

# The Fishery Products (Official Controls Charges) (Scotland) Regulations 2007

## Summaries of consultation responses from stakeholders

1. The consultation on the Fishery Products (Official Controls Charges) (Scotland) Regulations 2007 was issued on 29 June 2007 and closed on 21 September 2007. The consultation took place as the proposed new regulations were introducing national measures in Scotland from 1 January 2008 to implement the new rates in Regulation (EC) No. 882/2004 on Official Feed and Food Controls (the OFFC Regulation) that related to the requirement to charge food business operators for official hygiene controls on landings of fish and fishery products and fishery products entering processing establishments in Scotland.
2. Comments were requested from stakeholders on aspects of the draft Regulations, particularly on comments on the key proposals (below) and the practicalities and/or difficulties in their implementation. Stakeholders were also invited to respond to the nine specific questions relating to the impact of the implementation highlighted in the Regulatory Impact Assessment (RIA). The consultation was issued by either email or post to over 150 interested parties in Scotland (including Local Authorities, Consumer groups, Trade Associations and other Government departments) and was made publicly available on the Food Standards Agency website.
3. FSA Scotland is grateful to those stakeholders who responded and sets out in the table below responses in order of the group responding.
4. The key proposals on which the consultation sought views were:
  - to apply the rates in the OFFC Regulation for the collection of charges for direct landings in Scotland of fish and fishery products from 1 January 2008;
  - to require charges relating to the controls applicable to the first sale of fish and fishery products in a fish market and the first placing on the market to be calculated on the basis of the tonnage of fish and fishery products landed by fishermen per month (rather than per consignment);
  - to maintain the current maximum charging rate (50 Euro per consignment) for direct landings of specified pelagic fish; and
  - to amend the 'processing establishment charge' from 1 Euro per tonne to 0.5 Euro per tonne.
5. The Food Standards Agency's considered responses to stakeholders' comments are given in the last column of the table which includes those that were used as evidence base in the final RIA to support recommended Option.
6. A list of stakeholders who responded can be found at the end of the document.

SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA SCOTLAND CONSULATION - FISHERY PRODUCTS (OFFICIAL CONTROLS CHARGES) (SCOTLAND) REGULATIONS 2007

Organisation/Contract	Comments	FSA Comments
<p>David Sandison, General Manager, Shetland Aquaculture</p>	<ol style="list-style-type: none"> <li>1. Trade association representing fin fish aquaculture producers in Shetland. Surprised to find that the proposed charges will apply to fish packing plants in Shetland.</li> <li>2. Suggest that all island communities in UK are given derogation from the proposed charges due to location and logistical limitations of islands.</li> <li>3. Considers that the charges are to apply to fishing vessels and landed fish and not to the aquaculture industry. Requests that aquaculture industry is excluded from the regulations.</li> </ol> <p><b>Response to questions in RIA (in collaboration with Seafood Shetland)</b></p> <p>Question 1</p> <ul style="list-style-type: none"> <li>• States that inspections have not been carried out so far in the island and as such no charges have been paid. Requests that retrospective charges will not be applied and suggests that the proposed charges will be <i>new</i> charges to the industry.</li> </ul>	<ol style="list-style-type: none"> <li>1. Establishments carrying out the range of activities under the definition of 'processing' in Article 2 of Reg. 852/2004 will require to pay the charges. The legal premise for referring to Reg. 882/2004 is to ensure that the SI correctly reflects the scope and meaning of the specific use of 'processing' in Reg. 882/2004. There is no legal basis in Reg. 882/2004 (or the SSI) to charge preparation establishments for official controls.</li> <li>2. EC legislation overarches national legislation. Reg. 882/2004 is directly applicable (i.e. automatically has the force of law) in all Member States from the date of its publication. As such there is no scope to not implement the OFFC Regulation as this would breach an EU obligation to apply it and leave the UK open to infraction proceedings by the Commission for failing to do so.</li> <li>3. Fish from aquaculture farms fall within the definition of 'relevant landed fishery products' and the relevant charge will apply. See reply to Q2.</li> </ol> <p>Question 1</p> <p>Many local food authorities in Scotland have been collecting fees since the introduction of the fishery products hygiene charges. Enforcement of the charging provisions should be included in the activities of local authorities administering these regulations. Auditing of fish charging provisions will be incorporated into the Agency's auditing programme.</p> <p>Fees should be calculated on the basis of the charging regime in place at the time when the inspections took place. If inspections have not taken place then no charges should be levied. The proposed</p>

