WELSH STATUTORY INSTRUMENTS

2010 No. 797 (W.78)

FOOD, WALES

The Fish Labelling (Wales) Regulations 2010

Made - - - -	*15 March 2010*
Laid before the National Assembly for Wales - -	*16 March 2010*
Coming into force - -	*6 April 2010*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(e) and (f), 17(2), 26(3) and 48(1) of the Food Safety Act 1990(**1**) and now vested in them(**2**).

In accordance with section 48(4A) of that Act, they have had regard to relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**3**), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1.—(1) The title of these Regulations is the Fish Labelling (Wales) Regulations 2010.

(2) These Regulations apply in relation to Wales and come into force on 6 April 2010.

(**1**) 1996 c. 16. Section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990. Sections 17 and 18 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c. 28), ("the 1999 Act"). Section 48 was also amended by S.I. 2004/2990. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c. 40), Schedule 6 to the 1999 Act and S.I. 2004/2990.

(**2**) Functions formerly exercisable by "the Ministers" (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Functions of "the Ministers" so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). Those functions so far as exercisable in relation to Scotland were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act.

(**3**) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny — Part Four (OJ No. L188, 18.7.2009, p.14).

Interpretation

2. In these Regulations—

"Regulation 104/2000" ("Rheoliad 104/2000") means Council Regulation (EC) No. 104/2000 on the common organisation of the markets in fishery and aquaculture products(**4**);

"Regulation 2065/2001" ("Rheoliad 2065/2001") means Commission Regulation (EC) No. 2065/2001 laying down detailed rules for the application of Council Regulation (EC) No. 104/2000 as regards informing consumers about fishery and aquaculture products(**5**);

and any expressions used in these Regulations and in Regulation 104/2000 or Regulation 2065/2001 have the same meaning as in those Regulations.

Offences relating to consumer information

3.—(1) Any person who, in contravention of Article 4.1 of Regulation 104/2000 (consumer information) as read with Regulation 2065/2001, offers for retail sale to the final consumer any of the products to which that Article applies is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any person who fails to comply with Article 8 of Regulation 2065/2001 (traceability and control) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Lists of commercial designations

4.—(1) As regards Wales, the list of commercial designations which the United Kingdom is required to draw up and publish under Article 4.2 of Regulation 104/2000 is that set out in the table in the Schedule to these Regulations as read with the notes to it, and accordingly, the commercial designations set out in that Schedule are names prescribed by law for the purposes of regulations 6(1), 7 and 8(a) of the Food Labelling Regulations 1996 in so far as they apply in relation to Wales(**6**).

(2) In relation to a species included both in the Schedule to these Regulations and in a list published in English under Article 4.2 of Regulation 104/2000 having effect in another Member State or another part of the United Kingdom, the commercial designation for that species in the list having effect in that other Member State or part of the United Kingdom is an alternative to the commercial designation for that species set out in the Schedule to these Regulations and are names prescribed by law for the purposes set out in paragraph (1).

Omission of reference to the production method

5. In the case described in Article 4.2 of Regulation 2065/2001 (situation where it is obvious from commercial designation and catch area that the species is caught at sea) it is not a contravention of Article 4.1 of Regulation 104/2000 to offer for retail sale to the final consumer a product to which that article applies without the product being marked or labelled with the production method.

(**4**) OJ No. L17, 21.1.2000, p.22. That Regulation was amended by the EU Act concerning the conditions of accession of the Czech Republic etc. (OJ No. L236, 23.9.2003, p.33).

(**5**) OJ No. L278, 23.10.2001, p.6. That Regulation was corrected by a Corrigendum (OJ No. L10, 12.1.2002, p.82 (2001/2065)) and it was amended by the EU Act concerning the conditions of accession of the Czech Republic etc. (OJ No. L236, 23.9.2003, p.33) and by Commission Regulation (EC) No. 1792/2006 (OJ No. L362, 20.12.2006, p.1).

(**6**) S.I. 1996/1499; regulation 6(4) (which defines "prescribed by law" for the purposes of regulations 6(1), 7 and 8(a)) was inserted by S.I. 1998/1398.

Small quantities of products

6.—(1) For the purposes of Article 4.1 of Regulation 104/2000 as read with Article 7 of Regulation 2065/2001, the small quantity of products which may be sold directly to consumers will be products to a value not exceeding 20 Euro for each purchase.

(2) For the purposes of this Regulation, the reference to 20 Euro is to be taken to be a reference to the sterling equivalent of that number of Euros, converted by reference to the rate of conversion published annually on the first working day of the preceding September in the C series of the Official Journal of the European Communities or, if no rate is published in it on that day, the first rate published in it thereafter.

