

POLICY NOTE

THE FISH LABELLING (SCOTLAND) REGULATIONS 2013

SSI 2013 No. 256

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 6(4), 16(1), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990, paragraph 1A of Schedule 2 to the European Communities Act 1972 and all other powers enabling them to do so.

2. Policy Objectives

2.1 This instrument will provide for the enforcement and execution in Scotland of new labelling requirements from Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy and 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.

2.2 The instrument will also provide for the continued enforcement and execution of Council Regulation (EC) No 104/2000 on the common organisation of the markets in fishery and aquaculture products and Commission Regulation (EC) No 2065/2001 laying down detailed rules for the application of Council Regulation (EC) 104/2000. Those provisions are currently enforced by the Fish Labelling (Scotland) Regulations 2010, which are revoked.

2.3 This will provide additional consumer information which should be helpful in combatting food fraud.

3. Policy Background

What is being done and why?

3.1. New requirements to provide the consumer with additional information on fish and fishery products at the retail stage have been introduced throughout the EU. These requirements are set out in the Common Fisheries Policy (CFP) Control Regulation, which was agreed in 2010 and is now in the implementation phase. Provision must be made within domestic legislation to enforce the new consumer information requirements, including providing the scientific name of the fish at the point of retail and previously frozen declarations. Government intervention is necessary to ensure that the market supplies the consumer with the required information and to maintain consistency in how this is applied throughout the industry. This does not go further than the EU legislation requires and we have taken advantage of the derogation available to allow retailers to display the scientific name on a billboard or poster instead of labelling it on the product itself.

3.2 The current process for amending the UK's commercial designation list of fish names (e.g. Haddock, Cod etc.) is time consuming and burdensome and does not give us the flexibility to make changes quickly enough in response to market demands. This is because granting a new

designation involves making a new Scottish Statutory Instrument (SSI) (and equivalent instruments in England, Northern Ireland and Wales) each time. We are therefore proposing to separate the commercial designation list from the SSI and maintain a live up-to-date list of accepted names on the internet. This approach would benefit industry as it would remove the need to grant temporary designations while a new SSI is prepared. It would also prevent the existence of an incomplete list which occurs at present as temporary designations do not feature in the list attached to the SSI. In addition, this simplification will also bring cost savings to Government by removing the need to amend legislation each time a new commercial designation is agreed.

3.3 The obligation, under EU legislation, to maintain the a single UK list of commercial designations rests with the UK Secretary of State acting as the Member State and Competent Authority, as provided for in regulations 3 and 4 of The Fish Labelling Regulations 2013 SI No. 1768 It has been agreed that the list of commercial designations will be maintained administratively in collaboration with the Devolved Administrations. The list of commercial designations can be found at www.gov.uk/defra .

3.4 While no changes to enforcement procedures or new offences or penalties have been proposed in the 2013 Regulations, the offences have been slightly modified to take account of the new EU consumer information and traceability requirements.

4. Legislative Context

4.1 European legislation harmonises consumer information and traceability requirements regarding fish and fishery products. The four pieces of legislation are set out in the following paragraphs.

4.2 Council Regulation (EC) No 104/2000, which covers the organisation of the fisheries marketing regime, was agreed in December 1999. Article 4 of this Regulation relates to consumer information and labelling provisions. It requires all fishery and aquaculture products included within Chapter 3 of the Customs Code Combined Nomenclature (CN Codes) which are marketed within the Community, irrespective of their origin, to be appropriately marked or labelled at the point of retail sale to the final consumer with the following information:

- (a) The commercial designation of the species;
- (b) The production method (caught at sea or inland waters or farmed); and,
- (c) The catch area.

4.3 Chapter 3 of the CN Codes - covers fish from all species but only marketed in certain presentations, as described by Chapter 3, i.e. whether live, fresh, chilled, or frozen; fish fillets and other fish meat, fresh, chilled or frozen; smoked, dried, salted, or brined fish; crustaceans and molluscs.

4.4 Commission Regulation (EC) No 2065/2001 provides the detailed rules applying the provisions of Council Regulation 104/2000 and was agreed in October 2001. It lays down detailed rules for consumer information about certain fishery and aquaculture products through

improved marking or labelling at retail level. Certain information is also required for traceability purposes.

