

POLICY NOTE

THE FISH LABELLING (SCOTLAND) AMENDMENT REGULATIONS 2015

SSI 2015 No. 48

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 6(4), 16(1), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990, paragraph 1A of Schedule 2 to the European Communities Act 1972 and all other powers enabling them to do so.

2. Policy Objectives

2. 1 This instrument will provide for the enforcement of the new EU consumer information requirements for fishery products, which require that information on the equipment used to catch the fish, the date of minimum durability (as appropriate) and a more precise definition of farmed production area or catch area for fish caught at sea, must be available to consumers at the point of retail.

2.3 The amendment, which is necessary to comply with EU obligations on member states to execute and enforce EU food law, will provide the basis for delivery of enhanced consumer information and so enable consumers to make more informed choices, including expressing a preference for fish that has been caught in a sustainable manner. Consumers will benefit from the greater certainty and clarity that the increased information will provide, and have increased confidence in the quality of the product they are purchasing, while the sustainability of fisheries worldwide could be increased in response to consumer preference.

3. Policy Background

3.1. New requirements to provide the consumer with additional information on fish and fishery products at the retail stage have been introduced throughout the EU. The new rules are included in the fourth chapter of Regulation (EU) No 1379/2013 of the European Parliament and the Council, enacted on 11 December 2013. This Regulation, together with its companion Regulation (EU) No 1380/2013 (for which Marine Scotland have policy responsibility), mandates a wholesale revision of the Common Fisheries Policy, specifically its Common Organisation of the Market (CMO) Regulation, which also covers fishing, production and marketing. Provision must be made within domestic legislation to enforce the new consumer information requirements. Government intervention is necessary to ensure that the market supplies the consumer with the required information and to maintain consistency in how this is applied throughout the industry.

3.2 The additional requirements to provide information on fishery products are:

- the equipment used to catch the fish
- the date of minimum durability (as appropriate).

3.3 Furthermore, the current requirement to provide information on where a fish has been farmed or caught will become more specific. The revised requirement is for information that satisfies a tighter definition of the country of origin of farmed fish and a more precise definition of catch area for fish caught at sea.

3.4 The EU Regulation also encourages Food Business Operators to provide *additional voluntary information*, provided that it is clear, unambiguous and verifiable. It suggests that information of the following types would be particularly helpful:

- Date of catch / harvest
- Date of landing or information on the port of landing
- More details on the fishing gear
- Vessel's flag state
- Environmental information
- Ethical/social information
- Production techniques and practices
- Nutritional content

If such information is provided on labels, there is a legal requirement to ensure that it can be verified, and to ensure that it is not displayed to the detriment of the space available for mandatory information. Local Authorities are empowered to enforce this requirement.

4. Legislative Context

4.1 European legislation harmonises consumer information and traceability requirements regarding fish and fishery products. The applicable legislation is set out in the following paragraphs.

4.2 Previous situation

Common Fisheries Policy (CFP) Control Regulation

(EC) 1224/2009 – Establishing a community control system for ensuring compliance within the rules of the common fisheries policy

(EC) 404/2011 – Sets out detailed rules for the implementation of 1224/2009

Common Organisation of the Markets in Fishery and Aquaculture Products (CMO)

(EC) 104/2000 – Base Regulation

(EC) 2065/2001 – Detailed rules for the application of 104/2000

Scottish Statutory Instrument (SSI)

The Fish Labelling (Scotland) Regulations 2013 (SSI 2013 No. 256) – provides for the enforcement in Scotland of the European legislation on traceability and consumer information requirements.

The current consumer information requirements are as follows:

Fishery and aquaculture products.....may only be offered for retail to the final consumer where appropriate marking or labelling indicates:

- The commercial designation of the species, and scientific name

- The production method, in particular by the following words ‘caught’ or ‘caught in freshwater’ or ‘farmed’ or ‘cultivated’
- The area where the product was caught or farmed
- Whether the product has previously been frozen, to be indicated by the word ‘defrosted’

4.3 Revised situation (applied fully from December 2014)

Common Organisation of the Markets in Fishery and Aquaculture Products (CMO)

- Regulation (EU) No 1379/2013 – Repealed and replaced Regulation (EC) No 104/2000 from 1 January 2014 (*Consumer information on commercial designations, catch area and production methods remain in force until 12 December 2014*) and introduces revised consumer information requirements from 13 December 2014.
- Regulation (EU) No 1420/2013 – repealed Regulation (EC) No 2065/2001 with effect from 13 December 2014.

Common Organisation of the Markets in Fishery Products (CMO)

(EC) 1379/2013 – This Regulation updates and consolidates the European consumer information requirements which are listed below:

Chapter IV Consumer Information

Fishery and aquaculture products ... may be offered for sale to the final consumer or to a mass caterer only if appropriate marking or labelling indicates:

- (a) the commercial designation of the species and its scientific name;
- (b) the production method, in particular by the following words "... caught ..." or "... caught in freshwater ..." or "... farmed ...";
- (c) the area where the product was caught or farmed, and the category of fishing gear used in capture of fisheries, as laid down in the first column of Annex III to the Regulation;
- (d) whether the product has been defrosted;
- (e) the date of minimum durability, where appropriate.

5. Consultation

5.1 Consultation took place between 24 September 2014 and 17 October 2014. The consultation produced nine responses and a summary will be published on <http://www.food.gov.uk/news-updates/consultations>. The FSA(S) received responses from two private individuals and from seven producers and producer associations within the industry. The consumers were concerned that fish were sometimes labelled in ways that gave a misleading impression about the country of origin and production method. The proposed legislation should help to address these concerns. The most common concerns expressed by the industry have been around the revised requirement to provide information on where a fish has been caught, specifically a more precise definition of catch area for fish caught at sea. The European Commission published a pocket guide to the regulations in December and intends to issue a list of catch areas with translations in key EU languages to help clarify the

required information. Furthermore, two businesses commented that their relabelling and familiarisation costs would be substantial, and significantly higher than those estimated in the Partial BRIA. It was noted, however, that since these businesses produced processed fisheries products any additional relabelling and familiarisation costs would be linked to the introduction of the EU Food Information to Consumers Regulation and not this specific requirement. The Food Standards Agency will keep this under review.

6. Other Administrations

6.1 These Regulations apply to Scotland only. However, equivalent Regulations have been introduced in the other UK countries.

7. Guidance

7.1 The current guidance to the Fish Labelling Regulations 2013 will be updated to take account of the changes described above and guidance from the European Commission. In the meantime, working with Marine Scotland, the FSA will issue an information note to the industry to help address concerns raised during consultation.

8. Impact Assessment

8.1 A final Business and Regulatory Impact Assessment has been prepared following public consultation and discussion with a selection of businesses and accompanies this note.

9 Regulating small businesses

9.1 This Regulation will apply to all businesses trading in fishery products in order for the benefits of traceability to be realised.

10. Monitoring

10.1. The FSA will work with Enforcement Authorities where problems or suspected infringements of the legislation arise. The effectiveness of the instrument will be also be monitored via general feedback from industry and Enforcement Authorities.

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