

EUROPEAN COMMUNITIES (IMPORTATION OF FISH FROM THIRD COUNTRIES) 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 90/675/EEC(1) of 10 December, 1990 and Council Directive 91/496/EEC(2) of 15 July, 1991, insofar as they relate to fish, hereby makes the following Regulations:

(1) O.J. No. L373 of 31.12.1990, p.1 (2)

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

REG 1

1 Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Importation of Fish from Third Countries) Regulations, 1997.

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

REG 2

Application

2. These Regulations apply to the importation into the State of fish from—

(a) a country (referred to subsequently in these Regulations as "a third country") which is not a Member State of the European Community, and

(b) a Member State of the European Community if the fish originated in a third country and all the checks provided for in Council Directive 90/675 or, as the case may be. Council Directive 91/496 have not been carried out in relation to it, and "importation" 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 90/675" means Council Directive No. 90/675/EEC of 10 December 1990;

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

"customs temporary storage arrangements" means the customs warehousing procedure, the free zone or free warehouse procedure, and the temporary storage of goods procedure, referred to in Council Regulation (EEC) 2913/92 of 12 October 1992(3);

(3) O.J. No. L302 of 19.10.1992, p. 1.

"fish" means fish, live bivalve molluscs, aquaculture animals and products, and fishery products and waste of fish and fishery products, to which Council Directive 90/675/EEC or Council Directive 91/496/EEC applies;

"the Minister" means the Minister for the Marine;

"original certificate" has, in relation to fish, the meaning it has in Article 10.1 of Council Directive 90/675 or, as may be appropriate. Article 7.1 of Council Directive 91/496;

"a third country" shall be construed in accordance with Regulation 2.

(2) In these Regulations—

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

(3) A word or expression that is used in these Regulations and is also used in Council Directive 90/675 or Council Directive 91/496 has, unless the contrary intention appears, the meaning in these Regulations that it has in Council Directive 90/675 or, as the case may be. Council Directive 91/496.

REG 4

Restrictions on importation's

4. A person shall not—

(a) import fish unless, at the time of its importation, its importation is in compliance with and not prohibited by Council Directive 90/675 and, in particular, Article 4(3) thereof, or, as maybe appropriate, Council Directive 91/496 and, in particular,

Article 5 thereof, or

(b) import fish for immediate re-exportation from the State to a third country, whether directly or indirectly, unless such importation has been authorised in writing by an authorised officer and complies with Article 12 of Council Directive 90/675 or, as may be appropriate, Article 9 of Council Directive 91/496.

REG 5

5. (1) A person shall not import fish unless it is—

(a) landed at a port or airport specified in the Schedule, and (b) presented at the border inspection post at the port or airport at which the fish is landed for the purpose of carrying out the checks required by Council Directive 90/675 or, as may be appropriate, Council Directive 91/496.

(2) A person who intends to import fish shall give notice of such intention in writing to the border inspection post at the port or airport at which it is intended to land the fish at least 24 hours before such landing and shall specify in the notice the quantity or number and the type or species, country of origin and estimated date and time of landing or arrival at the inspection post of the fish.

(3) Notwithstanding paragraph (1), fish shall, on importation, if an authorised officer so directs, be conveyed under the supervision of the officer by the importer or the person in control for the time being of the fish to such place as he may designate for the purposes of carrying out the checks required by Council Directive 90/675 or, as may be appropriate, Council Directive 91/496 or, in the case of live fish, to a quarantine centre or holding of destination in accordance with Article 10 of Council Directive 91/496.

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.

REG 7

Powers of Authorised Officers

7. (1) An authorised officer may, for the purposes of these Regulations, Council Directive 90/675 and Council Directive 91/496—

(a) at all reasonable times, enter any premises or place, and any vehicle, wagon, vessel, aircraft or other means of transport, where he reasonably suspects that there are or have been fish which is being or has been imported,

(b) there examine and inspect any 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 any premises or place as he may reasonably require for the purposes of his functions under these Regulations, Council Directive 90/675 or Council Directive 91/496 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 his functions, the original certificate or certificates concerned.

(2) A person shall not obstruct or otherwise interfere with an authorised officer in the performance of his functions or, in purported compliance with a requirement under paragraph (1)(e), give information to an authorised officer that he knows to be false or misleading in a material respect.