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	<ul style="list-style-type: none"> <li>• Provides details of the potential impact of charges to members and states that this will impact members.</li> </ul> <p>Question 2 Agrees that Option 2 is the most appropriate option. Highlights the issue of businesses already contributing to local environmental health services through business rates on commercial premises.</p> <p>Question 3 Impact of charges has implications for businesses in Shetland – costs are per question 1.</p> <p>Question 4 Unable to comment on accuracy of figures in Table 1.</p> <p>Question 5 Requests that information is obtained on the impact of the charges on processing establishments and impact on fish markets.</p>	<p>regulations introduce a new charging regime from 1 January 2008.</p> <p>Refer to response on Q2 in general comments. The SSI allows for the payment of either the lower of the fees calculated using the specified minimum legal rates or the actual cost of inspection. From information provided by enforcement authorities is it likely that a significant number of businesses will pay the actual cost of inspection.</p> <p>Question 2 Support for Option 2 noted. EC legislation overarches national legislation. Reg. 882/2004 is directly applicable (i.e. automatically has the force of law) in all Member States from the date of its publication. It provides specifically for costs of official controls to be recouped via general taxation or by means of fees but in specified circumstances (including the ones to which the draft SI relates) requires that specified fees be charged. Food businesses should discuss any concerns with their LAs, as the issue of business rates falls outside the remit of the FSA.</p> <p>Question 3 Response noted. Refer to response to Q2 to general comment and RIA Q1.</p> <p>Question 4 Response noted.</p> <p>Question 5 Agreed. The purpose of the consultation is to give stakeholders the opportunity to comment and submit information in order that the impact of the charges can be accurately assessed. This information was requested as part of the consultation however no detailed figures were supplied by the industry in Scotland.</p>

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	<p>Question 6 Considers that the question is aimed more at relevant local authorities. Comments that processing establishments operating to high standards and this in turn should require minimal time on inspections and this reflected in actual cost.</p> <p>Question 7 Need to obtain information to be able to calculate the option of charging the full cost of actual inspection.</p> <p>Question 8 Queries whether assessment has been made on the administrative burdens to businesses and impact on processing establishments.</p> <p>Question 9 Request more clarification on the definition of a small business.</p>	<p>Question 6 All food businesses should comply with the EU food hygiene regulations introduced in 2006. The charges in respect of hygiene controls for fish and fishery product contribute to local food authorities legal obligations under Annex III to Regulation (EC) No. 854/2004. If businesses are complying with the regulations it will be expected that less time will be required to complete an inspection than for those who are non compliant.</p> <p>Question 7 Agreed. In response to the consultation one local food authority has provided data on actual cost of inspections. Due to different charging structures not all LAs will charge the same fees for their inspections, hence this information provides an indication of the likely actual costs of inspection. LAs will be encouraged to provide this information to food businesses when it is requested.</p> <p>Question 8 This information was request as part of the consultation exercise and no new administrative burdens have been identified. The requirement to provide written returns is not new. Other than changes to the rates for charges, the general information required by the LAs remains the same. The template form 'Local Authority Return for Chargeable Transactions' in FSA Q &amp; A Notes for Enforcement Authorities should be used. <a href="http://www.food.gov.uk/multimedia/pdfs/thefisherychargesregulations.pdf">http://www.food.gov.uk/multimedia/pdfs/thefisherychargesregulations.pdf</a></p> <p>Question 9 For the purposes of these regulations small businesses (land and vessels) are those handling less than 25 tonnes of fish and fishery products per year. They do not fall within the scope of the charging requirements.</p>
John Grant, Principle Environmental Health Officer, Aberdeenshire Council	1. Recommends that supporting guidance notes are published to aid	1. Agreed. The current guidance available to enforcement authorities on the regulations will be updated to reflect changes to the

