



SEA-FISHERIES (REGISTRATION OF FISH BUYERS AND SELLERS) (ISLE OF MAN) REGULATIONS 2012

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Statutory Document No. 0142/2012



European Communities (Isle of Man) Act 1973

SEA-FISHERIES (REGISTRATION OF FISH BUYERS AND SELLERS) (ISLE OF MAN) REGULATIONS 2012

Laid before Tynwald: 20 March 2012
Coming into Operation: 1 April 2012

The Council of Ministers makes the following Regulations under sections 2B and 2C of the European Communities (Isle of Man) Act 1973¹.

1 Title

These Regulations are the Sea-Fisheries (Registration of Fish Buyers and Sellers) (Isle of Man) Regulations 2012.

2 Commencement

These Regulations come into operation on 1 April 2012.

3 Interpretation

(1) In these Regulations —

“**Control Regulation**” means Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No. 847/96, (EC) No. 2371/2002, (EC) No. 811/2004, (EC) No. 768/2005, (EC) No. 2115/2005, (EC) No. 2166/2005, (EC) No. 388/2006, (EC) No. 509/2007, (EC) No. 676/2007, (EC) No. 1098/2007, (EC) No. 1300/2008, (EC) No. 1342/2008 and repealing Regulations (EEC) No. 2847/93, (EC) No. 1627/94 and (EC) No. 1966/2006², as amended from time to time;

“**Department**” means the Department of Environment, Food and Agriculture;

“**document**” includes information recorded in any form;

¹ c.14

² OJ L 343, 22.12.2009, p.1

“**equivalent provisions**” means any provision in regulations made under section of the European Communities Act 1972³ for the purposes of implementing the Control Regulation, applying to any part of the United Kingdom, which has equivalent effect to any provision in these Regulations;

“**first sale fish**” means fish and fishery products being marketed for the first time;

“**fish**” means fish (including shellfish and nephrops) or fishery products landed from a registered and licensed fishing vessel to which the Control Regulation applies;

“**PLN**” means a vessel's port number as defined in regulation 31 of the Merchant Shipping (Registration of Ships) Regulations 1993⁴;

“**registered and licensed fishing vessel**” means a fishing vessel in respect of which a licence has been issued by the Department under section 4 of the Sea Fish (Conservation) Act 1967⁵ or under similar fisheries related provisions by the United Kingdom, a Member State or by the appropriate authorities in the Channel Islands or another country or territory;

“**registered fish buyer**” means a person who is registered by the Department in accordance with regulation 7;

“**registered fish seller**” means a person who is registered by the Department in accordance with regulation 4;

“**sea-fishery officer**” means a person appointed under section 4 of the Sea Fisheries Act 1971⁶.

(2) In these Regulations, a reference to a fish seller includes an agent who sells fish on behalf of the seller.

(3) Expressions used in these Regulations and not defined in paragraphs (1) or (2) have the same meaning in these Regulations as they have for the purposes of Title V (Control of Marketing) of the Control Regulation.

4 Registration of fish sellers

(1) A registered fish seller is authorised for the purposes of Title V of the Control Regulation, insofar as he or she sells first sale fish either on his or her own behalf or as the seller's agent.

³ c.68, an Act of Parliament

⁴ SI 1993/3138; the relevant amending instrument is SI 1999/3206

⁵ c.84, an Act of Parliament. Section 4 was substituted by section 3 of the Fishery Limits Act 1976 (which relates to the licensing of fishing boats) (c.86). The Act, as amended, has effect in the Island by virtue of the Sea Fish (Conservation) (Isle of Man) Order 1973 (SI 1973/237) and the Sea Fish (Conservation) (Isle of Man) Order 1977 (SI 1977/1244)

⁶ c.18

- (2) A person may apply to the Department, using such form as the Department may provide, to be registered as a fish seller.
- (3) An applicant for registration as a fish seller must include with his or her application a statement of the facilities and the proposed methods of operation that he or she intends to use and the place where he or she intends to maintain his or her records of sales of first sale fish.
- (4) In considering an application for registration the Department must take into account whether the facilities and proposed methods of operation of the applicant, and the place where the applicant intends to maintain records of sales of first sale fish, are such as to assist compliance by the fish seller with the Control Regulation and these Regulations.
- (5) The Department must notify an applicant of its decision in writing.
- (6) If the Department grants a registration the registered fish seller must, as conditions of registration —
 - (a) provide the Department with details of any changes to the information contained in the application for registration within 28 days of the change occurring; and
 - (b) submit sales notes in accordance with the provisions of Article 62 of the Control Regulation.
- (7) The Department may publish a list of registered fish sellers.
- (8) The Department may suspend a fish seller's registration if, in the view of the Department, the registered fish seller has not complied with —
 - (a) a condition of registration; or
 - (b) a requirement of Title V of the Control Regulation or these Regulations.
- (9) A person who knowingly or recklessly makes a false statement for the purposes of an application under this regulation is guilty of an offence.
- (10) A registered fish seller who sells first sale fish in breach of a condition of his or her registration is guilty of an offence.