REG 8

Issue of Certificate of Compliance

8. (1) (a) A person shall not remove from—

(i) a border inspection post,

(ii) a place designated by an authorised officer in accordance with Regulation 5(3),

(iii) a place where it is kept pursuant to customs temporary storage arrangements, or

(iv) a quarantine centre or holding of destination, fish which has been or is being imported unless he has been provided by an authorised officer with a certificate stating that the checks required by Council Directive 90/675 or, as may be appropriate, Council Directive 91/496 have been carried out to the satisfaction of the authorised officer.

(b) Notwithstanding subparagraph (a), where an authorised officer is satisfied that the fish concerned will not be removed from the State, he may authorise in writing its removal from a border inspection post without issuing the said certificate.

(c) Notwithstanding subparagraph (a), where an authorised officer is satisfied that the fish concerned is destined for another Member State and that some or all of the checks required by Council Directive 90/675 or, as may be appropriate, Council Directive 91/496, will be carried out in that Member State, he may issue the said certificate and, if he does, he shall indicate on it the checks aforesaid (if any) carried out by him on the fish,

(2) An authorised officer shall on request by the importer or person in control for the time being of the importation of a consignment of fish which is intended to be divided following importation and dispatched to different destinations, supply to the importer or person copies, authenticated by him in such manner as he considers appropriate, of the original certificates accompanying the consignment.

(3) A person other than an authorised officer shall not purport to authenticate a copy of a certificate referred to in paragraph (2).

REG 9

On suspicion of disease

9. (1) Where an authorised officer is of opinion that there is present in fish which has been or is being imported an agent responsible for a disease referred to in Council Directive 82/894/EEC of 21 December 1982(4), 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—

(4) 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 a requirement specified in subparagraph (a) should be imposed in relation to the fish for any of the reasons stated in Article 4 (3) of Council Directive 90/675 or, as may be appropriate, Article 5 of Council Directive 91/496, he shall, after consultation with the person who is the importer concerned or who is or who appears to the officer to be for the time being in charge of the fish, serve or cause to be served on the person a notice stating that opinion and (a) requiring—
- (i) in the case of live fish, that the fish be dealt with in accordance with such of the provisions of Article 12 of Council Directive 91/496 as he shall set out in the notice, but the notice shall not require the re-dispatch of a consignment of fish in accordance with paragraph 1(c) of the said Article 12, unless animal health or welfare requirements so allow,
- (ii) in the case of other fish, that the fish be exported directly from the State to a third country or where such exportation is, in the opinion of the officer, not possible, be destroyed in such manner and at such place as the officer shall specify in the notice, 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 served on the Minister, in the manner specified in the relevant notice issued 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, a notice under paragraph (2).
- (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 the fish 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 10

Recovery of cost of disposal

10. The cost of the disposal by or on behalf of the Minister of fish under these Regulations may, subject to paragraph (9)(c) of Regulation 8, be recovered by the Minister from the person who was the owner of the fish at the time of the disposal as a simple contract debt in any court of competent jurisdiction.

REG 11

Cancellation of certificate of compliance

11. (1) An authorised officer, if he has formed an opinion referred to in paragraph (1) or (2) of Regulation 8, may require any person who is the importer or who appears to the officer to be for the time being in control of the fish, concerned to surrender to him the original certificate or certificates concerned for the purpose of cancellation and may, subject to paragraph (2), cancel the certificate or certificates.

(2) An original certificate shall not be cancelled under paragraph (1) unless -

(a) the person surrendering the certificate is, during the period of 14 days after such surrender, given the opportunity to make representations or have representations made on his behalf to the Minister in relation to the proposed cancellation, and

(b) regard has been had to any representations made under subparagraph (a).

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 or she were guilty of the first-mentioned offence.

SCHEDULE

Regulation 5(1)(a)

Cork Port

Cork Airport

Drogheda Port

Dublin Port

Dublin Airport

Killybegs

New Ross Port

Rosslare Port

Shannon Airport

Waterford Port

Given under my Official Seal, this 7th day of May, 1997.
Seán Barrett T.D.,
Minister for the Marine.

EXPLANATORY NOTE

These Regulations implement as far as fish are concerned (i) Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries and (ii) Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries.

They also provide for:

- (a) the ports and airports through which fish covered by the Regulations must be imported;
- (b) approval of authorised officers to implement and enforce the Regulations; and
- (c) the creation and prosecution of offences.