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	<p>understanding of the charges. LA should be able to contribute to the development of such guidance.</p> <p><b>Response to questions in RIA</b></p> <p>Question 1</p> <ul style="list-style-type: none"> <li>• In the majority of cases where a businesses ie vessels, pelagic vessels, fish processor are subject to an annual Primary inspection and charge on tonnage basis greater than the cost of Local Authority in carrying out official controls, processor pay lesser of the two amounts most likely enforcement costs.</li> <li>• States that the impact on the industry both the catching and processing sectors would be minimal when offset against the value of the product in tonnage terms</li> </ul> <p>Question 2</p> <ul style="list-style-type: none"> <li>• Agrees that Option 2 is most appropriate option. Accepted that charges are intended to make a contribution to the cost of enforcement however scale of Council's involvement in fishing industry and the size of businesses the income only partly offset the costs to the Service.</li> <li>• Charging the costs of inspection</li> </ul>	<p>legislation for the charges now applicable to official hygiene controls on fishery products. We will consult with LAs on the revised guidance.</p> <p>Question 1 Response noted. Information used to assess impact of Options in RIA.</p> <p>Response noted.</p> <p>Question 2 Comments and support of Option 2 noted. The information provided was used to assess the impact of Option 2 in the RIA. SSI enables the recovery of contributions towards the cost of official controls. The calculation of actual fees for official controls should be based on the criteria set in Annex VI of 882/2004.</p>

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	<p>as against the tonnage charge accrued, the industry in general will benefit significantly.</p> <p>Question 3 Not aware of any significant impacts not taken into account. Biggest impact will felt those paying the first placing on the market charge.</p> <p>Question 4 Agrees in general to figures in Table 1 although as these were based on 2003 figures they will change as have been significantly affected by quota cuts, restrictions and decommissioning of fishing vessels.</p> <p>Question 5 Scale of impact on business will be dependant on the volume of raw material they handle. The larger the volume the large the charge accrued. Example provided of costing of actual and tonnage charges for typical pelagic processor. Lesser of the two amounts would be charged which give value of raw material would be insignificant.</p> <p>Question 6 Provided examples of likely costs to processors, fish market and factory vessel based on tonnage throughput</p>	<p>Comments noted.</p> <p>Question 3 Response noted. Clarification of this issue will be included in the forthcoming revision of the Q&amp;A Notes for enforcement authorities.</p> <p>Question 4 Welcome your agreement and information provided.</p> <p>Question 5 Statistical information was used to inform the RIA.</p> <p>Question 6 Statistical information was used to inform the RIA.</p> <p>Do not want to restrict the flexible approach under the SSI. Food</p>

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	<p>and actual costs. Suggests that accounting period based on 12 months of financial year.</p> <p>Question 7 Does not necessarily agree that costs levied by official controls are anti-competitive. Where businesses generate a substantial tonnage throughput over accounting period associated charge will be greater than local authority charge therefore pay local authority charge.</p> <p>Question 8 The introduction of these regulations should not increase the administrative burden on businesses in the Aberdeenshire area. However it will be LAs' who will have the increase as they will have to calculate two costs then calculate the comparison.</p> <p>Question 9 Agrees that charges will not disproportionately impact on small businesses. However majority of businesses in Aberdeenshire will fall outwith criteria.</p>	<p>authorities and businesses are responsible for ensuring the correct exchange rate is used.</p> <p>Question 7 Due to the different costing structures in enforcement authorities and variety of inspection across the Scotland, UK and EU this would put industry at a disadvantage as compared with their competitors in other Member States. Being able to charge the lower of the minimal rates or the actual costs enables uniform application in all Member States.</p> <p>Question 8 Comments noted. Local authorities should base the calculation of the fees for official controls on the criteria in Annex VI of 882/2004.</p> <p>Question 9 Your response has been noted.</p>
Ruth Henderson, Seafood Shetland	<p><b>Response to questions in RIA (in collaboration with Shetland Aquaculture)</b></p> <p>Question 1</p>	<p>Question 1</p>

