

**STATUTORY INSTRUMENTS**

**S.I. No. 335 of 2006**

**EUROPEAN COMMUNITIES (HYGIENE OF FISHERY PRODUCTS AND FISH FEED)  
REGULATIONS 2006**

**DUBLIN : PUBLISHED BY THE STATIONERY OFFICE**

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**(PRN. A6/1073)**

**Price: €3.81**

# **European Communities (Hygiene of Fishery Products and Fish Feed) Regulations 2006**

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# European Communities (Hygiene of Fishery Products and Fish Feed) Regulations 2006

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I, Noel Dempsey, Minister for Communications, Marine and Natural Resources, 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 Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004<sup>1</sup>, Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002<sup>2</sup>, Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004<sup>3</sup>, Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004<sup>4</sup> (as amended by Commission Regulation (EC) No. 2074/2005<sup>5</sup> and No. 2076/2005 of 5 December 2005<sup>6</sup>), Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004<sup>7</sup> (as amended by Commission Regulation (EC) No. 2074/2005 and No. 2076/2005 of 5 December 2005), Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004<sup>8</sup>, Regulation (EC) No. 183/2005 of the European Parliament and of the Council of 12 January 2005<sup>9</sup> and Commission Regulation (EC) No. 2073/2005 of 15 November 2005<sup>10</sup> in so far as they relate to fishery products or fish feed, hereby make the following regulations:

## Citation.

1.\_\_\_\_ These Regulations may be cited as the European Communities (Hygiene of Fishery Products and Fish Feed) Regulations 2006.

## Interpretation.

2.\_\_\_\_ (1) In these Regulations-

“authorised officer” means –

- (a) a person declared by section 16 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006) to be a sea-fisheries protection officer, or
- (b) a person appointed under Regulation 7;

“compliance notice” has the meaning assigned by Regulation 10;

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<sup>1</sup> O.J. No. L195 of 2.6.2004, p.12.

<sup>2</sup> O.J. No. L31 of 1.2.2002, p.1.

<sup>3</sup> O.J. No. L226 of 25.6.2004, p.3.

<sup>4</sup> O.J. No. L226 of 25.6.2004, p. 22.

<sup>5</sup> O.J. No. L338 of 22.12.2005, p.27

<sup>6</sup> O.J. No. L338 of 22.12.2005, p.83

<sup>7</sup> O.J. No. L226 of 25.6.2004, p. 83.

<sup>8</sup> O.J. No. L191 of 28.5.2004, p.1.

<sup>9</sup> O.J. No. L35 of 8.2.2005, p.1.

<sup>10</sup> O.J. No. L 338 of 22.12.2005, p.1.

“document” includes data stored in a data processing system;

“EC Hygiene Regulations” means the Regulations of institutions of the European Communities cited in the preamble to these Regulations;

“fishery product” means all fish, crustaceans and shellfish or any part thereof (including their roes and gametes) intended for human consumption;

“fixed payment notice” has the meaning assigned by Regulation 16;

“Minister” means Minister for Communications, Marine and Natural Resources;

“Regulation No. 178/2002” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002<sup>1</sup>;

“Regulation No. 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004<sup>2</sup> and, in so far as is required by Article 2(2) thereof, Articles 2 and 3 of Regulation No. 178/2002;

“Regulation No. 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004<sup>3</sup> (as amended by Regulation No. 2074/2005 and No. 2076/2005) and, in so far as is required by Article 2(2) thereof, Articles 2 and 3 of Regulation No. 178/2002, and Article 2 of Regulation No. 852/2004;

“Regulation No. 854/2004” means Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004<sup>4</sup> (and, in so far as is required by Article 2(2) thereof, Regulation No. 1774/2002 of the European Parliament and of the Council of 3 October 2002<sup>5</sup>, Articles 2 and 3 of Regulation No. 178/2002, Regulation No. 852/2004 and Regulation No. 853/2004), as amended by Article 60 of Regulation No. 882/2004 and Regulation No. 2074/2005 and No. 2076/2005;

“Regulation No. 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004<sup>6</sup> and, in so far as is required by Article 2 thereof, Articles 2 and 3 of Regulation No. 178/2002;

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<sup>1</sup> O.J. No. L31 of 1.2.2002, p.1

<sup>2</sup> O.J. No. L226 of 25.6.2004, p.3.

<sup>3</sup> O.J. No. L226 of 25.6.2004, p. 22

<sup>4</sup> O.J. No. L226 of 25.6.2004, p. 83.

<sup>5</sup> O.J. No. L 273 of 10.10.2002, p.1.

