

## EXPLANATORY MEMORANDUM TO

### THE SEA FISH (MARKETING STANDARDS) (ENGLAND AND WALES AND NORTHERN IRELAND) REGULATIONS 2018

2018 No. 437

#### 1. Introduction

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

#### 2. Purpose of the instrument

- 2.1 This instrument introduces enforcement provisions for the marketing standards of fish and aquaculture products, which are outlined in Regulation (EU) 1379/2013 on the common organisation of the markets in fishery and aquaculture products (“the CMO regulation”) and its accompanying implementing legislation. This is in order to ensure that marketed fish comply with the relevant standards and to meet the requirement that Member States implement appropriate enforcement procedures and penalties at the national level.
- 2.2 This instrument provides that breach of the relevant marketing standards is an offence and also introduces civil enforcement provisions in line with enforcement regimes for similar offences in other food sectors.

#### 3. Matters of special interest to Parliament

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

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 The CMO regulation repeals and replaces Regulation (EC) No 104/2000 on the common organisation of the markets in fishery and aquaculture products. Article 34(1) of the CMO regulation provides that the products intended for human consumption for which common marketing standards are laid down may be made available on the Union market only in accordance with those standards.
- 4.2 Relevant common marketing standards are set out in Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products, which was made under a previous CMO regulation and preserved by Article 47 of the CMO regulation.
- 4.3 Provisions for the enforcement of sea fish marketing standards in England, Wales and Northern Ireland are currently set out in the Sea Fish (Marketing Standards) Regulations 1986 as amended by the Sea Fish (Marketing Standards) (Amendment)

Regulations 1989. This instrument will revoke and replace those instruments. Provisions for the enforcement of sea fish marketing standards in Scotland are set out in the Sea Fish (Marketing Standards) (Scotland) Regulations 2004, which are not affected by this instrument.

- 4.4 The other provisions of the CMO regulation that required domestic legislation were implemented in England and Wales through the introduction of the Fish Labelling Regulations 2013 and the Fish Labelling (Amendment) Regulations 2014. In Northern Ireland, the same provisions were implemented through the introduction of The Fish Labelling Regulations (Northern Ireland) 2013.

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

- 5.1 The extent of this instrument is England and Wales and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales and Northern Ireland.

## **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**

### *What is being done and why*

- 7.1 This instrument is necessary to ensure the proper enforcement of the marketing standards laid out in the CMO regulation.
- 7.2 The CMO regulation is the mechanism by which the EU manages the market and maximises value for EU seafood products. A CMO regulation was first introduced in 1970 aiming to provide market stability, ensure a stable supply of quality products, guarantee a fair income for producers and ensure reasonable prices for consumers.
- 7.3 The revised CMO regulation was adopted in 2013 in response to consumer drive for greater information on sustainability, provenance and quality of fish and aquaculture products. The new provisions relate to marketing standards (fish sizes and freshness) and their enforcement, consumer information (fish labelling requirements), Producer Organisations (to plan members' production and develop joint marketing strategies) and their activities, competition rules (such as information on storage, treatment or processing of fishery products) and market intelligence.
- 7.4 The new labelling provisions were transposed through The Fish Labelling Regulations 2013 and The Fish Labelling (Amendment) Regulations 2014. The provisions concerning Producer Organisations were directly applicable. This element therefore does not require national legislation. Enforcement provisions for the marketing standards are now being introduced through this instrument. That completes the national legislation required to implement the CMO regulation.
- 7.5 The enforcement provisions introduced by this instrument will bring up-to-date the enforcement provisions for the marketing standards, which are set out in the Sea Fish (Marketing Standards) Regulations 1986 and which relate to the previous version of the CMO. The 1986 enforcement provisions only allow enforcement officers to prosecute for instances of non-compliance with the marketing standards. The new SI applies enforcement provisions to the revised CMO and brings the powers up to date.

- 7.6 This instrument retains the prosecution element for which we have extended the time limit for bringing prosecutions to allow prosecutors sufficient time to collect and process evidence necessary for regulatory offences.
- 7.7 The instrument also introduces civil enforcement procedures as a more flexible and responsive approach to enforcement, which would help to maximise compliance from the fish and aquaculture sector. Specifically, we are proposing to allow for enforcement of the marketing standards by issuing, in the first instance, compliance notices, which will specify the steps which the recipient of the notice must take to ensure compliance with the marketing standards. Breach of compliance notices will be an offence and this instrument also introduces an appeals route against such notices.
- 7.8 The enforcement provisions in this instrument are needed in order to ensure that marketed fish do not undermine the minimum fish landing sizes specified in the technical conservation regulation and by implication promote fishing for juveniles.
- 7.9 On 23rd June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Prime Minister began the negotiations to exit the EU on 15 March 2017. Until exit negotiations are concluded, the UK remains a full member of the European Union and all rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

#### *Consolidation*

- 7.10 None.

