

SL(5)207 – The Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

Background and Purpose

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.

These Regulations make provision for enforcement authorities in England, Wales and Northern Ireland to appoint authorised officers for the purposes of ensuring that EU common marketing standards for fisheries products are complied with (regulation 4).

Authorised officers are provided with powers of entry, inspection and seizure for the purposes of investigation and inspection of relevant premises and products to identify breaches of the relevant EU requirements (regulations 5 and 7). Authorised officers are also given the power to serve compliance notices for breaches of the relevant EU requirements (regulation 8).

Contravening the EU common marketing standards is an offence (regulation 12(1)). The failure to comply with a compliance notice, within the specified time, is also an offence (regulation 12(2)).

The Regulations make provision for appeals against compliance notices and any refusal to serve a completion notice (regulations 10 and 11).

Procedure

Negative, composite.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – the meaning of the instrument needs further explanation.

Regulation 5 sets out a power to enter premises. Regulation 5(5) says that “An authorised officer must, if requested to do so, produce a duly authenticated document showing the authority of that officer”.

It is not clear to us who can make a request to which regulation 5(5) applies. (There may be many people present at premises when enforcement action is being taken.) It must apply when the occupier of the premises makes a request, but to who else does it apply? Does it apply to any family member of the occupier? Does it apply to a person contracted to carry out cleaning services at the premises? Does it apply to a shareholder of a company that owns the premises? Does it apply to a mere passer-by?



2. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh.

These Regulations have been made as a composite instrument, meaning that these Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament.

The Welsh Ministers considered it was not reasonably practicable for these Regulations to be made in English and Welsh.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Explanatory Memorandum says that enforcement officers exercising enforcement powers under the Regulations must have regard to the Police and Criminal Evidence Act 1984. However, the correct position is that enforcement officers must have regard to the statutory codes of practice made under the 1984 Act.

Despite raising concerns around the use of PACE Codes of Practice on a number of occasions, we note that incorrect references to the use of PACE Codes are still common.

2. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Regulation 6 sets out the process for applying for a warrant to enter premises. Regulation 6(4) says that a warrant to enter premises (which can include a person's home) is valid for three months. We question whether it is proportionate to have warrants that are valid for a blanket period of three months, in particular where, for example, all the required entering of the premises may have been completed within a day or two.

We accept that new circumstances may come to light which could require re-entry, but in that case it may be more proportionate to apply for a new warrant, in particular when the warrant relates to entering a person's home.

Implications arising from exiting the European Union

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the European Union (Withdrawal) Bill (the Bill), therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

With regard to the EU Regulations that are enforced by these Regulations, the EU Regulations are classed as "retained direct EU legislation" under the Bill. As drafted, the Bill does not give the Welsh Ministers (or the National Assembly for Wales) power to modify any retained direct EU legislation. Power to modify all retained direct EU legislation is given to UK Ministers; this includes the power to modify retained direct EU legislation in devolved areas.

However, the UK Government has committed to bring forward amendments to the Bill at Report stage in the House of Lords that are expected to lift these restrictions to some extent.



Government Response

A government response is required to the technical and merits scrutiny points.

Legal Advisers

Constitutional and Legislative Affairs Committee

4 April 2018

