STATUTORY INSTRUMENTS

2018 No. 437

SEA FISHERIES, ENGLAND AND WALES
SEA FISHERIES, NORTHERN IRELAND

The Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

Made - - - -	*26th March 2018*
Laid before Parliament	*28th March 2018*
Laid before the National Assembly for Wales - -	*28th March 2018*
Coming into force - -	*30th April 2018*

The Secretary of State and, in relation to Wales, the Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to the common agricultural policy of the European Union(**2**).

The Secretary of State, in relation to England and Northern Ireland, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018.

(2) These Regulations come into force on 30th April 2018.

(3) These Regulations extend to England and Wales and Northern Ireland.

Interpretation

2. In these Regulations—

(**1**) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1) and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.

(**2**) The Secretary of State is designated under S.I. 1972/1811. The designation of the Secretary of State in relation to the common agricultural policy under that instrument remains exercisable in relation to Northern Ireland despite the designation of Northern Ireland Ministers and Northern Ireland Departments in relation to that matter under S.I. 2000/2812 (see article 3(2) of that instrument). The Welsh Ministers are designated under S.I. 2010/2690. Designation in relation to the common agricultural policy includes the common fisheries policy: Article 38 of the Treaty on the Functioning of the European Union includes the common fisheries policy within the common agricultural policy.

"authorised officer" has the meaning given in regulation 4(1);

"compliance notice" has the meaning given in regulation 8(1);

"enforcement authority" means—

(a) in England—

(i) the Secretary of State;

(ii) the Marine Management Organisation(**3**);

(iii) for each county, district or London borough, the council of that county, district or borough;

(iv) for the City of London (including the Temples), the Common Council; and

(v) for the Isles of Scilly, the Council of the Isles of Scilly;

(b) in Wales—

(i) the Welsh Ministers; and

(ii) for each county or county borough, the council of that county or county borough; and

(c) in Northern Ireland—

(i) the Department of Agriculture, Environment and Rural Affairs; and

(ii) for each district, the council of that district;

"premises" means any land, building, container, vehicle or vessel of any description;

"Regulation 2406/96" means Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products(**4**), as last amended by Commission Regulation (EC) No. 790/2005(**5**);

"Regulation 1379/2013" means 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(**6**), as last amended by Regulation (EU) 2015/812 of the European Parliament and of the Council(**7**);

"relevant provision" means one of the provisions specified in regulation 3.

Application

3. These Regulations apply for the purposes of enforcing—

(a) Article 2(1) of Regulation 2406/96 (fishery products may be marketed only if they meet the requirements of the Regulation), read subject to Article 2(2) of that Regulation;

(b) Article 34(1) of Regulation 1379/2013 (products intended for human consumption may be made available on the market only in accordance with common marketing standards laid down for those products).

Authorised officers

4.—(1) The enforcement authority may in writing appoint an officer (an "authorised officer") to act for the purposes of these Regulations.

(**3**) The Marine Management Organisation is established under section 1 of the Marine and Coastal Access Act 2009 (c. 23).
(**4**) OJ No. L 334, 23.12.1996, p. 1.
(**5**) OJ No. L 132, 26.5.2005, p 15.
(**6**) OJ No. L 354, 28.12.2013, p. 1.
(**7**) OJ No. L 133, 29.5.2015, p.1.

(2) The enforcement authority may provide for an appointment made under paragraph (1) to have effect for limited purposes.

Power to enter premises

5.—(1) Where an authorised officer has reasonable suspicion of a contravention of a relevant provision in, or in connection with, any premises, the officer may, at a reasonable hour, enter those premises for the purpose of enforcing that provision.

(2) But an authorised officer must not enter any premises under paragraph (1) unless notice of the officer's intention to do so has been served on the occupier a reasonable period in advance.

(3) The requirement to serve notice does not apply—

(a) where the requirement has been waived;

(b) where reasonable efforts to agree an appointment have failed;

(c) where an inspector reasonably believes that serving notice would defeat the object of the entry; or

(d) in an emergency where entry is required urgently.

(4) Paragraph (1) does not apply in relation to any premises which are used wholly or mainly as a private dwelling house unless a right of entry is conferred by a warrant granted under regulation 6.

(5) An authorised officer must, if requested to do so, produce a duly authenticated document showing the authority of that officer.

(6) An authorised officer who enters any premises which are unoccupied, or from which the occupier is temporarily absent, or who enters any premises by force, must leave them as effectively secured against unauthorised entry as they were before entry.

(7) An authorised officer may—

(a) be accompanied by such other persons as the authorised officer considers necessary; and

(b) bring onto the premises such equipment as the authorised officer considers necessary.

(8) A person who is brought by an authorised officer to provide assistance may exercise any powers conferred on the officer by these Regulations, but only under the supervision or direction of the officer.