4.5 Council Regulation (EC) No 1224/2009 agreed in November 2009 states in Article 58 point 6 that Member States shall ensure that the following information, as set out in Article 8 of Regulation (EC) No 2065/2001, is available to the consumer at retail stage sale:

- (a) The commercial designation;
- (b) The scientific name;
- (c) The relevant geographical area;
- (d) The production method; and,
- (e) Whether the fisheries products have been previously frozen or not.

4.6 Commission implementing Regulation (EU) No 404/2011 provides the detailed rules applying the provisions of Council Regulation (EC) No 1224/2009. Article 68, of the implementing regulation, sets out that Member States shall ensure that the information requirements shown above are indicated on the label or appropriate mark of the fisheries and aquaculture products offered for retail sale, including imported products.

4.7 The scientific name of the species may be provided to the consumer at retail level by means of commercial information such as bill boards or posters.

4.8. The requirement to provide information on products that have been previously frozen shall be indicated on the label or appropriate mark using the word 'defrosted'. The absence of this wording at retail level shall be considered as meaning that the products have not been frozen beforehand and later defrosted.

4.9 In the 2013 regulations, the references to the underlying EU legislation are ambulatory.

5. Consultation

5.1 Consultation took place for a 12 week period between 3 October 2012 and 31 December 2012. The consultation produced six responses, five of which made substantive comments and a summary is included at **Annex A**. The FSA received responses from Local Authorities/Enforcement bodies, Industry representative organisations and the Government Chemist. One respondent felt that the costs of becoming familiar with the new Regulations were underestimated, although others did not share this concern. Another found the guidance to the Regulations helpful. The overall view of the respondents supported the preferred option to implement the changes required by EU legislation and improve the process for maintaining the list of commercial designations.

5.2 Since the Westminster Machinery of Government changes in 2010, the FSA no longer has policy responsibility for fish labelling matters on a UK basis and therefore more limited control of the overall planning process. Developing a new approach to updating the list of commercial designations required a UK SI to be introduced regarding UK member State

responsibilities and the development of new enforcement notice procedures in the other parts of the UK meant that it has taken longer than anticipated to introduce the 2013 regulations. With the aim of coordinating work across the UK as much as possible, it was considered best to finalise the UK SI and then seek clearance for the FSA instruments quickly thereafter.

6. Other Administrations

6.1 These Regulations apply to Scotland only. The UK SI comes into force from 2 September with the FSA instruments for Northern Ireland and Wales due to come into force in early October, subject to differences in scrutiny procedure and parliamentary timetables.

7. Guidance

7.1 An updated guidance note was prepared as part of the consultation and will be made available online to accompany the Regulations. There are principally only two major introductions, the need to provide the scientific name and the previously frozen declaration. The other change concerns the management and process for amending the UK list of commercial designations.

8. Impact Assessment

8.1 A final Business and Regulatory Impact Assessment has been prepared following public consultation and discussion with a selection of businesses and accompanies this note. The overall impact is felt to be low, although we will keep this under review. The changes to the way the UK list of commercial designations will be managed in future will benefit business and enforcers through a more straightforward legislative environment.

9 Regulating small businesses

9.1 This Regulation will apply to all businesses trading in fishery products in order for the benefits of traceability to be realised.

10. Monitoring

10.1. The FSA will work with Enforcement Authorities where problems or suspected infringements of the legislation arise. The effectiveness of the instrument will be also be monitored via general feedback from industry and Enforcement Authorities.

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2 September 2013

Fish Labelling (Scotland) Regulations 2013

SUMMARY REPORT OF RESPONSES TO CONSULTATION
FROM STAKEHOLDERS

Details

The Fish Labelling (Scotland) Regulations consultation was issued 1 October 2012 and closed on 31 Dec 2012. These Regulations will introduce new consumer information and traceability requirements as set out in the EU Common Fisheries Policy (CFP) Control Regulations (EC) No 1224/2009 and (EU) No 404/2011, and will continue to provide for the consumer information and traceability requirements of the Common Organisation of the Markets in Fishery and Aquaculture Products (CMO) Regulations (EC) 104/2000 and (EC) 2065/2001 (as currently provided for in the Fish Labelling (Scotland) Regulations 2010 which will be revoked).

