transport, constructed or adapted for the transport of goods;

"packaging" means the procedure of protecting fishery products by a wrapper, a container or any other suitable means;

"placing on the market" means, in relation to fishery products for human consumption, the holding for sale, exposing for sale, displaying for sale, offering for sale, selling, consigning, delivering or any other associate~ ~d activity of marketing but not either a sale to a final consumer or a sale by a fisherman of a small quantity within a local market in the circumstances specified in regulation 14;

"prepared product" means any fishery product which has undergone an operation affecting its anatomical wholeness such as gutting, heading, slicing, filleting or chopping;

"preserving" means the process whereby fishery products are packaged in hermetically sealed containers and subjected to heat treatment to the extent that any micro-organisms that might proliferate are destroyed or inactivated, irrespective of the temperature at which the product is to be stored;

"processed product" means any product comprising not less than 10% by weight of fishery product, which has undergone a chemical or physical process, such as the heating, smoking, salting, dehydration or marinating of chilled or frozen products, whether or not associated with other foodstuffs, or a combination of these processes;

"the Commission" means the Commission of the European Communities.

(2) In these Regulations, unless the context otherwise requires—

(a) a reference to a numbered regulation or Schedule is a reference to the regulation in or Schedule to these Regulations which bears that number;

(b) a reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation which bears that number;

(c) a reference to a numbered Schedule is to the Schedule to these Regulations which bears that number.

(3) In the Schedules to these Regulations—

- (a) a reference to the Annex is a reference to the Annex in the Council Directive; and
- (b) a reference to a numbered Chapter is a reference to the Chapter which bears that number in the Annex.

Placing fishery products on the market

3. No person shall place on the market any fishery products caught in their natural environment which do not meet the following requirements—

- (a) that they have been caught, and any operations to bleed, head, gut or remove fins, chill or freeze the products have been carried out in accordance with the requirements of the Fishing Vessel Directive;
- (b) if they have been handled in a factory vessel, that the vessel, if registered in a member State of the European Community, is approved pursuant to regulation 9, and is operated in accordance with the requirements of Chapter I of the Annex relating to factory vessels, as set out in the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992^(L7);
- (c) that during and after landing they have been handled in accordance with the requirements of Chapter II of the Annex relating to landing, as provided for in the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992;
- (d) that they have been handled and, where appropriate, packaged, prepared, processed, frozen, defrosted or stored hygienically in establishments approved in accordance with regulation 9 and the requirements of Chapter III of the Annex relating to general conditions for establishments on land and special conditions for handling fishery products on shore, as provided for in the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992;
- (e) that they shall have been the subject of the health control and monitoring described in Schedule 1 except when the food authority has authorised the transfer of fishery products ex quay into containers for immediate delivery to an approved establishment or registered auction or wholesale market to be checked there, in which case a check on the conditions of landing is not required;
- (f) that they have been appropriately packaged in accordance with Schedule 2;
- (g) that they have been given an identification mark in accordance with Schedule 3;
- (h) that they have been stored and transported under satisfactory conditions of hygiene in accordance with Schedule 4.

Gutting

4. An operator having control over the timing of the gutting of a fishery product, where such gutting is possible from a technical and commercial viewpoint, shall ensure that it is carried out as soon as possible after the product has been caught or landed.

Placing aquaculture products on the market

5.—(1) Subject to regulation 24(1), no person shall place aquaculture products on the market which do not meet the following requirements:—

- (a) that they were slaughtered under appropriate conditions of hygiene and, in particular,—
 - (i) that they are not soiled with earth, slime or faeces and
 - (ii) if not processed immediately after slaughtered, that they are kept chilled; and
- (b) the requirements of regulation 3(c) to (g).

Placing processed bivalve molluscs and other shellfish on the market

6. Subject to regulation 24(1), no person shall place processed bivalve molluscs or other shellfish on the market unless—

- (a) prior to processing they meet the requirements of the Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations 1992; and
- (b) at the time of placing on the market they satisfy the requirements of regulation 3(c) to (g).

Fishery products to place live on the market

7. A person with control over the survival conditions of a fishery product which is to be placed on the market alive shall ensure that it is at all times kept under conditions most suitable for its survival.