Warrants

6.—(1) A justice of the peace may, by signed warrant, permit an authorised officer to enter premises if the justice, on sworn information in writing or, in Northern Ireland, on a sworn complaint in writing, is satisfied—

(a) that there are reasonable grounds to enter those premises for the purpose of enforcing a relevant provision; and

(b) that any of the conditions in paragraph (2) are met.

(2) The conditions are—

(a) entry to the premises has been, or is likely to be refused, and notice of the intention to apply for a warrant has been served on the occupier a reasonable period in advance of the application;

(b) asking for admission to the premises, or serving such notice, would defeat the object of the entry;

(c) entry is required urgently; or

(d) the premises are unoccupied or the occupier is temporarily absent.

(3) A warrant may permit an authorised officer to enter by reasonable force if necessary, except in the case of any premises used wholly or mainly as a private dwelling house.

(4) A warrant is valid for three months.

(5) In this regulation, "justice of the peace" in Northern Ireland means a lay magistrate.

Power to inspect and seize etc.

7.—(1) An authorised officer who has entered premises for the purposes of enforcing a relevant provision may for that purpose—

(a) inspect and search the premises;

(b) carry out such investigations or tests as may reasonably be necessary;

(c) examine any fish, containers for fish and labels found on the premises;

(d) seize and detain any fish in respect of which the officer has reasonable grounds to suspect that there has been a contravention of the relevant provision;

(e) seize and detain any containers for fish and labels which the officer has reasonable grounds to suspect are relevant to the commission of an offence under these Regulations;

(f) take samples from any fish (and send them for laboratory testing);

(g) require any person not to remove or cause to be removed any fish from the premises for such period as may be necessary for the purpose of examination of it by the authorised officer;

(h) require any person at the 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 on the premises;

(i) inspect and take copies of any documents;

(j) have access to, inspect and check the data on any computer and any associated equipment;

(k) require a person to render a document or record held on a computer into a visible or legible form;

(l) take copies of any data held on any computer or associated equipment; and

(m) require any person to provide any such assistance, information, facilities or equipment as is reasonable.

(2) An authorised officer must—

(a) as soon as reasonably practicable, provide to the person appearing to be responsible for any item that the authorised officer seizes under paragraph (1) a written receipt for that item; and

(b) as soon as is reasonably practicable after deciding that the item is no longer required, return it to that person, apart from—

(i) any item to be used as evidence in court proceedings; and

(ii) any fish.

(3) Where an authorised officer has seized items under paragraph (1) for use in evidence in court proceedings and—

(a) it is subsequently decided—

(i) that no court proceedings are to be brought, or

(ii) that those items are no longer needed as evidence in court proceedings, or

(b) the court proceedings are completed and no order in relation to those items has been made by the court,

an authorised officer must return the items to the person appearing to be responsible for them as soon as is reasonably practicable.

(4) In this regulation, "fish" means any fishery or aquaculture product that an authorised officer reasonably believes is a product listed in Article 3 of Regulation 2406/96 or Annex 1 of Regulation 1379/2013.

Compliance notices

8.—(1) An authorised officer who has reasonable grounds for believing that a person has contravened, or is likely to contravene, a relevant provision may serve a notice (a "compliance notice") on that person.

(2) The authorised officer must in the compliance notice—

(a) state the reason for the service of the notice;

(b) state the date of service of the notice;

(c) identify the recipient of the notice;

(d) specify the steps which the recipient of the notice must take, being such steps as the authorised officer believes are necessary to ensure compliance with the relevant provision;

(e) state the reason that those steps must be taken;

(f) specify by when each of the steps must be taken;

(g) state that failure to comply with the notice is an offence; and

(h) give details of the right of appeal against the notice, including an explanation of how such an appeal can be made and the period within which such an appeal may be brought.

(3) An authorised officer may serve a notice on a person withdrawing, varying or suspending a compliance notice served under paragraph (1).

(4) A person on whom a compliance notice is served must comply with it at that person's own expense.

(5) If a compliance notice is not complied with, an authorised officer may arrange for it to be complied with at the expense of the person on whom it was served.

(6) An authorised officer must serve a completion notice on a person if, after service of a compliance notice on that person, the authorised officer is satisfied that that person has taken the steps specified in the notice to remedy the contravention.

(7) In the event of an authorised officer not being satisfied as mentioned in paragraph (6) by the end of the period specified in paragraph (2)(f), or such other period as may be specified in any variation of the compliance notice under paragraph (3), the authorised officer may not serve a completion notice, and must serve a notice, which must—

(a) give reasons for the decision not to serve a completion notice; and

(b) give details about the right of appeal against the decision.

(8) A compliance notice ceases to have effect when a completion notice is served.

Further provision about notices

9.—(1) A notice required or authorised to be served under these Regulations on any person must be in writing and may be served on a person by—

(a) personal delivery;

(b) leaving it at the person's proper address; or

(c) sending it by post or by electronic means to the person's proper address.