

**2012 No.**

**FOOD, ENGLAND**

**The Fish Labelling (England) Regulations 2012**

*Made* - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - \*\*\*

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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 6(4)(a), 16(1)(e) and (f), 17(2)(b), 26(2)(e) and (3)(c) and 48(1)(d) of the Food Safety Act 1990(e) and now vested in the Secretary of State(f), and paragraph 1A of Schedule 2 to the European Communities Act 1972(g).

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- (a) Section 6(4) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40), paragraphs 7, 10(1) and (3) of Schedule 5, and Schedule 6, to the Food Standards Act 1999 (c. 28), and Schedule 2 to S.I. 2002/794.
- (b) Section 17 was amended by paragraphs 7, 8 and 12 of Schedule 5 to the Food Standards Act 1999 (c. 28).
- (c) Section 26(2) was amended by paragraph 13 of Schedule 8 and Part 1 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 26(3) was partially repealed by Schedule 6 to the Food Standards Act 1999.
- (d) Section 48(1) was amended by paragraphs 7 and 8 of Schedule 5 to the Food Standards Act 1999.
- (e) 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999. 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 (c. 40), Schedule 6 to the 1999 Act, S.I. 2004/2990 and S.I. 2004/3279.
- (f) 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 Food Standards Act 1999.
- (g) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51).

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

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for references in these Regulations to the following Regulations to be construed as references to those Regulations as amended from time to time—

- (a) Council Regulation (EC) No. 104/2000 on the common organisation of the markets in fishery and aquaculture products(b);
- (b) 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(c);
- (c) Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy(d); and
- (d) Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy(e);

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(f), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

### **Citation, application and commencement**

1. These Regulations may be cited as the Fish Labelling (England) Regulations 2012, they apply in England and come into force on [ ] 2012.

### **Interpretation**

2.—(1) In these Regulations—

- (a) references to the EU Regulations are references to the EU Regulations as amended from time to time; and
- (b) terms used have the same meaning as in the EU Regulations.

(2) In these Regulations—

“the Act” means the Food Safety Act 1990;

“compliance notice” means a notice served under regulation 5(1);

“consumer information requirement” has the meaning given in regulation 4;

“the EU Regulations” means Regulation 104/2000, Regulation 2065/2001, Regulation 1224/2009 and Regulation 404/2011;

“Regulation 104/2000” means Council Regulation (EC) No. 104/2000 on the common organisation of the markets in fishery and aquaculture products;

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(a) Section 48(4A) was inserted by paragraphs 7 and 21 of Schedule 5 to the Food Standards Act 1999.

(b) OJ No. L17, 21.1.2000, p.22, as last amended by OJ No. L343, 29.12.2010, p.6.

(c) OJ No. L278, 23.10.2001, p.6, as last amended by OJ No. L362, 20.12.2006, p.1.

(d) OJ No. L343, 22.12.2009, p1, as last amended by OJ No. L348, 24.12.2008, p.20.

(e) OJ No. L112, 30.4.2011, p 1, as amended by OJ No. L328, 10.12.2011, p.58.

(f) OJ No. L31, 1.2.2002, p.1. as last amended by OJ No. L188, 18.7.2009, p 14.

“Regulation 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;

“Regulation 1224/2009” means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy;

“Regulation 404/2011” means Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy; and

“traceability requirement” has the meaning given in regulation 4.

### **Member State and competent authority**

#### **3. The Secretary of State—**

- (a) acts as the member State for the purposes of Article 4(2) of Regulation 104/2000(a) and Article 2(1) of Regulation 2065/2001; and
- (b) is the competent authority for the purposes of Article 2(1) of Regulation 2065/2001(b).

### **Consumer information and traceability requirements**

#### **4.—(1) In these Regulations—**

- (a) “consumer information requirement” means a requirement referred to in paragraph (2), except where disapplied or modified by virtue of paragraph (4), (5), (6) or (7); and
- (b) “traceability requirement” means a requirement referred to in paragraph (3), except where disapplied by virtue of paragraph (7).

#### **(2) Paragraph (1)(a) refers to—**

- (a) a requirement specified in Article 4(1) of Regulation 104/2000 (provision of consumer information) as read with the following provisions of Regulation 2065/2001—
  - (i) Articles 2 and 3 (commercial designation),
  - (ii) Article 4(1) and (3) (production method),
  - (iii) Article 5 (catch area), and
  - (iv) Article 6 (combination sales); and
- (b) a requirement specified in Article 58(6) of Regulation 1224/2009 as read with Articles 67(13) and 68 of Regulation 404/2011.

(3) Paragraph (1)(b) refers to a requirement specified in Article 58(2), (3) and (5) of Regulation 1224/2009 as read with Article 58(7) of that Regulation and Article 67(1) to (13) of Regulation 404/2011.

(4) The requirement specified in Article 4(1) of Regulation 104/2000 as read with Article 4(1) of Regulation 2065/2001 does not apply in circumstances described in Article 4(2) of Regulation 2065/2001.

(5) The requirement specified in Article 4(1) of Regulation 104/2000 as read with Article 5(1)(c) of Regulation 2065/2001 does not preclude the indication of various member States or third countries as described in Article 5(1)(c) of Regulation 2065/2001.