5 Sale of fish by unregistered seller

A person other than a registered fish-seller who sells first sale fish either on his or her own behalf or as an agent of the seller is guilty of an offence.

6 Maintenance of records by registered fish seller

- (1) A registered fish seller must maintain records of each sale of first sale fish that he or she makes, at the place notified to the Department in accordance with these Regulations.
- (2) In relation to each such sale the records must include —
 - (a) date and location of the sale;

- (b) quantities of each species sold;
 - (c) price paid for each species sold;
 - (d) name and PLN of the vessel which landed the fish;
 - (e) name, address and, where available, registration number of the buyer;
 - (f) where applicable, reference number of the contract of sale or invoice;
 - (g) the name of the fishing vessel's master;
 - (h) the name of each species caught and relevant geographical area in which the catches were taken;
 - (i) the port and date of landing; and
 - (j) the weight (in kilogrammes, weighed in accordance with Article 60 of the Control Regulation), and the presentation, freshness and grade (as specified by the Department) of each species.
- (3) A registered fish seller must keep the records of each sale required by this regulation until the end of the third calendar year following that sale.
- (4) A registered fish seller must make the records of sale of fish available for inspection at all reasonable times at the place notified to the Department.
- (5) A registered fish seller who does not operate his or her business from, or is not established in, the Island must submit his or her records within 28 days of a demand by the Department, and must either—
- (a) nominate a place where his or her records will be made available to the Department until the end of the third year following the sale to which the records relate; or
 - (b) submit his or her records to the Department annually from the date of registration.
- (6) A registered fish seller who does not operate his or her business from, or is not established in, the Island must keep the records of each sale as required by this regulation until the end of the third calendar year following that sale.
- (7) A registered fish seller who fails to keep, or to produce on request by the Department, the records required by this regulation is guilty of an offence.

7 Registration of fish buyers

- (1) For the purposes of Title V of the Control Regulation a person may apply to the Department to be registered as a fish buyer, using such form as the Department may provide.
- (2) An application under paragraph (1) must state —

- (a) the facilities and the proposed methods of operation he or she intends to use; and
 - (b) the place where he or she intends to maintain the records of purchases of first sale fish.
- (3) In considering an application the Department shall take into account whether the proposed methods of operation of the fish buyer, and the place where he or she intends to maintain their records of purchases of first sale fish, are such as to assist compliance by the fish buyer with Title V of the Control Regulation and these Regulations.
- (4) The Department must notify an applicant of its decision in writing.
- (5) If the Department grants a registration, the registered fish buyer must, as conditions of registration —
- (a) provide the Department with details of any changes to the information contained in the application for registration within 28 days of the change occurring; and
 - (b) submit sales notes in accordance with the provisions of Article 62 of the Control Regulation.
- (6) The Department may publish a list of registered buyers.
- (7) The registration of a fish buyer may be suspended where, in the view of the Department, the registered fish buyer has not —
- (a) complied with a condition of registration; or
 - (b) conducted his or her business in a manner that complies with the requirements of Title V of the Control Regulation or these Regulations.
- (8) A person who knowingly or recklessly makes a false statement for the purposes of an application under this regulation is guilty of an offence.
- (9) A registered fish buyer who fails to comply with a condition of his registration is guilty of an offence.

8 Purchase of fish by an unregistered buyer

- (1) A person who buys fish contrary to Article 59(2) of the Control Regulation is guilty of an offence.
- (2) A person who, on its first sale, buys fish other than from a registered fish seller or is not a registered buyer, is guilty of an offence.
- (3) But a person is not guilty of an offence under paragraph (2) if he or she —
- (a) does not buy more than 30 kilogrammes of fish on the day in question; and
 - (b) can show that all of the fish that he or she buys is for private consumption.