<sup>6</sup> O.J. No. L191 of 28.5.2004, p.1.

“Regulation No. 183/2005” means Regulation (EC) No. 183/2005 of the European Parliament and of the Council of 12 January 2005<sup>1</sup> and, in so far as is required by Article 3 thereof, Articles 2 and 3 of Regulation (EC) No. 178/2002;

“Regulation No. 2073/2005” means Commission Regulation (EC) No. 2073/2005 of 15 November 2005<sup>2</sup>;

“Regulation No. 2074/2005” means Commission Regulation (EC) No. 2074/2005 of 5 December 2005<sup>3</sup>;

“Regulation No. 2076/2005” means Commission Regulation (EC) No. 2076/2005 of 5 December 2005<sup>4</sup>.

(2) A word or expression that is used in the EC Hygiene Regulations and is also used in these Regulations has, in these Regulations unless the context otherwise requires, the same meaning as in those Regulations.

(3) These Regulations apply to all stages of production, processing and distribution, exportation and importation of fishery products and fish feed except the following –

(a) in the case of fishery products,

- (i) primary production for private domestic consumption;
- (ii) the domestic preparation, handling or storage for private domestic consumption;
- (iii) the direct supply, by the producer, of quantities of primary products (excluding bivalve molluscs) not exceeding €50 in value to the final consumer or to local retail establishments directly supplying the final consumer;
- (iv) supply by a retail establishment to other retail establishments only which is a marginal, localised and restricted activity,

and

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<sup>1</sup> O.J. No. L35 of 8.2.2005, p.1.

<sup>2</sup> O.J. No. L 338 of 22.12.2005, p.1.

<sup>3</sup> O.J. No. L338 of 22.12.2005, p.27

<sup>4</sup> O.J. No. L338 of 22.12.2005, p.83

(b) in the case of fish feed,

- (i) the private domestic production of feed –
  - (I) for fish kept for private domestic consumption;
  - and
  - (II) for fish not kept for food production;
- (ii) the feeding of fish kept for private domestic consumption or for supply in quantities not exceeding €50 in value to the final consumer or to local retail establishments directly supplying the final consumer;
- (iii) the feeding of fish not kept for food production;
- (iv) the direct supply of quantities not exceeding €50 in value of primary production of feed at local level by the producer to local farms for use on those farms;
- (v) the retailing of pet food.

(4) The European Communities (Food and Feed Hygiene) Regulations 2005 (S.I. No. 910 of 2005) do not apply to fishery products or fish feed.

#### **Competent authority.**

3. The Minister is the competent authority for the purposes of –

- (a) Regulation No. 178/2002 and Regulation No. 882/2004 in so far as they relate to fishery products and fish feed,
- (b) Regulation No. 852/2004, Regulation No. 853/2004, Regulation No. 854/2004, Regulation No. 2073/2005, Regulation No. 2074/2005 and Regulation No. 2076/2005, in so far as they relate to fishery products, and
- (c) Regulation No. 183/2005 in so far as it relates to fish feed.

#### **Registration and approval of establishments.**

4. (1) The Minister shall maintain and publish in such manner as he or she considers appropriate –

- (a) a register of establishments of fishery products businesses, for the purposes of Article 6 of Regulation No. 852/2004,

- (b) a register of establishments of fish feed businesses, for the purposes of Article 9 of Regulation No. 183/2005, and
- (c) a list of approvals granted in respect of any establishment referred to in paragraph (a) or (b), for the purposes of the Regulation concerned.

(2) A person shall not operate an establishment which requires to be registered or approved under Article 6 of Regulation No. 852/2004 or Article 9 of Regulation No. 183/2005 unless the establishment is registered and, as the case may require, approved by the Minister under this Regulation.

(3) Applications for registration or approval shall be made in such form and contain such information as the Minister requires and shall be accompanied by such fee as is required under Regulation 6(1). The Minister shall not consider any such application unless all of those requirements have been met.

(4) A person whose establishment is registered or for which an approval has been granted under this Regulation shall make such returns to the Minister as may be required from time to time in order to establish whether or not the EC Hygiene Regulations or these Regulations are being complied with.