Specified fishery products not to be placed on the market

8. No person shall place on the market any of the following:
- (a) poisonous fish of the following species, Tetraodontidae, Molidae, Diodontidae or Canthigasteridae;
 - (b) fishery products containing biotoxins including ciguatera or muscle-paralysing toxins.

Approval of factory vessels, and establishments

9.—(1) Subject to regulation 24(2) and any derogation no person shall operate any factory vessel or establishment unless it has been approved by the relevant food authority and no such vessel or establishment shall be so approved unless—

- (a) the food authority is satisfied that it meets the requirements of these Regulations; or
- (b) the food authority is satisfied that it meets the requirements save in so far as there is in force in respect of it a derogation and the terms on which it was granted are complied with.

(2) An application for approval pursuant to paragraph (1) in respect of a factory vessel or an establishment shall be made by the proprietor of the food business in the course of which fishery products are handled there and shall be—

- (a) in writing, and
- (b) accompanied by such supplementary information, documents, plans and diagrams as are necessary to enable the food authority to determine the application having regard to the matters specified in the Schedule to the Food Safety (Fishery Products) (Derogation) Regulations 1992.

(3) An approval may be granted only if the food authority is satisfied in relation to the matters referred to in paragraph (2)(b).

(4) An approval may be granted subject to limitations as to the particular activities approved, the method of operation approved and the intensity of use approved.

(5) In every case the food authority shall notify the applicant in writing of the result of the application and in the case of a refusal the reasons for that refusal.

(6) If an application is approved the food authority shall—

- (a) designate the establishment by a unique approval number;
- (b) notify the Secretary of State of the approval and the approval number allocated; and
- (c) in a case to which paragraph (1)(b) applies specify that the approval will expire on the date on which the derogation is due to expire.

(7) Where an appeal is made to a magistrates' court or a sheriff in accordance with section 37(1)(c) of the Act as applied by regulation 18(3) the applicant may continue

to operate the centre the subject of the appeal until such time as the appeal is finally determined.

(8) In this regulation and in regulation 13 "relevant food authority" means—

- (a) in relation to an establishment, the food authority for the area in which it is situated;
- (b) in relation to a factory vessel, the food authority for the area which includes the place at which the vessel usually lands fishery products.

Supplementary provisions about approval

10.—(1) Before finally determining an application under regulation 9 a food authority, if it is minded to refuse the application shall, and in any other case where it considers it reasonable to do so may, afford to the applicant an opportunity to make oral representations, on a date within 2 months of affording the opportunity, on any matters specified in writing by the food authority which it considers relevant to its final determination.

(2) Before finally determining an application a food authority may in writing request an applicant to provide supplementary written information to enable it properly to determine the application.

(3) A person may at any time apply to a food authority to vary the terms or limitations of any approval granted to him, and the food authority may vary any such terms or limitations.

Obligations on proprietors of establishments and factory vessels

11. The proprietor of a food business in the course of which an establishment, a factory vessel or a market is operated shall operate the business in accordance with such of the provisions of these Regulations, and in particular with such of the provisions specified in Schedule 5, as apply to it and shall take all reasonable steps to secure compliance with those provisions by any person employed by him or any person admitted to a place where the business is undertaken.

Registration of fishing vessels on which shrimps or molluscs are processed by cooking

12.—(1) A person operating a fishing vessel on board which shrimps or molluscs are, for the purpose of a food business, processed by cooking shall, unless such processing is to be supplemented subsequently by cooking, comply with paragraphs (2) to (4).

(2) The person operating the fishing vessel shall—

- (a) prior to engaging for the first time in the business of cooking, notify in writing the food authority for the area in which the fishing vessel is based of his intention to do so, and shall at the same time supply the information specified in paragraph (3); and
- (b) subsequently, similarly notify the food authority of any changes to the information originally supplied.

(3) The information referred to in paragraph (2)(a) is—

- (a) the name of the vessel;
- (b) the usual place of landing of the fishery products;
- (c) the name and address of the owner of the vessel.

(4) Any cooking on board of either shrimps or molluscs, or both, shall be in

accordance with the requirements of point 5 of section I of Chapter III of the Annex to, and point 7 of Chapter IV of the Annex to, the Council Directive, as set out in the Schedule to the Food Safety (Fishery Products) (Derogations) Regulations 1992.

