SCOTTISH STATUTORY INSTRUMENTS

# 2004 No. 498

# SEA FISHERIES

MARKETING

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

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| *Made - - - -* | *16th November 2004* |
| *Laid before the Scottish Parliament - - - -* | *22nd November 2004* |
| *Coming into force - -* | *14th December 2004* |

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1] and of all other powers enabling them in that behalf, hereby make the following Regulations:

**F1** 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.

## 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 [F2] 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;

**[**[F3]"Regulation 2406/96" means Council Regulation (EC) No 2406/96 laying down common marketing standards for certain fishery products, as last amended by Commission Regulation (EC) No 790/2005, read with Commission Regulation (EEC) No 3703/85 laying down detailed rules for applying the common marketing standards for certain fresh or chilled fish, as last amended by Commission Regulation (EC) No 1115/2006;**]**

**[**[F4]"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, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000;**]**

"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 **[**[F5]Regulation 1379/2013**]** 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.

**F2** 1968 c. 77.
**F3** Words in reg. 2 substituted (28.2.2019) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) (Scotland) Regulations 2018 (S.S.I. 2018/391), regs. 1(1), **40**
**F4** Words in reg. 2(1) substituted (5.10.2015) by The Sea Fishing (EU Control Measures) (Scotland) Order 2015 (S.S.I. 2015/320), arts. 1(1), **24(2)(a)**
**F5** Words in reg. 2(1) substituted (5.10.2015) by virtue of The Sea Fishing (EU Control Measures) (Scotland) Order 2015 (S.S.I. 2015/320), arts. 1(1), **24(2)(b)**

### 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

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 **[**F6Regulation 1379/2013**]** 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.

**F6** Words in reg. 4(1)(a) substituted (5.10.2015) by The Sea Fishing (EU Control Measures) (Scotland) Order 2015 (S.S.I. 2015/320), arts. 1(1), **24(3)**

### 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,