(5) The Minister may refuse an application or suspend or revoke a registration or approval if he or she is satisfied that –

- (a) any of the EC Hygiene Regulations or these Regulations has not been, is not being or will not be complied with by or in relation to the establishment or person concerned,
- (b) the applicant or the person named in the register (“other person”) to whom an approval was granted under this Regulation has committed an offence, whether or not he or she has been convicted of that offence, in relation to food, feed, animal or public health or welfare or the environment,
- (c) the applicant or other person has failed to comply with a condition of an approval granted under this Regulation or is not a fit and proper person to whom an approval should be granted,
- (d) the establishment to which the application relates is not, or has ceased to be, a fit and proper establishment to be registered or approved,

- (e) the activity to which an approval relates has ceased in the establishment to which the approval relates,
- (f) any inspection fee due under Regulation 6(2) remains unpaid after 28 days,
- (g) it is necessary for the protection of human health, animal health or welfare or the environment, or
- (h) it is necessary, ancillary or supplementary for an act of an institution of the European Communities to have full effect.

(6) Except in the circumstances mentioned in paragraph (5)(g) or (h), if the Minister proposes to refuse an application or to suspend or revoke a registration or approval he or she shall –

- (a) notify the applicant or other person of the proposal and the reasons for it, and that the person may make representations to the Minister within 14 days of being notified of the proposal,
- (b) consider any representations made, before deciding whether or not to proceed with, modify or annul the proposal, and
- (c) notify the applicant or other person of the decision and the reasons for the decision.

(7) If, in the circumstances mentioned in paragraph (5)(g) or (h), the Minister refuses an application or suspends or revokes a registration or approval, he or she shall –

- (a) notify the applicant or other person of the decision and the reasons for it, and that the person may make representations to the Minister in relation to the decision within 14 days of being notified,
- (b) consider any representations made, and
- (c) confirm, modify or annul the decision and notify the person of the decision and the reasons for it.

(8) If the Minister –

- (a) suspends a registration or an approval in relation to an establishment, the entry in the relevant register or list is suspended and has no effect for the duration of the suspension and shall be annotated accordingly, or
- (b) revokes a registration or an approval in relation to an establishment, or the registration or approval expires by the passage of time, the entry in the relevant



register or list ceases to have effect and shall be annotated accordingly.

- (9) (a) On the grant of approval under this Regulation, the Minister shall issue a certificate (“certificate of approval”) indicating –
- (i) the name and address of the establishment and the person concerned, with a unique reference number,
  - (ii) the nature of the activity to which the approval relates,
  - (iii) the conditions to which the approval is subject, and
  - (iv) the period of validity (if any) of the approval.
- (b) The holder of a certificate of approval which is in force shall have it displayed prominently at the establishment to which it relates, during business hours.
- (c) If an approval is suspended or revoked the certificate of approval shall be surrendered to the Minister.
- (d) The Minister shall return the certificate of approval immediately on the ending of the period of suspension of the approval if the approval has not expired by the passage of time.
- (10) (a) Notwithstanding paragraph (1), an establishment of a fish feed business which immediately before the making of these Regulations was approved or registered under, or carried on a fish feed business in accordance with, the European Communities (Approval and Registration of Establishments and Intermediaries operating in the Animal Feed Sector) Regulations 1999 (S.I. No. 88 of 1999), may continue to carry on that business in accordance with these Regulations until the application for registration or approval under these Regulations is determined.
- (b) Any approval referred to in subparagraph (a) continues in force as if granted under this Regulation and may be suspended, varied or revoked as if granted under this Regulation.

#### **Records of establishments.**

5. A person who is required to maintain a record pursuant to Regulation 178/2002, Regulation No. 852/2004, Regulation No. 853/2004, Regulation No. 854/2004, Regulation No. 183/2005, Regulation No. 2073/2005 or as a condition of registration or approval under these Regulations shall maintain the record for a period of 3 years and make it available on request to an authorised officer.

**Fees and charges.**

6.\_\_\_\_ (1) Subject to paragraph (2), the Minister shall publish by such means as he or she considers appropriate details of fees set by him or her, from time to time, with the consent of the Minister for Finance, for –

- (a) an application for registration or an amendment of particulars relating to any registration, under Regulation 4,
- (b) an application for approval under Regulation 4, or
- (c) the performance by the Minister or an authorised officer of a function under any of the EC Hygiene Regulations or these Regulations, and different fees may be set for different classes of applications and functions.

(2) With effect from 1 January 2007 –

- (a) fees in relation to certain activities shall be set in accordance with Article 27, and
- (b) expenses from additional official controls shall be charged in accordance with Articles 28 and 29,

of Regulation No. 882/2004.

(3) Moneys received under this Regulation or Regulation 16 shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(4) The Public Offices Fees Act 1879 (42 & 43 Vic., c. 58) does not apply to any fee or expenses charged under this Regulation or Regulation 16.

