

**EXPLANATORY MEMORANDUM TO**  
**THE OLIVE OIL (MARKETING STANDARDS) REGULATIONS 2014**

**2014 No. 195**

- 1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This statutory instrument (SI) is intended to provide powers to enforce, within the UK, new and amended European Union (EU) Regulations on marketing standards for olive oil. It:

- Provides powers to allow for effective inspections and enforcement.
- Provides for penalties and specifies an appeals mechanism.
- Includes a requirement to review the SI, in relation to England, at least every five years in accordance with government policy.
- Specifies detailed requirements for the entry and withdrawal registers which all operators up to the bottling stage must keep for each category of olive oil they hold.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 The sale of olive oil within the EU is governed by specific EU olive oil marketing standards Regulations. These seek to protect the consumer, by ensuring that olive oil is marketed accurately and by providing a deterrent against fraud. Regulation (EU) No 1308/2013 of the European Parliament and of the Council (“Regulation 1308/2013”) is the new EU Regulation which sets out the basic market management rules, including marketing standards, under the Common Agricultural Policy. The detailed rules for the olive oil marketing standards are then set out in two Commission Regulations:

- Commission Implementing Regulation (EU) No 29/2012 covers the marketing standards for olive oil including the setting of labelling requirements.
- Commission Regulation (EEC) No 2568/91 (“Regulation 2568/91”) sets out in detail the characteristics of each category of olive oil and establishes the relevant methods of analysis.

4.2 Taken together these three Regulations represent the EU marketing standards summarised below.

4.3 In summary, the Regulations:

- Detail the characteristics of the different categories of olive oil, enabling the consumer to distinguish between these categories, including the higher value extra virgin unrefined products and the lower value refined oils;
- Detail the methods of analysis to determine the characteristics of the oil; and
- Specify mandatory and optional labelling requirements. These include the conditions under which optional terms may be used on the label to describe the taste and smell of extra virgin and virgin olive oil.

4.4 These EU Regulations are directly applicable in each Member State. However national legislation is required to give powers to enforce the provisions in the UK.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Over the last few years there have been various media reports highlighting the risk of fraud in the food sector and the need for enforcement authorities to carry out appropriate checks to protect consumers.

7.2 Specifically, in late 2011 various articles were published in the UK which questioned the authenticity of EU produced olive oil, suggesting widespread adulteration with cheaper oils.

7.3 In response to this bad publicity, the European Commission met with olive oil producing Member States and agreed an Action Plan to improve the reputation of EU produced olive oil. As a non-producer, the UK was not involved.

7.4 The Action Plan made a number of recommendations, including enhanced Member State controls. These recommendations were adopted in Commission Implementing Regulation (EU) No 299/2013, which amended Regulation 2568/91. The main changes are as follows:

- (i) Member State control obligations are clarified.
- (ii) A new minimum annual sampling requirement is introduced based on the amount of oil marketed in each Member State. Results of the sampling carried out must be communicated to the European Commission by 31 May of the following year.
- (iii) A new provision is introduced which requires operators, up to the bottling stage, to keep entry and withdrawal registers of each category of olive oil they

hold. Member States will be required to check that this obligation has been carried out.

7.5 In order to take account of these changes and update current enforcement arrangements in line with best practice, this new SI has been prepared to replace previous instruments, in particular the Olive Oil (Marketing Standards) Regulations 2003 (SI 2003/2577) (as amended) and the Olive Oil (Marketing Standards) Regulations (Northern Ireland) 2008 (SR (NI) 2008 No 189).

7.6 Industry self-regulation is not permitted under the EU marketing standards on olive oil and cannot be considered an option for enforcement.

- ***Consolidation***

7.7 Not an issue. This is a free standing SI, which revokes all previous relevant instruments.

## **8. Consultation outcome**

8.1 A four week consultation ran from 25 October 2013 to 22 November 2013 seeking views of stakeholders on the Government's enforcement arrangements.

8.2 The relatively short consultation reflected the fact that the enforcement regime was drawn up in informal consultation with the industry and a wish to introduce the new arrangements as soon as possible after the expected adoption of Regulation 1308/2013.

8.3 Seven responses were received. Overall there was general agreement with the Government's approach to enforcement.

8.4 Two substantive comments were received. One asked for details of the reason for selecting the Rural Payments Agency (RPA) rather than local authorities as the principal enforcement body. They also suggested that the analysis of sampling could be undertaken by local authority public analyst laboratories.

8.5 In response, we explained that the RPA would be able to ensure economies of scale by using procedures, agreements and people in place for UK wide enforcement of similar EU requirements in other sectors (for example, fresh fruit and vegetables). Appointing local authorities as the principal enforcement body would require setting up a team within Defra to co-ordinate the enforcement, which would entail significant additional costs to central Government which could not be justified. The analysis of samples would be carried out through RPA's existing contractors until November 2014. An Invitation to Tender exercise will be conducted in 2014, inviting bids from any capable provider, to undertake laboratory analysis from December 2014.

8.6 Another respondent asked Defra to trigger a clause in the legislation enabling Member States to increase the maximum size container permitted for oil destined for the catering industry. However, since all other respondents were content with the current arrangements, Defra decided not to increase the limit at this stage. However, this will be kept under review for a future update of the EU legislation, which is expected to take place in 2015.

8.7 A full A full analysis of responses to the consultation is available at: <https://www.gov.uk/government/consultations/olive-oil-updated-eu-marketing-standards-proposed-enforcement-arrangements>

## **9. Guidance**

9.1 Guidance is being prepared by the principal enforcement body, the RPA.

## **10. Impact**

10.1 There will be an impact on business of approximately £83,000 per year. This will include staff time to host inspection visits of £1,000 to £1,300. There will be costs associated with the olive oil which will be collected for official sampling of £1,900. There will be a cost to operators who bottle olive oil to keep registers of oil passing through their premises of approximately £72,800. There will also be a cost to industry of the appeals process estimated to be £6,600.

10.2 The impact on the public sector is calculated to be £92,000 to £147,000 in the first year and £85,000 to £140,000 in subsequent years. This includes the cost of setting up and running First-tier Tribunals as the appeals mechanism in England and Wales. The current estimated cost is £12,670 in the first year and £6,000 in subsequent years. The cost of the annual sampling regime is expected to be £79,000 to £134,000 per year.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the size of a business will form part of the risk assessment used to decide whether that business will be inspected. Generally speaking, the smaller a business is, the smaller will be the impact of any non-compliance on its part. Impacts on small businesses will also be minimised following the principle of earned recognition.

11.3 We asked the European Commission to provide an exemption for micro businesses in the revised EU regulations, but they declined to do this.

11.4 Many small businesses were also consulted informally about the proposed approach to enforcement. They were generally content, and supported the objective of increased enforcement activity to reduce the likelihood of fraud in the olive oil sector. These operators were also given the opportunity to provide comments during the public consultation.

## **12. Monitoring & review**

12.1 The Secretary of State is under a duty to review the implementation and enforcement of this SI in England, in accordance with regulation 19. In particular the

review will cover whether the objectives of the SI have been met and the continuing relevance of the objectives. The conclusions of the first review must be set out in a report which must be published by end of February 2019.

### **13. Contact**

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