Statutory Instrument 1992 No. 3165

The Food Safety (Fishery Products on Fishing Vessels) Regulations 1992

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STATUTORY INSTRUMENTS

1992No. 3165

FOOD FOOD SAFETY

The Food Safety (Fishery Products on Fishing Vessels) Regulations 1992

Made	*11th December 1992*
Laid before Parliament	*11th December 1992*
Coming into force	
for the purposes of regulations 4 and 5	*18th December 1992*
for all other purposes	*1st 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 the exercise of the powers conferred upon them by sections 6(4), 17(1) and 26(3) 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 appeared 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 on Fishing Vessels) Regulations 1992 and shall come into force—

(a) for the purposes of regulations 4 and 5, on 18th December 1992;

(b) for all other purposes, on 1st January 1993.

Interpretation

2.—(1) In these Regulations—

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

"the second Directive" means Council Directive 92/48/EEC([3]), 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 first Directive;

"additional hygiene conditions" means the additional hygiene conditions laid down in Annex II to the second Directive, which is set out in Part II of the Schedule to these Regulations, other than the condition specified in point 9 of that Annex;

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

"derogation" means the grant of a further period within which to comply fully with the relevant requirements;

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

"fishing vessel to which Article 1.2 of the second Directive applies" means a fishing vessel designed and equipped to preserve fishery products on board under satisfactory conditions for more than twenty-four hours, other than one equipped for keeping fish, shell fish and molluscs alive without other means of conservation on board;

"frozen product" means any fishery product which has undergone a freezing process;

"food authority" means an authority specified in regulation 8 as an authority which is to enforce and execute these Regulations;

"general hygiene conditions" means the conditions specified in Annex I to the second Directive, which is set out in Part I of the Schedule to these Regulations;

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

"relevant requirements" means the requirements laid down in points 8(b) and (e) of Annex II to the second Directive.

(2) In these Regulations—

(a) a reference to a numbered regulation is a reference to the regulation in 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.

Hygiene conditions for fishing vessels

3.—(1) No person shall carry out on a fishing vessel any commercial operation in relation to fishery products unless the general hygiene conditions are fulfilled in relation to that vessel and the operations carried out on it.

(2) Subject to paragraph (3), no person shall carry out on a fishing vessel to

which Article 1.2 of the second Directive applies any commercial operation in relation to fishery products unless the additional hygiene conditions are also fulfilled in relation to that vessel and the operations carried out on it.

(3) The provisions of paragraph (2) do not apply in relation to a vessel and a relevant requirement in so far as a derogation is in force in respect of them, provided that the vessel and the fishery products handled on it meet such of the hygiene requirements of the first Directive as are applicable to them

.Application for a derogation

4.—(1) The proprietor of a food business which consists of or includes commercial operations with respect to fishery products carried out on a fishing vessel to which Article 1.2 of the second Directive applies may apply to the Secretary of State, before 31st December 1992, for a derogation.

(2) An application for the purposes of paragraph (1) shall-

(a) be made in writing;
(b) specify the fishing vessel and the relevant requirements in respect of which a derogation is sought; and
(c) be accompanied by a plan of the work intended by the proprietor together with a timetable indicating the period within which the proprietor intends that the relevant requirement the subject of the application for a derogation shall be met.

Method of determining an application for a derogation

5.—(1) After receiving an application, made in accordance with regulation 4, for a derogation in respect of a fishing vessel the Secretary of State shall send a copy of it to the food authority in whose area the fishing vessel is based.

(2) A food authority which receives a copy of an application pursuant to paragraph (1) shall invite the representations of the applicant and, after having regard to any such representations, shall send to the Secretary of State, as soon as possible, a written assessment of the need for the derogation and of the suitability of the plan of the work and the timetable.

(3) A food authority shall at the same time as providing the written assessment to the Secretary of State, send a copy of it to the applicant inviting him to send to the Secretary of State, within 8 weeks of the date on which the assessment was sent to the Secretary of State, his observations on it.

(4) After considering the assessment of the food authority and any observations made pursuant to the invitation mentioned in paragraph (3), the Secretary of State shall either grant or refuse the application for a derogation in respect of all or any of the requirements in respect of which a derogation was sought.

(5) Subject to paragraph (6) if an application for a derogation is granted the Secretary of State shall—

(a) designate the fishing vessel and the relevant requirements in respect of which the der ogation is granted; and
(b) specify the period of the derogation, which shall not in any case expire after 31st December 1995.

(6) If an application is refused or is granted otherwise than in accordance with the application the Secretary of State shall give written notice to the applicant of the reasons for his decision.

(7) The Secretary of State shall in all cases give written notice of his decision to

both the applicant and the food authority which provided the assessment.

List of vessels

6. The Ministers shall be the competent authority for the purposes of point 9 of Annex II to the second Directive (list of vessels).

Offences etc

7.—(1) A person who contravenes regulation 3(1) or regulation 3(2) shall be guilty of an offence under these Regulations and 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.

(2) The following provisions of the Food Safety Act 1990 shall apply for the purposes of these Regulations as they apply for the purposes of sections 8, 14 and 15 of that Act and unless the context otherwise requires a reference in them to the Act shall be construed as a reference to these Regulations:

section 20 (offences due to fault of another person);
section 21 (defence of due diligence);
section 30(8) (which relates to documentary evidence);
section 33 (obstruction etc. ofofficers);
section 36 (offences by bodies corporate).

Enforcement and execution

8.—(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 area 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([4]) to a port health authority; or

(b) by an order under section 172 of the Public Health (Scotland) Act 1897([5]) 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).

Transitional provision

9. A person who has applied before 31st December 1992 for a derogation in respect of a fishing vessel which was, on 30th June 1992, normally used for fishing activities, shall, until the application is determined, be treated as having been granted a derogation in accordance with his application.

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

(L.S.)
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,

10th December 1992

David Hunt

Secretary of State for Wales

10th December 1992

Hector Monro

Parliamentary Under-Secretary of State,
Scotish 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. L268, 24.9.1991, p. 15. back

[3] OJ No. L187, 7.7.1992, p. 41. back

[4] 1984 c. 22. back

[5] 1897 c. 38. back

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