**Appointment of authorised officers.**

7.\_\_\_\_ (1) The Minister may, by instrument in writing, appoint such and so many persons as the Minister thinks fit to be authorised officers for the purposes of such or all of these Regulations as are specified in the instrument.

(2) An authorised officer shall be furnished with a certificate of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, shall (unless in uniform), if requested by a person affected, produce the certificate or other evidence that he or she is an authorised officer to the person.

## **Powers of authorised officer.**

**8.\_\_\_\_** (1) If an authorised officer has reasonable cause to believe that –

- (a) a fishery product, fish feed or a fish feed additive is or has been present at an establishment,
- (b) a fishery product, fish feed or a fish feed additive is being or has been processed, stored or otherwise dealt with at an establishment,
- (c) an establishment is registered or required to be registered, or is approved or is required to be approved, under Regulation 4 or is the subject of an application for registration or approval, or is ancillary to any such establishment,
- (d) a document or other thing relating to a fishery product, fish feed or a fish feed additive or is or has been present at an establishment, or
- (e) an offence is being or has been committed under these Regulations,

the authorised officer may enter the establishment and may –

- (i) search the establishment,
- (ii) stop a person, vehicle, vessel, aircraft or container,
- (iii) board and search a vehicle, vessel, aircraft or container,
- (iv) search a person, where the authorised officer considers it necessary,
- (v) examine any fishery product, fish feed or fish feed additive, vehicle, vessel, aircraft, container or other thing that may contain or consist of any fishery product, fish feed or fish feed additive,
- (vi) take, without payment, one or more samples of any fishery product, fish feed or fish feed additive or other thing, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on such sample or samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (vii) seize and detain (for so long as is necessary) any fishery product, fish feed or fish feed additive, vehicle, vessel, aircraft or container,
- (viii) require the production of a document or other thing relating to a fishery product, fish feed or fish feed additive, vehicle, vessel, aircraft or container,
- (ix) retain a document or other thing (for so long as is necessary),
- (x) dispose of, or require the owner or person in charge of or in possession of, a fishery product, fish feed or fish feed additive, to deal with or dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in

contact with, the fishery product, fish feed or fish feed additive) in a manner that the authorised officer sees fit,

- (xi) give a direction to, or request information of, a person regarding a fishery product, fish feed or fish feed additive or an establishment as he or she considers necessary,
- (xii) require the name and address of a person and the name and address of any other relevant person including the person to whom any fishery product, fish feed or fish feed additive is being delivered or who is causing it to be delivered,
- (xiii) require of a person information as to the ownership, identity and origin of a fishery product, fish feed or fish feed additive,
- (xiv) mark or otherwise identify any fishery product, fish feed or fish feed additive or a sample taken under subparagraph (vi).

(2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has-

- (a) obtained a search warrant under Regulation 9, or
- (b) reasonable cause to believe that before a search warrant could be obtained in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.

(3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons (including one or more persons employed by or acting on the authority of the Commission of the European Communities) and may take with him or her, or those persons may take with them, any equipment or materials to assist the authorised officer in the exercise of the power.

(5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and there were reasonable grounds for doing it.

(6) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of any fishery product, fish feed or fish feed additive, as may be specified by the authorised officer.

(7) If a member of the Garda Síochána has reasonable grounds to believe that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

(8) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising any power conferred on him or her by these Regulations.

### **Search warrant.**

**9.** (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for believing that –

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found at an establishment or other place (including a vehicle, vessel or aircraft),
- (b) there is or has been at an establishment or other place any fishery product, fish feed or fish feed additive or equipment or other thing made, used or adapted for use (including manufacture and transport) in connection with a fishery product, fish feed or a fish feed additive subject to these Regulations, or
- (c) a document or other record related to a matter to which subparagraph (a) or (b) refers is at the establishment or other place,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the establishment or other place named in the warrant.

