



## SEA FISH (MARKETING STANDARDS) REGULATIONS 2020

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Statutory Document No. 2020/0596



*European Communities (Isle of Man) Act 1973*

## SEA FISH (MARKETING STANDARDS) REGULATIONS 2020

*Laid before Tynwald:*

*Coming into Operation: in accordance with regulation 2*

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The Council of Ministers makes the following Regulations under section 2B of the European Communities (Isle of Man) Act 1973<sup>1</sup>.

### 1 Title

These Regulations are the Sea Fish (Marketing Standards) Regulations 2020.

### 2 Commencement

These Regulations come into operation on the day they are made<sup>2</sup>.

### 3 Interpretation

In these Regulations —

“**authorised officer**” has the meaning given in regulation 5(1);

“**compliance notice**” has the meaning given in regulation 9(1);

“**Department**” means the Department of Environment, Food and Agriculture;

“**premises**” means any land, building, container, vehicle or vessel of any description;

“**Regulation 2406/96**” means Council Regulation (EC) No. 2406/96 of 26 November 1996 laying down common marketing standards for certain

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<sup>1</sup> In accordance with regulation 6 (Saving of the European Communities (Isle of Man) Act 1973 for implementation period) of the European Union and Trade Act 2019 (Withdrawal Agreement) Regulations 2020.

<sup>2</sup> Section 2B(9) of the European Communities (Isle of Man) Act 1973 specifies that regulations made under section 2B(1) shall be laid before Tynwald as soon as may be after they are made and if Tynwald at the sitting before which such instrument is so laid or at the next following sitting resolves that the instrument shall be annulled, the regulations shall thereupon cease to have effect.

fishery products<sup>3</sup>, as last amended by Commission Regulation (EC) No. 790/2005<sup>4</sup>;

“**Regulation 1379/2013**” means Regulation (EU) No. 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products<sup>5</sup>, as amended by —

- (a) Regulation (EU) 2015/812 of the European Parliament and of the Council<sup>6</sup>; and
- (b) Regulation (EU) 2020/560 of the European Parliament and of the Council<sup>7</sup>; and

“**relevant provision**” means one of the provisions specified in regulation 4.

#### 4 Application

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).

#### 5 Authorised officers

- (1) The Department may in writing appoint an officer (an “authorised officer”) to act for the purposes of these Regulations.
- (2) The Department may provide for an appointment made under paragraph (1) to have effect for limited purposes.

#### 6 Power to enter premises

- (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.

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<sup>3</sup> OJ L 334, 23.12.1996, p. 1.

<sup>4</sup> OJ L 132, 26.5.2005, p. 15.

<sup>5</sup> OJ L 354, 28.12.2013, p. 1.

<sup>6</sup> OJ L 133, 29.5.2015, p. 1.

<sup>7</sup> OJ L 130, 24.4.2020, p. 11.

- (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 authorised officer 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 7.
- (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.

## 7 Warrants

- (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, 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 granted under this regulation 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 granted under this regulation is valid for 3 months.

## **8 Power to inspect and seize etc.**

- (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.

## 9 Compliance notices

- (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.

## 10 Appeals

- (1) A person on whom a compliance notice has been served may appeal to a court of summary jurisdiction against –
  - (a) the decision of an authorised officer to serve that compliance notice; or
  - (b) a decision of an authorised officer not to serve a completion notice in relation to that compliance notice.
- (2) The procedure on appeal to a court of summary jurisdiction is by way of complaint for an order, and the Summary Jurisdictions Act 1989 applies to the proceedings.
- (3) The period within which an appeal may be brought is –
  - (a) one month from the date on which, further to regulation 9(1), the compliance notice was served on the person wishing to appeal; or
  - (b) one month from the date on which, further to regulation 9(7), the notice was served on the person wishing to appeal,as the case may be and the making of a complaint for an order is deemed for the purposes of this paragraph to be the making of the appeal.
- (4) A compliance notice is not suspended pending the determination or withdrawal of an appeal unless the court directs otherwise.
- (5) On appeal under this regulation, the court may –
  - (a) either cancel or confirm the compliance notice, and, if it confirms the notice, it may do so either in its original form or with such modifications as it thinks fit; or



- (b) make such order as it thinks fit as regards a decision not to serve a completion notice.

## 11 Offences: general

- (1) A person commits an offence if that person contravenes, or causes or permits a person to contravene, a relevant provision.
- (2) A person commits an offence if that person fails to comply with a compliance notice served under regulation 9.
- (3) But it is a defence for a person charged with an offence under paragraph (1) or (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

## 12 Obstruction offences

A person commits an offence if that person —

- (a) intentionally obstructs an authorised officer exercising a power under these Regulations;
- (b) fails, without reasonable excuse, to give any assistance or information that the authorised officer may reasonably require for the performance of that officer's functions under these Regulations;
- (c) knowingly or recklessly gives false or misleading information to an authorised officer; or
- (d) fails to produce a label, document or record to an authorised officer when required to do so.

## 13 Penalties

A person guilty of an offence under regulation 11 or 12 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## 14 Protection of authorised officers acting in good faith

- (1) An authorised officer or person accompanying that officer by virtue of regulation 6(7)(a) is not to be liable in any civil or criminal proceedings for anything done or omitted to be done in, or in connection with, the exercise or the purported exercise of the powers in these Regulations.
- (2) Paragraph (1) does not apply —
  - (a) if the act or omission is shown to have been in bad faith;
  - (b) if there were no reasonable grounds for the act or omission; or
  - (c) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 2001 (acts of public authorities).

**15 Time limit for bringing prosecution**

- (1) Proceedings for an offence under these Regulations may be commenced within the period of 16 months beginning with the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.
- (2) But no such proceedings may be commenced after the period of 2 years beginning with the date of the commission of the offence.
- (3) For the purposes of this regulation —
  - (a) a certificate signed by the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and
  - (b) a certificate stating that matter and purporting to be signed is deemed to be so signed unless the contrary is proved.

**16 Enforcement**

It is the responsibility of the Department to enforce these Regulations.

**MADE 21 DECEMBER 2020**

**W GREENHOW**  
*Chief Secretary*

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

These Regulations enable the enforcement of EU common marketing standards for fishery products contained in –

- Council Regulation (EC) No. 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products (OJ L334, 23.12.1996, p. 1); and
- Regulation (EU) No. 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products (OJ L 354, 28.12.2013, p. 1).

These Regulations make provision for the Department of Environment, Food and Agriculture to appoint authorised officers for the purposes of ensuring that EU common marketing standards for fisheries products are complied with (regulation 5).

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 6 and 8). Authorised officers are also given the power to serve compliance notices for breaches of the relevant EU requirements (regulation 9).

Contravening the EU common marketing standards is an offence (regulation 11(1)). The failure to comply with a compliance notice, within the specified time, is also an offence (regulation 11(2)).

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