

Explanatory Memorandum to Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

This Explanatory Memorandum has been prepared by the Environment, Planning and Rural Affairs Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations

LESLEY GRIFFITHS

CABINET SECRETARY FOR ENERGY, PLANNING AND RURAL AFFAIRS.

28 March 2018

1. Description

The Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018 (“the Regulations”) enable the enforcement of common marketing standards (i.e. fish sizes and freshness) contained in Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products and Regulation (EU) No. 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Regulations are made on a composite basis to maintain the clarity, accessibility and transparency of the statute book for those required to comply with its provisions. As this composite instrument is subject to approval by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

The Regulations are made subject to the negative procedure.

There is a choice of procedure in relation to instruments made under section 2(2) of the European Communities Act 1972. There were no factors indicating the use of affirmative procedure for these Regulations, considering in particular the enforcement measures are intended to bring up to date existing enforcement measures included in the Sea Fish (Marketing Standards) Regulations 1986 which were also made subject to the negative procedure.

In accordance with section 67(9) of the Police and Criminal Evidence Act 1984, officers exercising powers under these Regulations must have regard to that Act.

3. Legislative background

The Welsh Ministers make the Regulations in relation to Wales pursuant to powers in section 2(2) European Communities Act 1972. For the purposes of section 2(2), the Welsh Ministers are designated in relation to the Common Agricultural Policy and, therefore, the Common Fisheries Policy, by virtue of article 3(1) of the European Communities (Designation) (No 5) Order 2010.

The European Common Organisation of the Markets (CMO) in Fishery and Aquaculture Products Regulation 1379/2013 is the mechanism with which the EU manages the market and maximises value for EU seafood products.

These Regulations enable the enforcement, in England, Wales and Northern Ireland of EU common marketing standards for fishery products contained in—

- Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products; and

- Regulation (EU) No. 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products.

Provisions for the enforcement of sea fish marketing standards in England, Wales, Northern Ireland and Scotland 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.

The other provisions of the CMO regulation which 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

4. Purpose & intended effect of the legislation

This instrument is necessary to ensure the proper enforcement of the marketing standards laid out in the CMO regulation.

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.

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.

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 and we consider that the current oversight mechanisms are sufficient to monitor PO performance and compliance. 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.

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.

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.

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.

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.

5. Consultation

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).

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 (MLS) set up in the revised Common Fisheries Policy (CFP).

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.

6. Regulatory Impact Assessment (RIA)

An RIA has not been completed for these Regulations. The Regulations are not expected to impose an additional cost on the public or voluntary sectors in Wales. Similarly, the Regulations are not expected to impose an additional cost on fisheries businesses which comply with the law, however, costs may be incurred by businesses which choose to operate outside of the law. Defra will incur the cost

associated with establishing a new tribunal to hear appeals against a compliance notice and non-removal of a compliance notice

Failure to introduce these Regulations risks infraction proceedings against the UK by the EU and the associated costs.