(3) If an establishment or other place is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

### **Compliance notice.**

**10.** (1) Without prejudice to Regulation 8, if an authorised officer is of the opinion that –

- (a) any of the EC Hygiene Regulations or these Regulations is not being or has not been complied with or there are reasons to believe that any of them will not be complied with,

- (b) it is necessary for the protection of human health, animal health or welfare or the environment, or
- (c) it is necessary, ancillary or supplementary for an act of the institutions of the European Communities to have full effect,

he or she may serve or cause to be served on the owner or person who appears to be in charge, possession or control of an establishment, any fishery product, fish feed or fish feed additive, a notice (“compliance notice”) stating that opinion and directing that –

- (i) any fishery product, fish feed or fish feed additive be dealt with in a manner specified in the notice,
- (ii) such alteration be made to the establishment, or operations or activities there, as specified in the notice,
- (iii) any fishery product, fish feed or fish feed additive be disposed of in a manner specified in the notice,
- (iv) a specified operation or activity cease at an establishment,
- (v) a specified operation or activity take place only in a manner specified in the notice,
- (vi) a specified type or level of sampling and analysis be undertaken for a period specified in the notice,
- (vii) a measure within the meaning of Article 54(2) of Regulation No. 882/2004 be taken as specified in the notice, or
- (viii) a specified operation or activity may only be carried out under and in accordance with such terms and conditions as are specified in the notice.

(2) A person shall comply with a compliance notice or a requirement of a compliance notice unless and until the notice is annulled under paragraph (9).

(3) A compliance notice shall specify a time limit within which any requirement is to be complied with.

(4) A requirement specified in a compliance notice (in this paragraph referred to as the “earlier compliance notice”) may be amended or withdrawn by a further notice in writing and the earlier compliance notice has effect subject to such amendment or withdrawal.

(5) A compliance notice, whether amended under paragraph (4) or not, may require the owner or person in charge of any fishery product, fish feed or fish feed additive to choose between the requirements specified in the compliance notice and to comply with the requirement that he or she chooses.

(6) A person affected by a compliance notice may, within 7 days of service of the compliance notice, appeal to the judge of the District Court having jurisdiction in the District Court District where the feed business or food business is situated or to the judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the grounds that the compliance notice or any term of the compliance notice is unreasonable having regard to the EC Hygiene Regulations or these Regulations.

(7) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.

(8) Notice of an appeal, which shall contain a statement of the grounds upon which it is alleged that the compliance notice or any term of the compliance notice is unreasonable, shall be served on the Minister at least 48 hours prior to the hearing of the appeal and a copy of the appeal shall be lodged with the appropriate District Court Clerk.

(9) On the hearing of an appeal, a judge of District Court may confirm, with or without modification, or annul the compliance notice.

(10) A person, including a person on whom a compliance notice is served, shall not –

- (a) pending the determination of an appeal, deal with any fishery product, fish feed or feed additive to which the compliance notice relates other than in accordance with the notice, or
- (b) if the compliance notice is confirmed on the determination of the appeal, deal with any fishery product, fish feed or fish feed additive except in accordance with the compliance notice (as may be so modified).

(11) If –

- (a) person, by act or omission, fails to comply, whether within the specified time or otherwise, with a compliance notice (including a compliance notice modified in accordance with paragraph (9)), or
- (b) an authorised officer has reasonable cause to believe that –

- (i) a compliance notice (including a compliance notice modified in accordance with paragraph (9)) is not or will not be complied with, or
- (ii) pending the determination of an appeal, an establishment, any fishery product, fish feed or fish feed additive, to which the compliance notice relates is not or will not be dealt with in accordance with paragraph (10)(a),

an authorised officer may seize and detain the fishery product, fish feed or fish feed additive and sell or dispose of it in a manner (including slaughter) as he or she considers appropriate.

(12) Subject to paragraph (13), the net proceeds (if any) of the sale or disposal under paragraph (11) shall be paid as soon as may be after such sale or disposal to the person proving entitlement to such proceeds.

(13) The costs of seizure, sale or disposal of a fishery product, fish feed or a fish feed additive under this Regulation shall be recoverable by the Minister –

- (a) by deducting the costs from any sum due by the Minister to a person on whom a compliance notice has been served, or
- (b) as a simple contract debt in a court of competent jurisdiction.

(14) The costs of any action required by a compliance notice shall be borne by the owner of any establishment, fishery product, fish feed or fish feed additive to which the notice relates.

### **Service of notifications and notices.**

**11.** (1) A notification under Regulation 4(6), a compliance notice or a fixed payment notice shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on or given to the person –

- (a) by giving it to the person, or to an employee or agent of that person,
- (b) by leaving it at the address at which the person ordinarily resides or, where an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, where an address for service has been furnished, at that address, or
- (d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to an establishment, by delivering it to the establishment or by affixing it in a conspicuous position at or near the establishment.



(2) If a notification, a compliance notice or a fixed payment notice is to be served on or given to a person who is the owner or occupier of an establishment and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words “The owner” or “The occupier”.