(5) Each food authority shall maintain a register of all information supplied pursuant to paragraphs (2)(a) and (3).

Registration of wholesale and auction markets that are not establishments

13.—(1) The proprietor of a wholesale or auction market which is not an establishment for the purposes of these Regulations because fishery products are only displayed for sale or sold by wholesale there, shall apply to the relevant food authority for the market to be registered by that food authority.

(2) The relevant food authority shall register a market in respect of which an application is made if it is satisfied that the market meets such of the requirements of the Council Directive as apply to it.

(3) If the relevant food authority registers a market pursuant to an application made under paragraph (1) it shall—

- (a) designate the market by a unique registration number; and
- (b) notify the Secretary of State of the registration and the registration number allocated.

Sales by fishermen of small quantities of fishery products

14.—(1) A fisherman may sell for human consumption in any year, within the United Kingdom, to retailers or final consumers a small quantity of fishery products which he has caught.

(2) For the purpose of this regulation a small quantity of fishery products means a total amount not exceeding 25 tonnes, comprising any species, but within such total the amount of any of the species listed in column (a) which are dead shall not exceed the amount for that species listed in column (b)—

Column (a)	Column (b)
<i>Species</i>	<i>Maximum amount</i>
Oysters	5.0 tonnes
King Scallops	5.0 tonnes
Queen Scallops	10.0 tonnes
Mussels	20.0 tonnes
Marine Gastropods	20.0 tonnes
Other Bivalve Molluscs	10.0 tonnes

Functions of Ministers and food authorities

15.—(1) The Ministers and food authorities shall perform any functions assigned to them by Schedule 1 or Schedule 5.

(2) Without prejudice to the generality of the powers of the Ministers to direct a food authority in relation to the exercise of any function by that food authority, the Ministers may in particular specify the frequency of the exercise of any such function.

Offences and penalties

16.—(1) If any person contravenes any provision of these regulations specified in paragraph (2) he shall be guilty of an offence against these Regulations.

(2) The provisions of these Regulations referred to in paragraph (1) are regulations

3, 4, 5, 6, 7, 8, 9(1), 11, 12(1) and 13(1).

(3) Any person guilty of an offence against these Regulations shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

False information

17. Any person who for any purpose connected with these Regulations furnishes information which he knows to be false shall be guilty of an offence triable summarily and be liable on conviction to a fine not exceeding the statutory maximum.

Application of Provisions of the Act

18.—(1) The following provisions of the Act shall apply for the purposes of the Regulations as they apply for the purposes of sections 8, 14 and 15 of the Act and unless the context otherwise requires a reference in them to the Act shall be construed as a reference to these Regulations:

- section 3 (presumptions that food intended for human consumption);
- section 20 (offences due to fault of another person);
- section 21 (defence of due diligence);
- section 30(8) (which relates to documentary evidence);
- section 32 (powers of entry);
- section 33 (obstruction etc of officers);
- section 34 (time limit for prosecutions);
- section 36 (offences by body corporate).

(2) Section 6(3) of the Act (discharge of duties of food authorities by Ministers) shall apply as respects functions conferred on food authorities by these Regulations as it does as respects a duty imposed on a food authority by section 6(2) of the Act.

(3) Section 37(1)(c) of the Act (appeals to magistrates' court or sheriff) shall apply in relation to a decision to refuse, vary or grant subject to limitations an approval applied for under regulation 9 as it does to a decision to refuse, cancel, suspend or vary a licence required by Regulations under Part II of the Act.

Enforcement and execution

19.—(1) Subject to paragraph (2), these Regulations shall be enforced and executed—

- (a) as respects each London borough or district in England and Wales, by the council of that borough or district;
- (b) as respects the City of London (including the Temples), by the Common Council;
- (c) as respects each islands or district in Scotland, by the islands or district council; and
- (d) as respects the Isles of Scilly by the Council of the Isles of Scilly.

(2) Where any functions are assigned—

- (a) by an order under section 2 or 7 of the Public Health (Control of Disease) Act 1984^[8] to a port health authority; or
- (b) by an order under section 172 of the Public Health (Scotland) Act 1897^[9] to a port local authority;

these Regulations shall be enforced by that authority within its area and not by the authority mentioned in paragraph (1).

