

2013 No. 1768

FOOD

The Fish Labelling Regulations 2013

Made - - - - - *15th July 2013*

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The Secretary of State makes the following Regulations (except so far as relating to regulations 3 and 4 so far as they extend to Northern Ireland) in exercise of the powers conferred by sections 6(4)(a), 16(1)(b), 17(2)(c), 26(2)(a) and (3)(d) and 48(1)(e) of the Food Safety Act 1990(f) and paragraph 1A of Schedule 2 to the European Communities Act 1972(g).

The Secretary of State is designated(h) for the purposes of section 2(2) of the European Communities Act 1972(i) in relation to the common agricultural policy and makes these Regulations so far as relating to regulations 3 and 4 so far as they extend to Northern Ireland under the powers conferred by that section and paragraph 1A of Schedule 2 to the European Communities Act 1972.

In accordance with section 48(4A)(j) of the Food Safety Act 1990, the Secretary of State has had regard to relevant advice given by the Food Standards Agency.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for references in these Regulations to the following Regulations to be construed as references to those Regulations as amended from time to time—

- (a) Council Regulation (EC) No 104/2000 on the common organisation of the markets in fishery and aquaculture products(k);
- (b) Commission Regulation (EC) No 2065/2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products(l);
- (c) Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy(m); and
- (d) Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community

(a) Section 6(4) was amended by section 31 of, and paragraph 6 of Schedule 9 to, the Deregulation and Contracting Out Act 1994 (c. 40); section 40(1) of, and paragraphs 7, 10(1) and (3) of Schedule 5 to, the Food Standards Act 1999 (c. 28), section 40(4) of, and Schedule 6 to, that Act and S.I. 2002/794.

(b) Section 16(1) was amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the Food Standards Act 1999.

(c) Section 17(2) was amended by section 40(1) of, and paragraphs 7, 8 and 12 of Schedule 5 to, the Food Standards Act 1999 and S.I. 2011/1043.

(d) Section 26(3) was partially repealed by section 40(4) of, and Schedule 6 to, the Food Standards Act 1999.

(e) Section 48(1) was amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the Food Standards Act 1999.

(f) 1990 c.16. Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable by the Secretary of State in relation to England pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999. The power of the Secretary of State to make regulations which apply in Wales or extend to Scotland remains exercisable in relation to functions that are not “exercisable in relation to Wales” under the National Assembly for Wales (Transfer of functions) Order 1999 (S.I. 1999/672) nor “exercisable in or as regards Scotland” under the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2005 (S.I. 2005/849), respectively.

(g) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(h) S.I. 1972/1811.

(i) Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). The power of the Secretary of State, as a designated Minister, to make regulations which extend to Northern Ireland remains exercisable by virtue of article 3(2) of S.I. 2000/2812.

(j) Section 48(4A) was inserted by section 40(1) of, and paragraphs 7 and 21 of Schedule 5 to, the Food Standards Act 1999.

(k) OJ No L 17, 21.1.2000, p 22, as last amended by OJ No L349, 19.12.2012, p4.

(l) OJ No L 278, 23.10.2001, p 6, as last amended by OJ No L 362, 20.12.2006, p 1.

(m) OJ No L 343, 22.12.2009, p 1.

control system for ensuring compliance with the rules of the Common Fisheries Policy(a).

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(b), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

PART 1

Introduction

Citation, commencement, application and extent

1.—(1) These Regulations —

- (a) may be cited as the Fish Labelling Regulations 2013; and
- (b) come into force on 2nd September 2013.

(2) They apply in England only except Part 2, and Part 1 so far as relating to Part 2, which extend to the United Kingdom.

Interpretation

2.—(1) In these Regulations—

“the EU Regulations” means Regulation 104/2000, Regulation 2065/2001, Regulation 1224/2009 and Regulation 404/2011;

“Regulation 104/2000” means Council Regulation (EC) No 104/2000 on the common organisation of the markets in fishery and aquaculture products;

“Regulation 2065/2001” means Commission Regulation (EC) No 2065/2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products;

“Regulation 1224/2009” means Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy; and

“Regulation 404/2011” means Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

(2) In these Regulations—

- (a) references to any of the EU Regulations are references to the EU Regulations in question as amended from time to time; and
- (b) terms used that are also used in any of the EU Regulations have the same meaning as in the EU Regulations in question.

