



STATUTORY INSTRUMENTS.

S.I. No. 132 of 2010



EUROPEAN COMMUNITIES (DATA COLLECTION IN THE
FISHERIES SECTOR) REGULATIONS 2010

(Prn. A10/0473)

EUROPEAN COMMUNITIES (DATA COLLECTION IN THE FISHERIES SECTOR) REGULATIONS 2010

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving full effect to Council Regulation (EC) No. 199/2008 of 25 February 2008¹ and Commission Decision No. 2008/949/EC of 6 November 2008², hereby make the following Regulations:

Citation

1. These Regulations may be cited as the European Communities (Data Collection in the Fisheries Sector) Regulations 2010.

Interpretation

2. (1) In these Regulations—

“Bord Iascaigh Mhara” means a body established under section 14 of the Sea Fisheries Act 1952 (No. 7 of 1952);

“Council Regulation” means Council Regulation (EC) No. 199/2008 of 25 February 2008;

“Commission Decision” means Commission Decision No. 2008/949/EC of 6 November 2008;

“data collection officer” means—

(a) a sea-fisheries protection officer, or

(b) a person appointed under Regulation 9

“fish” includes crustaceans and molluscs;

“Marine Institute” means a body established under section 3 of the Marine Institute Act 1991 (No. 2 of 1991);

“Minister” means Minister for Agriculture, Fisheries and Food;

“Sea-Fisheries Protection Authority” means a body established under section 41 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006).

¹O.J. L 60 of 5.3. 2008, p.1.

²O.J. L 346 p. 37 2008/12/23

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 2nd April, 2010.

(2) A word or expression that is used in these Regulations and is also used in the Council Regulation or the Commission Decision has, in these Regulations, the same meaning as in the Council Regulation or the Commission Decision.

Duties of vessel owner

3. The owner of a sea-fishing boat shall maintain data of—

- (a) all catches, discards, landings and transshipments of fish by quantity and species,
- (b) fishing gear used, to target species or for target species,
- (c) economic data as listed in Appendix VI to the Commission Decision, and
- (d) capacity, effort and landings as listed in Appendix VIII to the Commission Decision.

Duties of aquaculture operator

4. The operator of an aquaculture site shall maintain data of—

- (a) transfers of fish to or from the site,
- (b) production by quantity and species, and
- (c) economic data as listed in Appendix X to the Commission Decision.

Duties of processor

5. The operator of a fish processing plant shall maintain data of—

- (a) quantities and species of raw material entering the plant,
- (b) quantities and types of products produced, and
- (c) economic data as listed in Annex XII of the Commission Decision.

Maintenance of data, etc.

6. (1) Data under Regulations 3, 4 or 5 shall be maintained for a period of three years after the year to which the data relates and be made available on request to a data collection officer.

(2) The Minister may determine the form in which data under Regulations 3, 4 or 5 is to be maintained and, if he or she does so, the data shall be maintained in that form.

(3) Data under Regulations 3, 4 or 5 may be maintained in machine readable form if it is capable of being transferred into readable form.

Obligations on certain public bodies

7. Notwithstanding the Data Protection Acts 1998 and 2003, the Sea Fisheries Protection Authority, the Marine Institute, Bord Iascaigh Mhara and the Minister shall make available to a data collection officer such data relating to activities referred to in Regulations 3, 4 or 5 as is available.

Disclosure of information

8. A person shall not disclose data obtained under these Regulations unless authorised by the Minister to do so.

Appointment of data collection officer

9. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be data collection officers for the purposes of some or all of the functions of a data collection officer as may be specified in the instrument.

(2) The Minister may terminate the appointment of a data collection officer, whether or not the appointment was for a fixed period.

(3) An appointment as a data collection officer ceases—

(a) if it is terminated pursuant to paragraph (2),

(b) if it is for a fixed period, on the expiry of that period, or

(c) if the person appointed is an officer of the Minister, an Bord Iascaigh Mhara, the Marine Institute or the Sea-Fisheries Protection Authority, upon him or her ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as a data collection officer a person to whom paragraph (3) relates.

(5) A data collection officer shall be furnished with a warrant of his or her appointment by the Minister and, when exercising a function conferred on him or her, the officer shall, if requested by a person affected, produce the warrant or evidence that he or she is a data collection officer.

Functions of data collection officer

10. (1) A data collection officer shall collect, process and transmit data in accordance with Council Regulation (EC) No. 199/2008.

(2) A data collection officer, in order to carry out his or her duties shall have access to all records, commercial documents including contracts, log books and any other material as is necessary to fulfil the information requirements under the Commission Decision.

(3) A person mentioned in Regulations 3, 4 or 5 or his or her agent shall comply with a request to furnish the information mentioned in paragraph (2) to a data collection officer without delay.

Obstruction, etc.

11. A person shall not—

(a) fail, without reasonable cause, to comply with a request or direction of a data collection officer under Regulation 10,

- (b) in purporting to give information to a data collection officer for the performance of the officer's functions under Regulation 10—
- (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular.

Forgery, etc.

12. (1) A person shall not forge or utter knowing it to be forged data referred to in Regulations 3, 4 or 5 or data purporting to be an extract from data referred to in those Regulations (hereafter in this Regulation referred to as “forged data”).

(2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered data referred to in Regulations 3, 4 or 5 or data purporting to be an extract from data referred to in those Regulations (hereafter in this Regulation referred to as “altered data”).

(3) A person shall not have, without lawful authority, in his or her possession or under his or her control forged data or altered data.

Proof of acts of the European Communities

13. (1) In proceedings, evidence of an act of the institutions of the European Communities may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(2) Paragraph (1) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Offences, etc

14. (1) A person who contravenes or aids or abets a contravention of—

(a) Article 11(3) or 22 of the Council Regulation, or

(b) Regulation 3, 4, 5, 6, 7, 8, 10, 11 or 12 of these Regulations,

commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000.

(2) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who purported to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she is guilty of the offence.

(3) If the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

On the spot fine

15. (1) If a data collection officer has reasonable grounds for believing that a person is committing or has committed an offence under these Regulations, the data collection officer may serve a notice in writing on that person stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days beginning on the date of the notice make to the Minister a payment of €200 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) If notice is given under paragraph (1)—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice the payment specified in the notice accompanied by the notice;
- (b) the Minister shall, on receipt of the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it;
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under these Regulations the onus of proving that a payment pursuant to a notice under this Regulation has been made shall lie on the defendant.



GIVEN under my Official Seal,
23 March 2010.

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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