(3) A person shall not, while a notification or a compliance notice is affixed under paragraph (1)(d) is in force, remove, damage or deface the notification or compliance notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

### **Forgery.**

**12.** (1) A person shall not forge or utter knowing it to be forged, or alter without lawful authority –

- (a) a document or record referred to in Article 5(2)(g) or (4), or Part III of Part A of Annex I to, Regulation No. 852/2004,
- (b) documentation or certification referred to in Article 6(4) of Regulation No. 853/2004,
- (c) a certificate or document referred to in Article 7 of Regulation No. 853/2004, or
- (d) an entry in a register or list of approvals maintained under Regulation 4, a record purporting to be maintained under Regulation 5, a requirement or direction of an authorised officer under Regulation 8 (if the requirement or direction is in writing), a compliance notice, a fixed payment notice or a certificate or other document purporting to be issued, granted or given under these Regulations.

(2) A person shall not have, without lawful authority, in his or her possession or under his or her control any document or other thing referred to in paragraph (1) which is forged or altered without lawful authority.

(3) A person who contravenes this Regulation commits an offence and is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or to both.

**Obstruction, etc.**

**13.**\_\_ (1) A person shall not-

- (a) obstruct or impede an authorised officer in the exercise of his or her powers under Regulation 8 or 9,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 8 or 9,
- (c) in making an application for registration or approval under Regulation 4, or in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 8 or 9 –
  - (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,
- (d) tamper or otherwise interfere with a sample taken under Regulation 8 or 9, or
- (e) aid or abet a contravention of any of the EC Hygiene Regulations or these Regulations.

(2) A person who contravenes this Regulation commits an offence and is liable to on summary conviction a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or to both.

**Other offences and penalties.**

**14.**\_\_ (1) A person who, by act or omission –

- (a) fails to comply with or contravenes Article 11, 12, 14, 15, 16, 17(1), 18, 19 or 20 of Regulation No. 178/2002,
- (b) fails to comply with Article 3, 4, 5 or 6(2) of Regulation No. 852/2004,
- (c) fails to comply with or contravenes Article 3, 5, 6 or 7 of Regulation No. 853/2004,
- (d) fails to comply with Article 4, 5, 6, 7, 9(2), 17(2), 18(3), 23 or 25 of Regulation No. 183/2005,
- (e) fails to comply with Articles 3, 4, 5, 6, 7 or 9 of Regulation No. 2073/2005,
- (f) fails to give assistance to an authorised officer,
- (g) contravenes Regulation 4(2),
- (h) fails to comply with Regulation 5, 10(2), (5) or (10), or 11(3), or
- (i) contravenes a condition of registration or approval under Regulation 4,

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

(2) Where an offence under these Regulations is committed by a body corporate, or by an unincorporated body of persons, or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons and it 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 other person who, when the offence was committed, was, or purported to act as, a director, manager, secretary or other officer (including a member of such body) such other person as well as the body, or the person so purporting to act on behalf of the body, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

### **Evidence in proceedings.**

**15.** (1) In proceedings for an offence under these Regulations, a certificate purporting to be signed by a person employed at a laboratory where a sample taken under these Regulations is analysed stating the capacity in which the person is employed and stating that –

- (a) the person received the sample,
- (b) for the period specified in the certificate, the person had the sample in his or her possession,
- (c) the person gave the sample to another person named in the certificate, or
- (d) the person carried out a procedure for the purpose of detecting in the sample, a substance or contamination or that the sample contained a substance as is, or was contaminated in a manner specified in the certificate,

is (without proof of the signature of the person or that he or she is employed at the laboratory), unless the contrary is shown, evidence of the matters stated in the certificate.

(2) A certificate purporting to be signed by an authorised officer and to certify that on a specified day or days, or during the whole of a specified period –

- (a) a particular establishment stood or did not stand registered or approved under Regulation 4,
- (b) such registration or approval was suspended or revoked, or
- (c) a particular registration or approval was subject to a particular condition or particular conditions,

is, without proof of the signature of the person purporting to sign the certificate or that he or she is an authorised officer, evidence, unless the contrary is shown, of the matters stated in the certificate.

(3) In proceedings for an offence the court may, if it considers that the interests of justice so require, direct that oral evidence of any matter stated in a certificate under paragraph (1) or (2) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(4) In proceedings for an offence, 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 authorised officer 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 authorised officer.

(5) Paragraph (4) 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).

### **Fixed payment notice.**

**16.** (1) If an officer of the Minister authorised by the Minister in that behalf has reasonable grounds for believing that a person is committing or has committed an offence under Regulation 14, he or she may serve on that person a notice (“fixed payment notice”) in the form set out in the Schedule stating that –

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days from the date of the notice make to the Minister a payment of €100 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) Where a fixed payment notice is served 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 may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable by the person who made it, and

- (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 in the notice 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 lies on the defendant.

## **Revocations.**

**17.**\_\_ The following are revoked –

(a) with effect from the making of these Regulations -

- (i) the European Communities (Live Bivalve Molluscs) (Health Conditions for Production and Placing on the Market) Regulations 1996 (S.I. No. 147 of 1996) and every prohibition, restriction, withdrawal, approval, designation, recognition or registration under those Regulations,
- (ii) the European Communities (Fishery Products) (Health Conditions and Hygiene Rules for Production and Placing on the Market) Regulations 1996 (S.I. No. 170 of 1996), and
- (iii) the European Communities (Live Bivalve Molluscs) (Health Conditions for Production and Placing on the Market) (Amendment) Regulations 2000 (S.I. No. 390 of 2000), and

(b) with effect from 1 January 2007 -

- (i) the European Communities (Financing of Veterinary Inspections and Controls on Fish and Fishery Products at Approved Establishments and on Factory Vessels) Regulations 2003 (S.I. No. 544 of 2003),
- (ii) the European Communities (Financing of Veterinary Inspections and Controls on Fish and Fishery Products on Irish Fishing Vessels) Regulations 2003 (S.I. No. 545 of 2003),
- (iii) the European Communities (Financing of Veterinary Inspections and Controls on Fish and Fishery Products at Border Inspection Posts) Regulations 2003 (S.I. No. 546 of 2003), and

- (iv) the European Communities (Financing of Veterinary Inspections and Controls on Fresh Fish Landed by Third Country Vessels) Regulations (S.I. No. 547 of 2003).

**Transfer of Minister's functions to Sea-Fisheries Protection Authority.**

**18.** (1) Subject to paragraph (3), the functions of the Minister under these Regulations are transferred to the Sea-Fisheries Protection Authority on the establishment day appointed under section 40 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006).

(2) On and from the establishment day referred to in paragraph (1) –

(a) moneys payable under Regulation 6 or 16 shall be paid to the Authority instead of to the Minister, and

(b) in Regulation 16, a reference to an officer of the Minister shall be read as a reference to an officer of the Authority.

(3) The Minister retains the right to deduct from any sum due by him or her to a person on whom a compliance notice was served before the establishment day the unpaid costs, incurred by the Minister, of any seizure, sale or disposal under Regulation 10 in relation to that person.

**EUROPEAN COMMUNITIES (HYGIENE OF FISHERY PRODUCTS AND FISH FEED)  
REGULATIONS 2006**

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**FIXED PAYMENT NOTICE UNDER REGULATION 16 IN RELATION TO AN ALLEGED  
OFFENCE**

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**TO:** .....

**ADDRESS:** .....

.....

.....

It is alleged that you committed an offence under the above Regulations

at .....

on .....

A description of the alleged offence is given at reference number ..... indicated in the **SCHEDULE** overleaf.

A prosecution in respect of the alleged offence will not be instituted during the period of 28 days beginning on the date of this notice and, if during that period you pay to

The Minister for Communications, Marine and Natural Resources

Leeson Lane,

Dublin 2

the sum of €100 accompanied by this notice, a prosecution in respect of the alleged offence will not be instituted.