(a) OJ No L 112, 30.4.2011, p 1, as amended by OJ No L 328, 10.12.2011, p 58.

(b) OJ No L 31, 1.2.2002, p 1, as last amended by OJ No L 188, 18.7.2009, p 14.

PART 2

United Kingdom commercial designations of species

List of commercial designations of species

3. The Secretary of State acts as the member State for the purposes of—
- (a) Article 4(2) of Regulation 104/2000(a); and
 - (b) Article 2(1) of Regulation 2065/2001.

Competent authority

4. The Secretary of State is the competent authority for the purposes of Article 2(1) of Regulation 2065/2001(b).

PART 3

Consumer information and traceability requirements in England

Interpretation of Part 3

5. In this Part, “the Act” means the Food Safety Act 1990.

Consumer information and traceability requirements

- 6.—(1) In this Part—
- (a) “consumer information requirement” means a requirement referred to in paragraph (2), subject to paragraphs (4) to (7); and
 - (b) “traceability requirement” means a requirement referred to in paragraph (3), subject to paragraph (7).
- (2) For the purposes of paragraph (1)(a), the requirements are—
- (a) a requirement specified in Article 4(1) of Regulation 104/2000 (provision of consumer information) as read with the following provisions of Regulation 2065/2001—
 - (i) Articles 2 and 3 (commercial designation),
 - (ii) Article 4(1) and (3) (production method),
 - (iii) Article 5 (catch area), and
 - (iv) Article 6 (combination sales);
 - (b) a requirement specified in Article 58(6) of Regulation 1224/2009 as read with Articles 67(13) and 68 of Regulation 404/2011.
- (3) For the purposes of paragraph (1)(b), the requirements are Article 58(2), (3) and (5) of Regulation 1224/2009 as read with Article 58(7) of that Regulation and Article 67(1) to (3) and (5) to (13) of Regulation 404/2011.
- (4) The requirement specified in Article 4(1) of Regulation 104/2000 as read with Article 4(1) of Regulation 2065/2001 does not apply in circumstances described in Article 4(2) of Regulation 2065/2001.

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- (a) The list of commercial designations is published on the Defra website at www.gov.uk/defra. A copy can also be obtained from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.
 - (b) Provisional commercial designations are published on the Defra website at www.gov.uk/defra. Copies can also be obtained from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.

(5) The requirement specified in Article 4(1) of Regulation 104/2000 as read with Article 5(1)(c) of Regulation 2065/2001 does not preclude the indication of various member States or third countries as described in Article 5(1)(c) of Regulation 2065/2001.

(6) The requirement referred to in paragraph (2)(a) does not apply in circumstances described in the last paragraph of Article 4(1) of Regulation 104/2000, as read with the last sentence of Article 7 of Regulation 2065/2001, where each purchase does not exceed the sterling equivalent of 20 euros or, in the case of direct sale from a fishing vessel, 50 euros.

(7) The requirements referred to in paragraphs (2)(b) and (3) do not apply in circumstances described in Article 58(8) of Regulation 1224/2009, as read with Article 67(14) of Regulation 404/2011, where the sale does not exceed the sterling equivalent of 50 euros per day.

Improvement notice

7.—(1) Section 10 of the Act (improvement notices) applies for the purposes of these Regulations with the following modifications.

(2) For subsection (1), substitute—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that an operator has not complied with, or is not likely to comply with, a consumer information requirement or a traceability requirement, the officer may, by notice served on that operator (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the operator is failing to comply with those requirements;
- (b) specify the matters which constitute the operator’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the operator must take in order to secure compliance; and
- (d) require the operator to take those measures, or measures which are at least equivalent to them, within such period as may be specified in the notice.”.

(3) For subsection (3), substitute —

“(3) In this section—

- (a) “consumer information requirement” and “traceability requirement” have the meanings given by regulation 6(1) of the Fish Labelling Regulations 2013;
- (b) “operator” has the same meaning as in the EU Regulations as defined in regulation 2(1) of the Fish Labelling Regulations 2013 as read with regulation 2(2)(a) of those Regulations.”.

Appeal to the First-tier Tribunal

8.—(1) Section 37 of the Act^(a) (appeals to magistrates’ court or sheriff) applies for the purposes of these Regulations with the following modifications.

(2) For subsection (1), substitute—

“(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10, as applied by regulation 7 of the Fish Labelling Regulations 2013, may appeal to the First-tier Tribunal.”.

(3) Omit subsections (2) to (5).

(4) In subsection (6)—

- (a) for “(3) or (4)”, substitute “(1)”;
- (b) in paragraph (a), for “a magistrates’ court or to the sheriff”, substitute “the First-tier Tribunal”.

(a) Section 37 was amended by section 48(1) of, and paragraph 13(1) and (3) of Schedule 8 to, the Tribunals, Courts and Enforcement Act 2007 (c.15) and by section 146 of, and Part 1 of Schedule 23 to, that Act.

Appeals against improvement notices

9.—(1) Section 39 of the Act (appeals against improvement notices) applies for the purposes of these Regulations with the following modifications.

(2) For subsection (1), substitute—

“(1) On an appeal against an improvement notice served under section 10, as applied by regulation 7 of the Fish Labelling Regulations 2013, the First-tier Tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the First-tier Tribunal may in the circumstances think fit.”.

(3) In subsection (3), omit “for want of prosecution”.

Requirement to keep records

10.—(1) For the purposes of Article 58(4) of Regulation 1224/2009, an operator must keep a record of the information referred to in that Article as read with Article 67(4) of Regulation 404/2011.

(2) The record must be kept for three years from the date the transaction is completed.

(3) It is an offence to fail to comply with this regulation.

Requirement to produce records

11. An operator who fails to comply with the second sentence of Article 58(4) of Regulation 1224/2009 is guilty of an offence.

Penalties

12. A person guilty of an offence under regulation 10 or 11 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Application and modification of the Act

13. The Schedule (application and modification of the Act) has effect.

Enforcement

14.—(1) Each food authority must enforce and execute these Regulations in its area.

(2) Each food authority is the competent authority in its area for the purposes of Article 58(4) of Regulation 1224/2009 and Article 67(5) of Regulation 404/2011.

Review of these Regulations

15.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the consumer information requirements and the traceability requirements are enforced in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Revocation

16. The Fish Labelling (England) Regulations 2010(a) are revoked.

15th July 2013

David Heath
Minister of State
Department for Environment, Food and Rural affairs

SCHEDULE

Regulation 13

Application and modification of the Act

PART 1

General

1. The following provisions of the Act apply for the purposes of these Regulations with the following modifications—

<i>Section of the Act</i>	<i>Modification</i>
Section 3 (presumptions that food intended for human consumption) Section 30(8)(b) (which relates to evidence of certificates given by a food analyst or examiner) Section 33 (obstruction etc of officers) Section 44 (protection of officers acting in good faith)	In these sections, for “this Act”, in each place occurring, substitute “the Fish Labelling Regulations 2013”
Section 20 (offences due to fault of another person)	For “any of the preceding provisions of this Part”, substitute “section 10(2), as applied by regulation 7 of the Fish Labelling Regulations 2013, or regulation 10 or 11 of those Regulations”
Section 21(c) (defence of due diligence)	In subsection (1), for “any of the preceding

(a) S.I. 2010/420 as amended by S.I. 2011/1043.

(b) Section 30 was amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the Food Standards Act 1999 (c.28).

(c) Section 21 was amended by S.I. 2004/3279.

<i>Section of the Act</i>	<i>Modification</i>
	provisions of this Part” substitute “section 10(2), as applied by regulation 7 of the Fish Labelling Regulations 2013, or regulation 10 or 11 of those Regulations”
	Omit subsections (2) to (4)
Section 29 (procurement of samples)	In paragraph (b)(ii), after “under section 32 below”, insert “as applied by regulation 13 of, and the Schedule to, the Fish Labelling Regulations 2013”
Section 35(a) (punishment of offences)	In subsection (1), after “section 33(1) above”, insert “as applied by regulation 13 of, and the Schedule to, the Fish Labelling Regulations 2013” After subsection (1), insert— <p style="padding-left: 40px;">“(1A) A person guilty of an offence under section 10(2), as applied by regulation 7 of the Fish Labelling Regulations 2013, shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”</p> In subsection (2)— <p style="padding-left: 40px;">(a) for the words “any other offence under this Act”, substitute “an offence under section 33(2) as applied by regulation 13 of, and the Schedule to, the Fish Labelling Regulations 2013”;</p> <p style="padding-left: 40px;">(b) in paragraph (b), for “the relevant amount” substitute “the statutory maximum”</p> Omit subsections (3) and (4)
Section 36 (offences by bodies corporate)	For “this Act”, substitute “section 10(2) as applied by regulation 7 of the Fish Labelling Regulations 2013 or regulation 10 or 11 of those Regulations”

PART 2

Powers of entry

2. For the purpose of enabling an authorised officer of an enforcement authority to ascertain whether there is, or has been, any contravention of a consumer information requirement or a

(a) Section 35 was amended by section 280(2) of, and paragraph 42 of Schedule 26 to, the Criminal Justice Act 2003 (c.44) and S.I. 1996/2235 and 2004/3279.

traceability requirement, section 32 of the Act^(a) (powers of entry) is modified in its application to these Regulations as follows —

- (a) in subsection (1)(a), after “made under it” insert “, or of a consumer information requirement or a traceability requirement”;
- (b) after subsection (9), insert—

“(10) In this section, “consumer information requirement” and “traceability requirement” have the meanings given by regulation 6(1) of the Fish Labelling Regulations 2013.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations designate the Secretary of State to draw up and publish the list of commercial designations of fish species accepted in the United Kingdom pursuant to Article 4(2) of Council Regulation (EC) No 104/2000 on the common organisation of the markets in fishery and aquaculture products (OJ No L 17, 21.1.2000, p 22) (regulation 3). They also designate the Secretary of State as the competent authority in the United Kingdom for the purposes of Article 2(1) of Commission Regulation (EC) No 2065/2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products (OJ No L 278, 23.10.2001, p 6) (regulation 4).

Part 3 of these Regulations enforces in England the consumer information requirements of Chapter 2 of Title I of Council Regulation (EC) No 104/2000 and Commission Regulation (EC) No 2065/2001. They also enforce in England the traceability requirements of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No L 343, 22.12.2009, p 1) and Article 67 of Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ No L 112, 30.4.2011, p 1).

Regulation 7 applies section 10 of the Food Safety Act 1990 (c.16) with modifications so that an authorised officer of an enforcement authority can serve an improvement notice on an operator who fails to comply with the consumer information requirements or traceability requirements. Regulation 8 applies section 37 of that Act with modifications so that an operator can appeal against service of an improvement notice to the First-tier Tribunal. Regulation 9 applies section 39 of the Act to enable the First-tier Tribunal to either cancel or affirm an improvement notice.

Regulation 10 requires operators to keep records of information specified in Article 58(4) of Council Regulation (EC) No 1224/2009 (as read with Article 67(4) of Commission Implementing Regulation (EU) No 404/2011) and creates an offence for failure to comply with that requirement. Regulation 11 creates an offence for failure to produce those records on demand in breach of that Article.

Regulation 13 and the Schedule apply certain other provisions of the Food Safety Act 1990 to these Regulations with consequential modifications.

Regulation 14 provides that each food authority in England must execute and enforce these Regulations in its area.

Regulation 15 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

(a) Section 32 was amended by section 70 of, and paragraph 18 of Part 2 of Schedule 2 to, the Criminal Justice and Police Act 2001 (c. 16).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector in England is available at www.gov.uk/defra or from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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