Purpose

The purpose of this 3 month public consultation was to seek the views of those involved in the trade of fishery products and other stakeholders in the fish industry on the draft Fish Labelling (Scotland) Regulations.

The consultation aim was to check that the preferred option for implementing the new EU requirements for fish labelling made sense and was the least burdensome for those affected. It also provided an opportunity for those who operate in this sector to express their views on the proposed change to how the UK list of commercial designations for fish will be updated and maintained in future. This included proposed new species for consideration.

Focus

The focus of the consultation was as follows:

- A) A proposal to change the way the list of UK commercial designations is updated and maintained
- B) Options to amend the current Scottish Statutory Instrument to take account of the new requirements introduced by the EU Fisheries Control Regulation
- C) Views were also sought on draft UK guidance on the revised Fish Labelling Regulations.

Business & Regulatory Impact Assessment (BRIA)

In addition, the BRIA posed particular questions as follows:

Question 1 - Stakeholders are invited to comment on whether we have captured all firms in the market that might be affected by the proposal?

Question 2 - Stakeholders are invited to comment on whether the time saving benefits listed seem reasonable.

Question 3 - Commercial Designation list - On average, how often do you consult the existing SSI to check Commercial Designations per year? What time saving do you estimate as a result of placing a 'live' Commercial Designation list on a webpage?

Question 4 - Do the hours listed seem reasonable?

Question 5 - Stakeholders are invited to comment on whether the assumption of 1 hour for micro and small businesses and 2 hours for medium and large businesses is reasonable.

Question 6 - Stakeholders are invited to comment on whether the assumptions in relation to traceability costs are realistic.

Question 7 - We are keen to seek views from micro business on the degree of impact of any labelling changes.

Question 8 - Stakeholders are invited to comment on whether the assumptions regarding familiarisation costs are reasonable.

The FSA is grateful to those stakeholders who responded to our consultation and a summary of responses is set out in the table below.

The Food Standards Agency's considered responses to stakeholders' comments are given in the last column of the table. A summary of changes to the original proposal(s) resulting from stakeholder comments is set out in the final table.

A list of stakeholders who responded can be found at the end of the document.

SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION

ISSUE / GROUP

Respondent	Method of Response	Comment	Response
Paul Bradley, East Ayrshire Council	email	<p>Comments restricted to regulatory aspects only. Costs not addressed.</p> <p>Notes that regulation will be simplified by incorporating all rules relating to consumer information for fishery products into one set of regulations. In terms of simplicity and ease of use the author would support one domestic SSI.</p> <p>Supports that the new requirement to give the scientific name and an indication of whether or not the fishery product has been previously frozen, is to be incorporated at the point of sale to provide clear consumer information.</p>	Noted

ISSUE / GROUP

Respondent	Method of Response	Comment	Response
Craig M Brown, South Lanarkshire Council	email	Responded to the questions posed in the Business & Regulatory Impact Assessment as follows:	

ISSUE / GROUP

Respondent	Method of Response	Comment	Response

SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION

		<p>Question 1 - feels the distribution list is appropriate in so far as it relates to their area.</p> <p>Question 2 - feels the time savings are reasonable, but the estimated financial benefit is an underestimate based on the salary of EHO's in Scotland.</p> <p>Question 3 - cannot provide any information in respect of this question. The author has never required to consult the existing SSI and the Council does not hold information on how often their food safety enforcement staff consult the SSI.</p> <p>Question 4 – unable to comment accurately on this, though it is logical that if there is one source of the information it will save time for enforcement staff.</p> <p>Question 5 – believes it is for the industry to comment on this question.</p> <p>Question 6 - believes it is for the industry to comment on this question.</p> <p>Question 7 – This question does not apply to South Lanarkshire Council.</p> <p>Question 8 – feels the proposed costs are an under estimate; suggesting that only one officer per authority is going to spend time familiar with this change does not seem reasonable. The salary cost used in the calculation is also lower than would be reasonable based on the assumption of only one officer per authority becoming familiar with the change.</p>	<p>Question 1. The list of consultees was representative of those most interested and affected by the proposals.</p> <p>Question 2. Noted (Salary costs based on a 2011 survey and applied in line with the standard cost model)</p> <p>Question 3. We assume that our estimate is reasonable.</p> <p>Question 4. We assume that our estimate is reasonable.</p> <p>Question 5. We assume that our estimate is reasonable.</p> <p>Question 6. We assume that our estimate is reasonable.</p> <p>Question 7. Some stakeholders have confirmed potential savings so this reinforces the decision to separate the commercial designation list from the SSI and maintain it separately on a website.</p> <p>Question 8. Noted (Salary costs based on a 2011 survey and applied in line with the standard cost model. However, we will keep this under review) becoming</p>
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SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION

ISSUE / GROUP

Respondent	Method of Response	Comment	Response
Derek Craston, The Government Chemist [UK]	letter	Welcomes the implementation of provision of information for consumers and supports electronic means (website posts of commercial designations) more flexibly and efficiently to respond to new or updated commercial designations. Notes that it is aimed to maintain the rigour of the process.	

SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION

OTHER COMMENTS:

Respondent	Method of Response	Comment	Response
		Feels that these regulations appear to stop short of scrutiny of the correctness of the consumer information to be given, and the author notes that this may well become an issue e.g. the determination of the species and hence the commercial designation of a fillet of fish devoid of distinctive morphological characteristics can only be carried out by scientific analysis, e.g. by DNA profiling. ¹ Similarly, measurement of specific enzyme activity has been shown to be key to determining if a fillet of fish has been previously frozen. ² Should a dispute arise in the results of such scientific tests or their interpretation the author feels it is a more cost effective option for industry and regulator alike to refer this to his team for a referee analysis as provided for in S.31(2)(h) of the Food Safety Act. He suggests a reference to this in the Guidance Notes.	Noted and suggestion appreciated.
Jane Waye, Scottish Environment Protection Agency (SEPA)	email	No comment	
Jamie Smith - Scottish Salmon Producers Organisation (SSPO)	email	Does not believe the proposed changes will have any financial or other impact on the businesses they represent in the farmed salmon sector.	Noted
Fiona Wright – Seafish Industry Authority [England-based]	email	Happy with the changes made to the regulation as a consequence of 404/2011 and 1224/2009. Welcomes the proposal to simplify the process for changes to the commercial names list. Feels that the guidance is well drafted and welcomes the flexibility and clear explanations of the exemptions included in the regulation to avoid unnecessary burdens on industry.	Noted

¹ Rasmussen, R. S. and Morrissey, M. T. (2008), DNA-Based Methods for the Identification of Commercial Fish and Seafood Species. Comprehensive Reviews in Food Science and Food Safety, 7: 280–295.

² Duflos, G., Le Fur, B., Mulak, V., Becel, P. and Malle, P. (2002), Comparison of methods of differentiating between fresh and frozen–thawed fish or fillets. J. Sci. Food Agric., 82: 1341–1345.

SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION

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Comment	Response

ACTIONS TO BE IMPLEMENTED:

- An additional 55 entries have been put forward for inclusion in the list of Commercial Designations. These will be considered individually in collaboration with the Fish Expert Group on their suitability for inclusion on the list.
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List of Respondents:

	32.	
1. East Ayrshire Council	33.	64.
2. South Lanarkshire Council	34.	65.
3. UK Government Chemist	35.	66.
4. Scottish Environment Protection Agency	36.	67.
5. Sea fish Industry Authority	37.	68.
6. Scottish Salmon Producers Organisation	38.	69.
7.	39.	70.
8.	40.	71.
9.	41.	72.
10.	42.	73.
11.	43.	74.
12.	44.	75.
13.	45.	76.
14.	46.	77.
15.	47.	78.
16.	48.	79.
17.	49.	80.
18.	50.	81.
19.	51.	82.
20.	52.	83.
21.	53.	84.
22.	54.	85.
23.	55.	86.
24.	56.	87.
25.	57.	88.
26.	58.	89.
27.	59.	90.
28.	60.	91.
29.	61.	92.
30.	62.	93.
31.	63.	94.

List of Respondents: