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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 498**

**SEA FISHERIES**

**MARKETING**

**The Sea Fish (Marketing Standards)  
(Scotland) Regulations 2004**

<i>Made</i>	- - - -	<i>16th November 2004</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>22nd November 2004</i>
<i>Coming into force</i>	- -	<i>14th December 2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Sea Fish (Marketing Standards) (Scotland) Regulations 2004 and shall come into force on 14th December 2004.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“authorised officer” means –

- (a) a person who by virtue of section 7 of the Sea Fisheries Act 1968<sup>(2)</sup> is a British sea-fisheries officer; or
- (b) an officer authorised in writing by the Scottish Ministers for the purpose of enforcing these Regulations;

“cephalopods” means the cephalopods specified in Article 3(1)(c) of Regulation 2406/96;

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(1) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) 1968 c. 77.

“Regulation 2406/96” means Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products<sup>(3)</sup>, as amended by Commission Regulation (EC) No. 323/97<sup>(4)</sup>, Council Regulation (EC) No. 2578/2000<sup>(5)</sup>, Commission Regulation (EC) No. 2495/2001<sup>(6)</sup> and the Act concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded<sup>(7)</sup> and read with Commission Regulation (EEC) No. 3703/85 laying down detailed rules for applying the common marketing standards for certain fresh or chilled fish<sup>(8)</sup>, as amended by Commission Regulation (EEC) No. 3506/89<sup>(9)</sup>;

“Regulation 104/2000” means Council Regulation (EC) No. 104/2000 on the common organisation of the markets in fishery and aquaculture products<sup>(10)</sup>;

“saltwater fish” means the fish specified in Article 3(1)(a) of Regulation 2406/96;

“scallops” means the common scallop specified in Article 3(1)(d) of Regulation 2406/96;

“shellfish” means the crustaceans specified in Article 3(1)(b) of Regulation 2406/96;

“specified Community provision” means a provision of an Article of Regulation 2406/96 or Regulation 104/2000 specified in column 1 of the Schedule to these Regulations (as read with any qualifying provision relating to that Article in that column of the Schedule) and subject to paragraph (3), in respect of which an indication of the subject matter of the provision is set out in the corresponding entry in column 2 of the Schedule;

“whelks” means the common whelk specified in Article 3(1)(d) of Regulation 2406/96.

(2) Expressions in these Regulations which are not defined in the preceding paragraph of this regulation and which appear or are referred to in Regulation 2406/96 have the same meaning in these Regulations as in that Regulation.

(3) Column 2 of the Schedule to these Regulations shall not be read as limiting the scope of any specified Community provision and shall be disregarded for the purposes of any question arising as to the construction of these Regulations.

### **Offences related to marketing**

3.—(1) Where there is a contravention of, or a failure to comply with, any specified Community provision the master, the owner and the charterer (if any) shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Where a label affixed to a lot contains false information as regards the description of any of the characteristics which require to be marked on such a label by Regulation 2406/96, the master, the owner and the charterer (if any) shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership a partner or a person who was purporting to act as such), that person as well as the body corporate or the

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(3) O.J. No. L 334, 31.12.96, p.1.

(4) O.J. No. L 52, 22.2.97, p.8.

(5) O.J. No. L 298, 25.11.00, p.1.

(6) O.J. No. L 337, 20.12.01, p.23.

(7) O.J. No. L 236, 23.9.03, p.33.

(8) O.J. No. L 351, 28.12.85, p.63.

(9) O.J. No. L 342, 24.11.89, p.11.

(10) O.J. No. L 17, 21.1.00, p.22.

partnership, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (3) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(5) Where the commission by any person of an offence under these Regulations was due to the act or default of another person then, whether proceedings are taken against the first mentioned person or not, that other person may be charged with, and convicted of, the offence, and shall on conviction be liable to the same punishment as that to which the first mentioned person is, on conviction, liable.

(6) It shall be a defence for a person charged with an offence under these Regulations to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### **Powers of authorised officers**

4.—(1) For the purposes of enforcing regulation 3 of these Regulations, an authorised officer, on producing (if so required) a duly authenticated document showing the authority of that officer, may—

- (a) at all reasonable times enter and inspect any premises (other than premises used only as a dwelling) at which any activity regulated by Regulation 2406/96 or Regulation 104/2000 is, or is reasonably suspected of being, carried on;
- (b) examine fish, containers for fish and labels found on such premises and seize any fish in respect of which the officer has reasonable grounds to suspect that there has been a contravention of, or failure to comply with a specified Community provision;
- (c) carry out at such premises such other inspections or tests as may reasonably be necessary;
- (d) require any person not to remove or cause to be removed any fish from such premises for such a period as may be reasonably necessary for the purposes of examination of it by the authorised officer;
- (e) require any person at such premises to produce any documents which are in the possession or custody of that person relating to the catching, landing, grading or marketing of any fish found on such premises; and
- (f) inspect and take copies of any such documents.

(2) An authorised officer entering any premises by virtue of paragraph (1) may be accompanied by any other person, and the officer may take any equipment or materials necessary to assist the officer in the exercise of the functions of that officer.

(3) The provisions of paragraphs (1) and (2) shall apply in relation to any land, vehicle or vessel as they apply in relation to premises.

(4) In this regulation “fish” means cephalopods, saltwater fish, scallops, shellfish, and whelks.

### **Obstruction of officers**

5. A person who—

- (a) intentionally obstructs an authorised officer exercising any of the powers conferred on that officer by regulation 4 of these Regulations; or
- (b) fails without reasonable excuse to comply with a requirement properly imposed under these Regulations by such an officer,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Protection of officers**

6. An authorised officer or a person assisting that officer by virtue of regulation 4(2) of these Regulations shall not be liable in any civil or criminal proceedings for anything done by that officer or person in the purported exercise of the powers conferred by regulation 4 of these Regulations if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

### **Revocation**

7. The following Regulations are hereby revoked—
- (a) the Sea Fish (Marketing Standards) Regulations 1986**(11)**;
  - (b) the Sea Fish (Marketing Standards) (Amendment) Regulations 1989**(12)**; and
  - (c) the Sea Fish (Marketing Standards) (Amendment) Regulations 1994**(13)**.

St Andrew's House, Edinburgh  
16th November 2004

*ROSS FINNIE*  
A member of the Scottish Executive

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**(11)** S.I.1986/1272, amended by S.I. 1989/687 and 1994/452.  
**(12)** S.I. 1989/687.  
**(13)** S.I. 1994/452.

## SCHEDULE

Regulation 2(1)

## SPECIFIED COMMUNITY PROVISION

Column 1 <i>Article of the Regulation</i>	Column 2 <i>Subject Matter</i>
Article 2(1) of Regulation 2406/96, read subject to Article 2(2) of that Regulation	Cephalopods, saltwater fish, scallops, shellfish and whelks to be marketed only if they comply with the provisions of Regulation 2046/96.
Article 5(2) of Regulation 2406/96	Freshness category to be clearly and indelibly marked on labels affixed to a lot.
Article 7(1) of Regulation 2406/96	Cephalopods, Norway lobster and saltwater fish to be sized by weight or by number per kilogram. Crabs, scallops, shrimps and whelks to be graded in size categories by width of shell.
Article 8(3) of Regulation 2406/96	Size category and presentation to be clearly and indelibly marked on labels affixed to a lot. Net weight in kilograms to be clearly and legibly marked on each lot.
Article 11 of Regulation 2406/96	Cephalopods, saltwater fish, scallops, shellfish and whelks coming from third countries to be marketed only if they comply with specified marketing standards and labelling requirements.
Article 2 of Regulation 104/2000	Cephalopods, saltwater fish, scallops, shellfish and whelks to be marketed only if they comply with the marketing standards in Regulation 104/2000.
Article 29 and 30 of Regulation 104/2000	Cephalopods, saltwater fish, scallops, shellfish and whelks to be marketed only if they comply with the relevant price arrangements in Regulation 104/2000.

**EXPLANATORY NOTE***(This note is not part of the Regulations)*

These Regulations make provision for the enforcement in Scotland of Community Regulations laying down common marketing standards and related rules as to marketing for certain species of sea fish, including shellfish. The Regulations implement a Community obligation to take appropriate measures to penalise infringements of Community marketing rules for fishery products, imposed by Article 3 of Council Regulation (EC) No. 104/2000 (O.J. No. L 17, 21.1.00, p.22).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The Council Regulations to be enforced under these Regulations are–

- (a) Council Regulation 2406/96, as amended by Commission Regulation (EC) No. 323/97, Council Regulation (EC) No. 2578/2000, Commission Regulation (EC) No. 2495/2001 and the Act concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded and read with Commission Regulation (EEC) No. 3703/85 as amended by Commission Regulation (EEC) No. 3506/89; and
- (b) Council Regulation (EC) No. 104/2000.

Those Council Regulations prohibit the marketing for human consumption of fishery products except in compliance with the rules laid down in those Regulations.

These rules require that fishery products must be marketed in lots each containing fish of the same species of uniform grade of freshness, size and presentation (determined in accordance with grading standards prescribed in Regulation 2406/96), bearing a label to show the grade and have the net weight in kilograms clearly and legibly marked on each lot (Articles 5, 7 and 8 of Regulation 2406/96). Additional rules are prescribed in relation to fish imported from third countries, while fish landed from third country vessels are subject to the rules applicable to Community catches (Article 11 of Regulation 2406/96).

In the case of pelagic species such as herring and mackerel (which may be marketed in bulk) grading may be undertaken according to a sampling system (Article 9 of Regulation 2406/96).

These Regulations make infringements of the prohibitions on marketing imposed by Regulations 2406/96 and 104/2000 offences for the purposes of Scots law and specify penalties (regulation 3). The Regulations confer powers of enforcement on authorised officers (regulation 4), penalise the obstruction of such officers in the exercise of those powers (regulation 5) and provide for the protection of such officers, acting properly, from challenge in the courts (regulation 6).

The Regulations revoke the Sea Fish (Marketing Standards) Regulations 1986 (as amended) as regards Scotland (regulation 7).