Additional information relating to the catch area

7. The indication of catch area required by Article 4.1(c) of Regulation 104/2000 may, where the circumstances described in Article 5.1(c) of Regulation 2065/2001 apply, indicate the various Member States or third countries in which the product was farmed.

Provisional commercial designations

8.—(1) For the purposes of Article 2 of Regulation 2065/2001 (provisional commercial designations), the Food Standards Agency is the competent authority.

(2) The Food Standards Agency will draw up and publish a list of provisional commercial designations laid down pursuant to Article 2.

Enforcement

9. Each food authority must enforce and execute these Regulations in its area.

Application of various provisions of the Food Safety Act 1990

10. The following provisions of the Food Safety Act 1990 ("the Act") apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of the Act is to be construed as a reference to these Regulations and to those provisions of Regulation 104/2000 and Regulation 2065/2001 to which these Regulations relate—

(a) section 3 (presumption that food is intended for human consumption);

(b) section 20 (offences due to fault of another person);

(c) section 21 (defence of due diligence)(**7**) with the modification that subsections (2) to (4) apply in relation to an offence under regulation 3(1) as they apply in relation to an offence under section 14 or 15;

(d) section 30(8) (which relates to documentary evidence);

(e) section 33(1) (obstruction etc. of officers);

(f) section 33(2) with the modification that the reference to "any such requirement as is mentioned in subsection (1)(b) above" is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by paragraph (e);

(g) section 35(1) (punishment of offences)(**8**) insofar as it relates to offences under section 33(1) as applied by paragraph (e);

(**7**) Section 21 was amended by S.I. 2004/3279.
(**8**) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c. 44), Schedule 26, paragraph 42, from a date to be appointed.

(h) section 35(2) and (3)(**9**) insofar as it relates to offences under section 33(2) as applied by paragraph (f);

(i) section 36 (offences by bodies corporate);

(j) section 36A (offences by Scottish partnerships)(**10**); and

(k) section 44 (protection of officers acting in good faith).

Revocation

11. The following Regulations are revoked—

(a) The Fish Labelling (Wales) Regulations 2003(**11**); and

(b) The Fish Labelling (Amendment) (Wales) Regulations 2006(**12**).

Gwenda Thomas
Deputy Minister for Social Services, under authority of the Minister for Health and Social Services, one of the Welsh Ministers

15 March 2010

(**9**) Section 35(3) was amended by S.I. 2004/3279.
(**10**) Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), Schedule 5, paragraph 16.
(**11**) S.I. 2003/1635 (W.177).
(**12**) S.I. 2006/1339 (W.131).

SCHEDULE Regulation 4

Commercial Designations

1. Subject to paragraphs 2 and 3, the commercial designation for any species of fish specified in column 2 of the following Table is a name specified for that species in the corresponding entry in column 1.

2. A customary name may be used for any species of fish which has been subjected to smoking or any similar process, unless the name of the species in column 2 of the Table is followed by an asterisk. In such cases the name used for the food when the fish is smoked is a name specified for that species in column 1 of the said Table preceded by the word "smoked".

3. Paragraph 1, as read with the Table, does not apply to fish regulated by Council Regulation (EEC) No 2136/89 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products(**13**) (as amended by Commission Regulation (EC) No. 1181/2003(**14**) and Commission Regulation (EC) No. 1345/2008(**15**)) or Council Regulation (EEC) No. 1536/92 laying down common marketing standards for preserved tuna and bonito(**16**).

Column 1 *Commercial designation*	*Column 2* *Species of fish*
Sea Fish	
African sole	*Solea senegalensis*
Alaska plaice	*Pleuronectes quadrituberculatus*
Alaska pollack *or* Alaska pollock *or* Pacific pollack *or* Pacific pollock	*Theragra chalcogramma*
Alaska pollock – see entry for Alaska Pollack *or* Alaska pollock *or* Pacific pollack *or* Pacific pollock	
Albacore tuna - see entry for Tuna *or* Tunny	
Amberjack – see entry for Horse Mackerel *or* Jack *or* Scad *or* Trevally	
American plaice	*Hippoglossoides platessoides*
Anchovy	All species of the family *Engraulidae*
Angler(fish) *or* Monk(fish)	*Lophiodes caulinaris* *Lophius americanus* *Lophius budegassa* *Lophius piscatorius*
Argentine	All species of the family *Argentinidae*

(**13**) OJ No. L212, 22.7.1989, p.79.
(**14**) OJ No. L165, 3.7.2003, p.17.
(**15**) OJ No. L348, 24.12.2008, p.76.
(**16**) OJ No. L.163, 17.6.1992, p.1.