### **8. Consultation outcome**

- 8.1 The provisions outlined in the new CMO had been previously consulted on in 2011 as part of a series of EU consultations during the review of the Common Fisheries Policy (CFP).
- 8.2 Specifically, on 13 July 2011, the European Commission published a package of proposals to reform the CFP and the Common Organisation of the Market (CMO) in fishery and aquaculture products. Defra sought the views of the UK public in a consultation that ran for 12 weeks from the 10<sup>th</sup> August 2011. The responses to the 2011 consultation on the original CMO proposals were broadly aligned to the Government's analysis with overall support for the Commission's aims. Although, the common marketing standards of the new CMO remained as they were in the previous regime, in respect of quality, size, freshness and weight, it was recognised that some areas needed further clarification, including around the fish labelling provisions and the increased responsibility of Producer Organisations (POs).
- 8.3 The Government's summary of responses to the 2011 consultation was published in February 2012. The publication is available at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/89444/cfp-cmo-summ-resp1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/89444/cfp-cmo-summ-resp1.pdf)
- 8.4 Following the 2011 consultation, Defra conducted a subsequent public consultation on the final CMO proposals over a period of six weeks from 31 March 2014. The 2014 Defra consultation proposed to update legislation in England and Wales to allow for the fish labelling provisions to be introduced into UK law and to bring up to date the enforcement provisions for the common marketing standards. These changes were

required to allow for the minimum marketing sizes to align with the Minimum Landing Sizes set up in the revised CFP.

- 8.5 Five responses to the 2014 consultation were received. Four of these were broadly supportive of the proposed enforcement provisions as a better alternative to the current enforcement regime of direct prosecution. One respondent was doubtful of the effectiveness of the proposed compliance notices as a deterrent against non-compliance. However, to address persistent and high level offenders enforcement officers will be able to prosecute directly for serious offences of non-compliance and for non-compliance with the notices.
- 8.6 We published the Government's summary of responses to our consultation in July 2014. The publication is available at: <https://consult.defra.gov.uk/fisheries/cmo-in-fishery-and-aquaculture-products/>.
- 8.7 The fish labelling amendments came into effect in 2014 with the Fish Labelling Regulations 2013 and the Fish Labelling (Amendment) Regulations 2014.
- 8.8 This instrument implements the remaining provisions of the CMO consultation in 2014 and specifically the enforcement provisions for the common marketing standards. The scope of the SI has been extended to include Northern Ireland, to allow for consistency with previous versions of the marketing standards regulations, which also had included Northern Ireland. Progress on implementation resumed last year following a pause when resources were reprioritised.

## **9. Guidance**

- 9.1 We will work with the MMO and the Food Standards Agency to issue guidance, if required.

## **10. Impact**

- 10.1 The introduction of the enforcement provisions will have no impact on those businesses currently complying with the rules.
- 10.2 Compliance with marketing standards under both the present and previous CMO regulations has been good with no prosecutions for breaches. The compliance notice provisions will only apply to instances of non-compliance identified from April 2018 onwards. Enforcement authorities will use advice and guidance in the first instance, and use compliance notices where this has not been successful. In cases where the authorities consider that compliance notices are unlikely to succeed (e.g. a repeat offender) or where a serious breach of the regulations has occurred, the authorities will consider prosecution, as a last resort.
- 10.3 Enforcement by the MMO, Trading Standards officers in England, and the enforcement bodies in Wales and Northern Ireland have been estimated to be within existing workforce budgets.
- 10.4 The introduction of the new tribunal for hearing appeals against a compliance notice and non-removal of a compliance notice, carries financial implications for Defra in the region of £42,000 for setting up and running the appeals process.
- 10.5 An Impact Assessment has not been prepared for this instrument as impacts on businesses are expected to be less than £5million.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses. The proposal is not anticipated to affect small or micro businesses negatively, their customers or competitors.
- 11.2 Small business cannot be excluded from this instrument as they are capable of marketing fish that needs to meet legal requirements. The compliance notices are focused on bringing businesses into compliance with regulations. From a financial perspective, it would be cheaper for businesses to comply with a compliance notice than to be prosecuted.

## **12. Monitoring & review**

- 12.1 The Government has considered the need for a review of the Regulations relating to the enforcement provisions for the common marketing standards in England and Wales and Northern Ireland in accordance with sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015. Giving consideration to the low impact these Regulations have on business, the Government is of the view that the high costs of undertaking a review outweigh the limited scope for future policy change. Therefore, in accordance with section 14 (b) of the Statutory Guidance under s.31 of the Small Business, Enterprise and Employment Act, the Minister considers that it is not appropriate in the circumstances to make provision for review in these Regulations due to cost proportionality.
- 12.2 The Post-Implementation Review Guidance can be viewed at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674755/small-business-act-s31-statutory-review-requirements.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674755/small-business-act-s31-statutory-review-requirements.pdf)

## **13. Contact**

- 13.1 Joanna Messini at the Department for Environment, Food and Rural Affairs. Telephone: 020 802 64433 or email: [Joanna.messini@defra.gsi.gov.uk](mailto:Joanna.messini@defra.gsi.gov.uk) can answer any queries regarding the instrument.