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	<ul style="list-style-type: none"> <li data-bbox="689 288 1167 496">• States that inspections have not been carried out so far in the island and as such no charges have been paid. Requests that retrospective charges will not be applied and suggests that the proposed charges will be <i>new</i> charges to the industry.</li> <li data-bbox="689 655 1167 743">• Provides details of the potential impact of charges to members and states that this will impact member.</li> </ul> <p data-bbox="689 935 1155 1142">Question 2 Agrees that Option 2 is the most appropriate option. Highlights the issue of businesses already contributing to local environmental health services through business rates on commercial premises.</p> <p data-bbox="689 1270 1144 1327">Question 3 Impact of charges has implications for</p>	<p data-bbox="1189 288 2029 432">Many local food authorities in Scotland have been collecting fees since the introduction of the fishery products hygiene charges. Enforcement of the charging provisions should be included in the activities of local authorities administering these regulations. Auditing of fish charging provisions will be incorporated into the Agency's auditing programme.</p> <p data-bbox="1189 472 2029 584">Fees should be calculated on the basis of the charging regime in place at the time when the inspections took place. If inspections have not taken place then no charges should be levied. The proposed regulations introduce a new charging regime from 1 January 2008.</p> <p data-bbox="1189 655 2040 895">Establishments carrying out the range of activities under the definition of 'processing' in Article 2 of Reg. 852/2004 will require to pay the charges. There is no legal basis in Reg. 882/2004 (or the SSI) to charge preparation establishments for official controls. The SSI allows for the payment of either the lower of the fees calculated using the specified minimum legal rates or the actual cost of inspection. From information provided by enforcement authorities is it likely that a significant number of businesses will pay the actual cost of inspection.</p> <p data-bbox="1189 935 2040 1230">Question 2 Support for Option 2 noted. EC legislation overarches national legislation. Reg. 882/2004 is directly applicable (i.e. automatically has the force of law) in all Member States from the date of its publication. It provides specifically for costs of official controls to be recouped via general taxation or by means of fees but in specified circumstances (including the ones to which the draft SI relates) <i>requires</i> that specified fees be charged. Food businesses should discuss any concerns with their LAs, as the issue of business rates falls outside the remit of the FSA.</p> <p data-bbox="1189 1270 1693 1327">Question3 Response noted. Refer to response to Q1.</p>

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	<p>businesses in Shetland.</p> <p>Question 4 Unable to comment on accuracy of figures in Table 1.</p> <p>Question 5 Requests that information is obtained on the impact of the charges on processing establishments and impact on fish markets.</p> <p>Question 6 Considers that the question is aimed more at relevant local authorities. Comments that processing establishments operating to high standards and this in turn should require minimal time on inspections and reflected in actual cost.</p> <p>Question 7 Need to obtain information to be able to calculate the option of charging the full cost of actual inspection.</p> <p>Question 8 Queries whether assessment has been made on the administrative burdens to</p>	<p>Question 4 Response noted.</p> <p>Question 5 Agreed. The purpose of the consultation is to give stakeholders the opportunity to comment and submit information in order that the impact of the charges can be accurately assessed. This information was requested as part of the consultation however no detailed figures were supplied by the industry in Scotland.</p> <p>Question 6 All food businesses should comply with the EU food hygiene regulations introduced in 2006. The charges in respect of hygiene controls for fish and fishery product contribute to local food authorities legal obligations under Annex III to Regulation (EC) No. 854/2004. If businesses are complying with the regulations it will be expected that less time will be required to complete an inspection than for those who are non compliant.</p> <p>Question 7 Agreed. In response to the consultation one local food authority has provided data on actual cost of inspections. Due to different charging structures not all LAs will charge the same fees for their inspections, hence this information provides an indication of the likely actual costs of inspection. LAs will be encouraged to provide this information to food businesses when it is requested.</p> <p>Question 8 This information was request as part of the consultation exercise and no new administrative burdens have been identified. The requirement to</p>

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	<p>businesses and impact on processing establishments.</p> <p>Question 9 Request more clarification on the definition of a small business.</p>	<p>provide written returns is not new. Other than changes to the rates for charges, the general information required by the LAs remains the same. The template form 'Local Authority Return for Chargeable Transactions' in FSA Q &amp; A Notes for Enforcement Authorities should be used. <a href="http://www.food.gov.uk/multimedia/pdfs/thefisherychargesregulations.pdf">http://www.food.gov.uk/multimedia/pdfs/thefisherychargesregulations.pdf</a></p> <p>Question 9 For the purposes of these regulations small businesses (land and vessels) are those handling less than 25 tonnes of fish and fishery products per year. They do not fall within the scope of the charging requirements.</p>

**List of respondents**

1.	Janice Milne, Head of Environmental Policy, SEPA
2.	David Sandison, General Manager, Shetland Aquaculture
3.	John Grant, Principle Environmental Health Officer, Aberdeenshire Council
4.	Ruth Henderson, Seafood Shetland