**SIGNED:** \_\_\_\_\_  
Officer of the Minister authorised by the Minister.

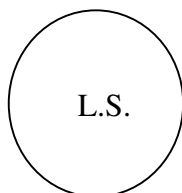
**DATE:** \_\_\_\_\_

/...**SCHEDULE**

## SCHEDULE

PROVISION		DESCRIPTION OF ALLEGED OFFENCE	REFERENCE NUMBER
<b>Regulation (EC) No. 178/2002</b>			
<b>Article</b>	<b>11</b>	Non-compliance with requirements regarding importation of fishery products or fish feed from outside EC	1
	<b>12</b>	Non-compliance with requirements regarding exportation of fishery products or fish feed to outside EC	2
	<b>14</b>	Contravention of general food safety requirements	3
	<b>15</b>	Contravention of general feed safety requirements	4
	<b>16</b>	Contravention of requirements against misleading presentation of food or feed	5
	<b>17(1)</b>	Failure by food or feed business operator to check if legal requirements are met	6
	<b>18</b>	Non-compliance by food or feed business operator with traceability requirements	7
	<b>19</b>	Failure to withdraw unsafe food from market, etc.	8
	<b>20</b>	Failure to withdraw unsafe feed from market, etc.	9
<b>Regulation (EC) No. 852/2004</b>			
<b>Article</b>	<b>3</b>	Failure to meet general obligation of operators of fishery products businesses	10
	<b>4</b>	Non-compliance with certain hygiene requirements	11
	<b>5</b>	Non-compliance with requirements regarding identification, etc., of hazards in production, etc. of fishery products	12
	<b>6(2)</b>	Failure to advise Minister of establishment operating fishery products business or of any significant changes in relation to it	13
<b>Regulation (EC) No. 853/2004</b>			
<b>Article</b>	<b>3</b>	Failure to meet general obligations of operators of fishery products businesses	14
	<b>5</b>	Contravention of requirements regarding health and identification marking	15
	<b>6</b>	Non-compliance with requirements regarding importation of fishery products, from outside EC	16
	<b>7</b>	Non-compliance with requirements regarding documents to accompany consignments of fishery products	17
<b>Regulation (EC) No. 183/2005</b>			
<b>Article</b>	<b>4</b>	Failure to meet general obligations of operators of fish feed businesses	18
	<b>5</b>	Failure to meet specific obligations of operators of fish feed businesses	19
	<b>6</b>	Non-compliance with requirements regarding identification, etc., of hazards in production, etc., of fish feed	20
	<b>7</b>	Non-compliance with documentary requirements regarding Article 6	21
	<b>9(2)</b>	Failure to advise Minister of establishment operating fish feed business or of any significant changes in relation to it	22
	<b>17(2)</b>	Failure by traders to submit required declaration to Minister that fish feed placed on the market by them complies with Regulation	23
	<b>18(3)</b>	Failure by applicant for registration to make required declaration that conditions of Regulation are complied with	24
	<b>23</b>	Non-compliance with requirements regarding importation of fish feed from outside EC	25
	<b>25</b>	Non-compliance with requirements regarding exportation of fish feed to outside EC	26
<b>Regulation (EC) No. 2073/2005</b>			
<b>Article</b>	<b>3</b>	Non-compliance with requirements as regards microbiological criteria for products	27
	<b>4</b>	Failure to test against required microbiological criteria.	28
	<b>5</b>	Failure to comply with specific rules for testing and sampling of products	29
	<b>6</b>	Failure to comply with labelling requirements specifying thorough cooking of products before consumption	30
	<b>7</b>	Failure to take appropriate corrective, etc., action in event of unsatisfactory results of tests	31
	<b>9</b>	Failure to take appropriate action to prevent the occurrence of microbiological risks	32
<b>European Communities (Hygiene of Fishery Products and Fish Feed) Regulations 2006</b>			
<b>Regulation</b>	<b>4(2)</b>	Unauthorised operation of establishment	33
	<b>5</b>	Non-compliance with requirement to maintain certain records	34
	<b>10(2)</b>	Non-compliance with Compliance Notice	35
	<b>10(5)</b>	Non-compliance with chosen requirement	36
	<b>10(10)</b>	Unauthorised dealing in fishery products or fish feed pending or after determination of appeal	37
	<b>11(3)</b>	Unauthorised removal, etc., of notifications or notices	38
	<b>14(1)(f)</b>	Failure to assist authorised officer	39
	<b>14(1)(i)</b>	Contravention of condition of registration or approval	40





GIVEN under my Official Seal,  
30 June 2006

NOEL DEMPSEY

Minister for Communications,  
Marine and Natural Resources.

#### **EXPLANATORY NOTE**

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give immediate effect to EC Directive 2004/41 and Regulations Numbers 178 of 2002, 852, 853, 854 and 882 of 2004 and 183, 2073, 2074 and 2076 of 2005 (EC Food and Feed Hygiene Regulations designed to better protect public health), in so far as concerns the production, processing, and distribution, exportation and importation of fishery products and fish feed (including additives).

Certain establishments involved in those businesses are required to register and be approved (following official inspection) in order to continue their operations which will be closely monitored for compliance with the law. Registrations and approvals, and enforcement generally of these Regulations, will be dealt with by the Department of Communications, Marine and Natural Resources until the statutory Sea-Fisheries Protection Authority is established under section 40 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (Act No. 8 of 2006).

Fees continue to be chargeable under the Regulations referred to in Regulation 17(b) of these Regulations until 31 December 2006, after which the fees chargeable will be set under Regulation 6(1) of these Regulations.