(6) The requirement referred to in paragraph (2)(a) does not apply in circumstances described in the last paragraph of Article 4(1) of Regulation 104/2000, as read with the last sentence of Article 7 of Regulation 2065/2001, where each purchase does not exceed the sterling equivalent of 20 euros, or, in the case of direct sale from a fishing vessel, 50 euros.

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(a) The list of commercial designations is published on the Defra website [insert address].

(b) Provisional commercial designations are published on the Defra website [insert address].

(7) The requirements referred to in paragraphs (2)(b) and (3) do not apply in circumstances described in Article 58(8) of Regulation 1224/2009, as read with Article 67(14) of Regulation 404/2011, where the sale does not exceed the sterling equivalent of 50 euros per day.

### **Compliance notices**

5.—(1) If an authorised officer has reasonable grounds for believing that an operator has not complied with, or is not likely to comply with—

- (a) a consumer information requirement; or
- (b) a traceability requirement,

that officer may serve a compliance notice on that operator.

(2) A compliance notice must state—

- (a) the reason for the service of the notice and for the steps required to be taken;
- (b) the steps which the person must take, being such steps as the authorised officer believes are necessary to ensure compliance with a consumer information requirement or a traceability requirement;
- (c) the time by which each of the steps must be taken;
- (d) that failure to comply with the notice is an offence; and
- (e) the details of the right of appeal against the notice.

(3) An authorised officer may serve a notice on an operator withdrawing, varying or suspending a compliance notice.

### **Appeal against compliance notice**

6.—(1) An operator served with a compliance notice may appeal against that notice to the First-tier Tribunal.

(2) Subject to regulation 6(3), a compliance notice is not suspended pending an appeal unless the Tribunal directs otherwise.

(3) The Tribunal may—

- (a) confirm the notice or any requirement contained in it;
- (b) vary the notice or any requirement contained in it; or
- (c) revoke the notice or any requirement contained in it.

### **Offences**

7. A person commits an offence and is liable on summary conviction to a fine not exceeding level 5 of the standard scale if that person—

- (a) has been served with a compliance notice and fails to comply with that notice; or
- (b) fails to keep for three years beginning on the date the transaction is completed the records of the information referred to in Article 58(4) of Regulation 1224/2009 as read with Article 67(4) of Regulation 404/2011.

### **Enforcement**

8. Each food authority [define?] must enforce and execute these Regulations in its area.

### **Application of various provisions of the Act**

9. The following provisions of 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—

- (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)(a) with the modification that subsections (2) to (4) apply in relation to an offence under regulation 7 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 to be taken 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)(b) insofar as it relates to offences under section 33(1) as applied by paragraph (e);
- (h) section 35(2) and (3)(c) insofar as it relates to offences under section 33(2) as applied by paragraph (f);
- (i) section 36 (offences by bodies corporate); and
- (j) section 44 (protection of officers acting in good faith).

### **Modification of section 32 of the Act**

**10.** In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, section 32 is modified in that the references to the Act in subsection (1) are to be construed as including a reference to the EU Regulations and the purposes mentioned in subsections (1) and (2) are to be taken to include any purpose connected with the execution or enforcement of the consumer information requirements or the traceability requirements.

### **Review of these Regulations**

**11.—**(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the consumer information requirements and the traceability requirements are enforced in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

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(a) Section 21 was amended by S.I. 2004/3279.

(b) Section 35(1) is amended by the Criminal Justice Act 2003 (c. 44), Schedule 26, paragraph 42, from a date to be appointed

(c) Section 35(3) was amended by S.I. 2004/3279.

## Revocation

12. The Fish Labelling (England) Regulations 2010(a) are revoked.

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department for Environment, food and rural Affairs

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations enforce in England 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 (OJ No. L278, 23.10.2001, p.6) and parts of the following in respect of requirements on operators to provide consumer information and to keep records for traceability purposes—

- (a) 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 (OJ No. L17, 21.1.2000, p.22);
- (b) Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No. L343, 22.12.2009, p. 1); and
- (c) Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ No. L112, 30.4.2011, p. 1).

Regulation 3 sets out that the Secretary of State acts as the member State and competent authority for the specified purposes.

Regulation 4 sets out the consumer information requirements and the traceability requirements. Regulation 5 provides that an operator may be served with compliance notice by an authorised officer requiring compliance with those requirements. Regulation 6 provides a right of appeal to the First-tier Tribunal against a compliance notice.

Regulation 7 provides for criminal offences for failure to comply with a compliance notice or to keep certain records and for fines on summary conviction up to level 5 of the standard scale.

Regulations 8 to 10 provide that food authorities must execute and enforce these Regulations and provide the powers to authorised officers for these purposes.

Regulation 11 requires the Secretary of State to review these Regulations and to publish a report at a maximum interval of every five years.

Regulation 12 revokes the Fish Labelling (England) Regulations 2010 (S.I. 2010/420).

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available at [www.defra.gov.uk](http://www.defra.gov.uk) or from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR. It is also annexed to the Explanatory Memorandum for these Regulations, which is available, alongside these Regulations, on [www.legislation.gov.uk](http://www.legislation.gov.uk)[http://](http://www.legislation.gov.uk).

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(a) S.I. 2010/420 as amended by S.I. 2011/1043.