

SL(5)207 – The Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

Background and Purpose

These Regulations enable the enforcement, in England, Wales and Northern Ireland, of EU common marketing standards for fishery products contained in—

- Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products; and
- 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.

These Regulations make provision for enforcement authorities in England, Wales and Northern Ireland to appoint authorised officers for the purposes of ensuring that EU common marketing standards for fisheries products are complied with (regulation 4).

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 5 and 7). Authorised officers are also given the power to serve compliance notices for breaches of the relevant EU requirements (regulation 8).

Contravening the EU common marketing standards is an offence (regulation 12(1)). The failure to comply with a compliance notice, within the specified time, is also an offence (regulation 12(2)).

The Regulations make provision for appeals against compliance notices and any refusal to serve a completion notice (regulations 10 and 11).

Procedure

Negative, composite.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – the meaning of the instrument needs further explanation.

Regulation 5 sets out a power to enter premises. Regulation 5(5) says that “An authorised officer must, if requested to do so, produce a duly authenticated document showing the authority of that officer”.

It is not clear to us who can make a request to which regulation 5(5) applies. (There may be many people present at premises when enforcement action is being taken.) It must apply when the occupier of the premises makes a request, but to who else does it apply? Does it apply to any family member of the occupier? Does it apply to a person contracted to carry out cleaning services at the premises? Does it apply to a shareholder of a company that owns the premises? Does it apply to a mere passer-by?



2. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh.

These Regulations have been made as a composite instrument, meaning that these Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament.

The Welsh Ministers considered it was not reasonably practicable for these Regulations to be made in English and Welsh.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Explanatory Memorandum says that enforcement officers exercising enforcement powers under the Regulations must have regard to the Police and Criminal Evidence Act 1984. However, the correct position is that enforcement officers must have regard to the statutory codes of practice made under the 1984 Act.

Despite raising concerns around the use of PACE Codes of Practice on a number of occasions, we note that incorrect references to the use of PACE Codes are still common.

2. Standing Order 21.3(ii) – the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Regulation 6 sets out the process for applying for a warrant to enter premises. Regulation 6(4) says that a warrant to enter premises (which can include a person's home) is valid for three months. We question whether it is proportionate to have warrants that are valid for a blanket period of three months, in particular where, for example, all the required entering of the premises may have been completed within a day or two.

We accept that new circumstances may come to light which could require re-entry, but in that case it may be more proportionate to apply for a new warrant, in particular when the warrant relates to entering a person's home.

Implications arising from exiting the European Union

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the European Union (Withdrawal) Bill (the Bill), therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

With regard to the EU Regulations that are enforced by these Regulations, the EU Regulations are classed as "retained direct EU legislation" under the Bill. As drafted, the Bill does not give the Welsh Ministers (or the National Assembly for Wales) power to modify any retained direct EU legislation. Power to modify all retained direct EU legislation is given to UK Ministers; this includes the power to modify retained direct EU legislation in devolved areas.

However, the UK Government has committed to bring forward amendments to the Bill at Report stage in the House of Lords that are expected to lift these restrictions to some extent.



Government Response

Point 1: Standing Order 21.2 (v) – The meaning of the instrument needs further explanation:

The reporting point is not accepted.

The provision is intentionally broad and is not intended to limit who may request sight of a duly authenticated document. The policy intention is to ensure the facilitation of a search under warrant or inspection of a premises where a variety of persons may be present and who would reasonably need to see the authority of an officer performing his/her duties. In practice, enforcement officers would show their warrant card on request.

The Sea Fish (Marketing Standards)(England and Wales and Northern Ireland) Regulations 2018 revoke and replace, with changes, the Sea Fish (Marketing Standards) Regulations 1986. Regulation 4(1) of the revoked 1986 Regulations included similar provision.

This provision is also consistent with other enforcement legislation. Regulation 35(4) of the Welfare at the Time of Killing (Wales) Regulations 2014 and section 289 and 290 of the Marine and Coastal Access Act 2009 contain similarly broad provision.

Point 2: Standing Order 21.2 (ix) – The instrument is not made in both English and Welsh

The Regulations are made on a composite basis to maintain the clarity, accessibility and transparency of the statute book for those required to comply with its provisions.

The Regulations apply to England and Wales and Northern Ireland and are subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it was not considered reasonably practicable for this Instrument to be laid or made bilingually.

Response to Merits Scrutiny Points

Points 1 and 2: Standing Order 21.3 (ii) – The instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly:

Point 1:

The reporting point is noted.

Officers to be authorised to enforce these regulations will only have such an authorisation when they have successfully completed comprehensive training. Such training includes the requirement of exercising powers with regard to the Police and Criminal Evidence Act Codes of Practice.

Point 2:

The reporting point is not accepted.

The provision in regulation 6(4) is intended to provide operational flexibility, allowing time to deal with any unexpected issues which come up during the search phase. It is reasonable therefore to provide a time period within which the search of a premises can be undertaken which will need to allow for all the operational vagaries which might occur in the preparation and execution of that process.



Identical provision can be found in other enforcement legislation including regulation 36(3) of the Welfare of Animals at the Time of Killing (Wales) Regulations 2014, regulation 12(5) of the Alien and Locally Absent Species (England and Wales) Regulations 2011 and regulation 6(7) of the Olive Oil (Marketing Standards) Regulations 2014 which provide for enforcement throughout the United Kingdom. Maintaining a similar approach across the enforcement provisions helps to ensure the legislation is easily understood and accessible.

Committee Consideration

The Committee considered the instrument at its meeting on 23 April along with the Government response.

Technical Reporting Point 1

We agree that anyone who reasonably needs to see the authority of an officer can request to see the officer's authorisation.

We will continue to scrutinise powers of entry and seek clarity around the use of powers of entry. It is vital to be clear about every element of powers of entry, especially when they relate to entering people's homes.

Technical Reporting Point 2

We note the Government's response.

Merits Reporting Point 1

We will continue to scrutinise powers of entry and seek clarity around the use of powers of entry. It is vital to be clear about every element of powers of entry, especially when they relate to entering people's homes.

Merits Reporting Point 2

In our Merits Reporting Point 2, we raised the question of the proportionality of warrants to enter premises being valid for 3 months, whatever the circumstances. The Government response does not provide specific justification for warrants to be valid for a blanket period of 3 months in the context of these sea fish regulations.

Of particular concern is the Government's reliance on the fact that a blanket period of 3 months is found in other legislation. The enforcement background to that other legislation may be very different. Where the Government feels that a warrant must be valid for 3 months, we would expect the Government to be able to justify that in each and every case.

We do not say that a 3-month warrant can never be justified, but when there is a 3-month warrant, it must be justifiable on the facts of each statutory instrument, especially in the context of people's homes.