Amendment of Regulations providing for derogations

20. The Food Safety (Fishery Products) (Derogations) Regulations 1992 shall be amended the omission of regulations 3 and 4.

Amendment of the Food Hygiene (Docks, Carriers etc) Regulations 1960

21.—(1) In regulation 4 (premises and places to which the Regulations apply) of the Food Hygiene (Docks, Carriers etc) Regulations 1960^[10] there shall be inserted at the beginning the words "Subject to regulation 4A,".

(2) After regulation 4 of those Regulations there shall be inserted the following regulation:—

"Exceptions for premises and places where fishery products are handled

4A. Regulations 6, 9 and 11 to 23 of these Regulations shall not apply to an establishment or factory vessel within the meaning of the Food Safety (Fishery Products) Regulations 1992 which is subject to the requirements of regulation 9 of those Regulations." .

Amendment of the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966

22. After regulation 2 of the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966^[11] there shall be inserted the following regulation:—

"Places where fishery products are handled

2A. These Regulations shall not apply to an establishment or factory vessel within the meaning of the Food Safety (Fishery Products) Regulations 1992 which is subject to the requirements of regulation 9 of those Regulations, or to the handling there of any fishery products within the meaning of those Regulations." .

Amendment of the Food Hygiene (General) Regulations 1970

23.—(1) After regulation 3 of the Food Hygiene (General) Regulations 1970^[12] there shall be inserted the following regulation—

"Exception for premises where fishery products are handled

3A. Regulations 7, 8 and 10 to 26 shall not apply to an establishment or factory vessel within the meaning of the Food Safety (Fishery Products) Regulations 1992 which is subject to the requirements of regulation 9 of these Regulations, or to the handling there of any fishery products within the meaning of those Regulations." .

(2) In regulation 27(2) (temperatures at which certain foods are to be kept) of the Food Hygiene (General) Regulations 1970 there shall be inserted after sub-paragraph (b), the following sub-paragraph—

"(bb) cooked and chilled crustacean or molluscan shellfish products;" .

Transitional provisions

24.—(1) In so far as any provision of regulation 3, 5 or 6 imposes a requirement in relation to the catching, preparation, processing, handling or any other activity carried out in respect of a fishery product prior to its being placed on the market that

requirement shall be treated as applying only in relation to any such activity taking place on or after 15th January 1993.

(2) Until 1st January 1994 a person who has applied for approval in accordance with regulation 9 may continue to operate the factory vessel or establishment the subject of the application until such time as the application is finally determined by the food authority, provided it was operating at any time during the year ending on the 14th January 1993 and it is not prohibited from operating by reason of any other legal requirement.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on
10th December 1992.

John Selwyn Gummer

Minister of Agriculture, Fisheries and Food

Signed by authority of the Secretary of State for Health.

Cumberlege

Parliamentary Under-Secretary of State,
Department of Health

10th December 1992

David Hunt

Secretary of State for Wales

10th December 1992

Hector Monro

Parliamentary Under-Secretary of State,
Scottish Office

11th December 1992

Notes:

[1] [1990 c. 16](#). Section 4(1) contains a definition of "the Ministers" which is relevant to the powers being exercised in the making of these Regulations. [back](#)

[2] OJ No.L 268, 24.9.1991, p. 15. [back](#)

[3] S.I. [1992/1507](#). [back](#)

[4] S.I. [1992/3165](#). [back](#)

[5] OJ No.L 229, 30.8.1980, p. 11. Directive last amended by Directive 91/377/EEC (OJ No.L 377, 31.12.1991, p. 48). [back](#)

[6] OJ No.L 187, 7.7.1992, p. 41. [back](#)

[7] S.I.[1992/1507](#). [back](#)

[8] 1984 c. 22. [back](#)

[9] 1897 c. 38. [back](#)

[10] S.I.1960/1602, relevant amending instruments are S.I.[1990/1431](#) and [1990/2486](#). [back](#)

[11] S.I.1966/791 to which there are amendments not relevant to these Regulations. [back](#)

[12] S.I.1970/1172, relevant amending instruments are S.I.[1990/1431](#), [1990/2468](#), [1991/1343](#) and [1991/2825](#). [back](#)