9 Maintenance of records by registered fish buyer

- (1) A registered fish buyer shall maintain and make available for inspection records of every purchase of first sale fish that he makes.
- (2) In relation to each purchase the records must include all the following information —
 - (a) date and location of the purchase;
 - (b) quantity of each species purchased;
 - (c) price paid for each species purchased;
 - (d) name and PLN of the vessel which landed the fish;
 - (e) where applicable, reference number of the invoice or contract of sale;
 - (f) the name of the fishing vessel's master;
 - (g) the name of each species caught and relevant geographical area in which the catches were taken; and
 - (h) the weight (in kilogrammes, weighed in accordance with Article 60 of the Control Regulation), and the presentation, freshness and grade (as specified by the Department) of each species.
- (3) A registered fish buyer must keep the records of each purchase, as required by this regulation, and at the place notified to the authorities until the end of the third calendar year following that purchase.
- (4) A registered fish buyer who does not operate his or her business from, or who is not established in the Island, must submit his or her records to the Department within 28 days of a request to do so, and must either —
 - (a) nominate a place where his or her records will be made available to the authorities until the end of the third year following purchase; or
 - (b) submit his or her records to the Department annually from the date of registration.
- (5) A registered fish buyer who does not operate his or her business from the Isle of Man must keep the records of each purchase required by this regulation until the end of the third calendar year following that purchase.
- (6) A registered fish buyer who fails to keep, or to produce on request by the Department, the records as required by this regulation is guilty of an offence.

10 Electronic completion and transmission of sales notes data

- (1) Registered sellers and buyers or other bodies or persons authorised by the Department with a requisite financial turnover in first sales of fish and fisheries products must record by electronic means the information

referred to in regulation 6(2) or 9(2), and must send it by electronic means within 24 hours after completion of the first sale to the Department.

- (2) For the purposes of this regulation “requisite financial turnover” means an annual financial turnover in first sales of fish or fisheries products for a person which is in excess of EUR 200,000 and calculated for a calendar year using the annual financial turnover for that person from the calendar year two years previously and based on European Central Bank Euro foreign exchange reference rates applicable on 1st January for the calendar year from which the annual financial turnover information is taken.

11 Sale of first sale fish landed from a registered and licensed fishing vessel

A person who offers for sale or sells first sale fish caught or landed otherwise than by a registered and licensed fishing vessel is guilty of an offence.

12 Purchase of first sale fish landed from a registered and licensed fishing vessel

- (1) A person who buys first sale fish caught or landed otherwise than by a registered and licensed fishing vessel is guilty of an offence.
- (2) In proceedings for an offence under paragraph (1) it is a defence for a person to show that—
 - (a) the person did not know; and
 - (b) it was reasonable for the person not to suspect,that the fish had not been landed by a registered and licensed fishing vessel.

13 Penalties

- (1) A person convicted of an offence under these Regulations is liable—
 - (a) on summary conviction to a fine not exceeding £5,000; or
 - (b) on conviction on information, to a fine.
- (2) In addition to the penalties in paragraph (1), a court may also, in relation to an offence under regulations 4(9), 4(10), 6(7), 7(8), 7(9) or 9(6), order that the registration of the person convicted is revoked and that person may be disqualified from applying for registration under either regulation 4 or 7, as the case may be, for a specified period.

14 Powers of sea-fishery officers in relation to fishing boats

- (1) For the purpose of enforcing these Regulations or any equivalent provisions, a sea-fishery officer may exercise the powers conferred by this regulation in relation to any registered and licensed fishing vessel within the Island's Territorial Sea.
- (2) A sea-fishery officer may go on board the boat, with or without persons assigned to assist the officer in the performance of the officer's duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.
- (3) A sea-fishery officer may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to the officer to be necessary for the purpose mentioned in paragraph (1) of this article and, in particular —
 - (a) may search for fish or fishing gear on the boat and may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the examination;
 - (b) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession;
 - (c) for the purpose of ascertaining whether an offence under these Regulations or any equivalent provisions has been committed, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search;
 - (d) may inspect and take copies of any such document produced to him or found on board;
 - (e) without limiting sub-paragraphs (c) and (d), may require the master and any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and
 - (f) if the boat is one in relation to which the officer has reason to suspect that an offence under these Regulations or any equivalent provisions has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence;

but nothing in sub-paragraph (f) permits the seizure or detention of any document required by law to be carried on board the boat except while the boat is detained in a port.

- (4) If it appears to a sea-fishery officer that an offence under these Regulations or any equivalent provisions has at any time been committed, the officer may require the master of the boat in relation to which the offence took place to take, or himself or herself take, the boat and its crew to the port which appears to the officer to be the nearest convenient port, and detain or require the master to detain the boat in the port.
- (5) If a sea-fishery officer detains or requires the detention of a boat the officer must serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a sea-fishery officer.

15 Powers of sea-fishery officers on land

- (1) For the purpose of enforcing these Regulations or any equivalent provisions, a sea-fishery officer may –
 - (a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage, purchase or sale of fish;
 - (b) be accompanied by such other persons as appear to the officer to be necessary and any equipment or materials;
 - (c) examine any fish on the premises and require persons on the premises to do anything which appears to the officer to be necessary for facilitating the examination;
 - (d) carry out at such premises such other inspections or tests as may reasonably be necessary;
 - (e) require a person not to remove or cause to be removed any fish from such premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under these Regulations or any equivalent provisions has at any time been committed;
 - (f) require a person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fish or to the entry to, or exit from, any port or harbour by any fishing vessel;
 - (g) for the purpose of ascertaining whether any person on the premises has committed an offence under these Regulations or any equivalent provisions, search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search;

- (h) inspect and take copies of any such document produced to the officer or found on the premises;
 - (i) require an appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
 - (j) if the officer has a reason to suspect that an offence under these Regulations or any equivalent provisions has been committed, seize and detain any such document produced to the officer or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.
- (2) The provisions of paragraph (1) also apply in relation to any land used in connection with any of the activities described in paragraph (1), or in respect of any vehicle or container which a sea-fishery officer has reasonable cause to believe is being used to transport fisheries products, as they apply in relation to premises and, in the case of a vehicle, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.
- (3) If a justice of the peace on sworn information in writing is satisfied —
- (a) that there is reasonable ground to believe that any documents or other items which a sea-fishery officer has power under this regulation to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under these Regulations or any equivalent provisions; and
 - (b) either —
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
 - (ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his or her return;

the justice may by warrant signed by the justice, and valid for one month, authorise a sea-fishery officer to enter the premises, if need be by reasonable force, and be accompanied by such persons as appear to the officer to be necessary.

16 Powers of sea-fishery officers to seize fish

- (1) This regulation applies —
- (a) in the Island;
 - (b) to a fishing boat within the Island's Territorial Sea.

- (2) If this regulation applies, a sea-fishery officer may seize any fish (including any receptacle which contains the fish) in respect of which the officer has reasonable grounds to suspect that an offence under these Regulations or under any equivalent provision, has been committed.

17 Protection of officers

A sea-fishery officer or a person assisting the officer by virtue of regulations 14(2) or 15(1)(b) or authorisation under regulation 15(3) is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on that person by regulations 14 to 16 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

18 Obstruction of officers

- (1) A person commits an offence if the person —
 - (a) fails without reasonable excuse to comply with any requirement imposed by a sea-fishery officer under the powers conferred on sea-fishery officers by regulations 14, 15 and 16;
 - (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
 - (c) assaults an officer who is exercising any of the powers conferred on the officer by regulations 14, 15 and 16 or intentionally obstructs any such officer in the exercise of any of those powers.
- (2) A person convicted of an offence under paragraph (1) is liable —
 - (a) on summary conviction to a fine not exceeding £5,000; or
 - (b) on conviction on information to a fine.

19 Offences by bodies corporate

- (1) If an offence under these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, the officer as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where any offence under these Regulations committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

- (3) Where any offence under these Regulations committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, that person as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

MADE 1st March 2012


W GREENHOW
Chief Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the implementation of certain EU obligations that apply to the Island in respect of the control of marketing of first sale fish.

The Regulations make provision for the registration by the Department of Environment, Food and Agriculture of sellers (regulation 4) and buyers (regulation 7) of first sale fish. Regulations 6 and 9 require registered fish sellers and registered fish buyers to maintain records of their sales and purchases of first sale fish. The Regulations provide offences for the purposes of the enforcement of these requirements. Regulation 10 provides for the electronic completion and transmission of sales note data.

The Regulations also provide offences in relation to the sale and purchase of first sale fish. Under regulation 5 it is an offence to sell first sale fish unless registered as a fish seller. By regulation 8 it is an offence for a person who is not registered as a buyer to purchase first sale fish, subject to an exception for limited quantities bought for private consumption. By regulations 11 and 12 it is an offence to sell or buy first sale fish landed otherwise than by a registered and licensed fishing vessel.

Regulation 13 sets the penalties for offences: on summary conviction, a fine not exceeding £5,000; on conviction on indictment, a fine. Where a person is convicted of offences in relation to registration or the maintenance of records a court may also revoke the registration concerned and may order that the person convicted is disqualified from applying for registration for a specified period.

The Regulations confer powers of enforcement on sea fishery officers which may be exercised in the Island and on any fishing boat within the Island's territorial sea (regulations 14 to 16). Regulation 17 provides for protection of sea fishery officers and regulation 18 provides offences and penalties for their obstruction. Regulation 19 makes provision in respect of offences by bodies corporate.