

FINAL REGULATORY ASSESSMENT

Title of proposed regulations

The Fish Labelling (Wales) Regulations 2003

Purpose and intended effect of the Regulations

(i) The objective

To provide clearer labelling information for certain fish products, and to promote the free movement of fishery and aquaculture products – by providing for the enforcement of Article 4 of EC Regulation 104/2000, and EC Regulation 2065/2001.

This is principally a consumer information measure; it is not intended to fulfil a food safety or consumer health objective.

(ii) Devolution

The proposed Regulations will apply in Wales only. Separate, equivalent legislation will be made in England, Scotland, and Northern Ireland.

(iii) Background

Council Regulation 104/2000, on the common organisation of the markets in fishery and aquaculture products, was agreed in December 1999. Article 4 of this Regulation requires that certain fish products must, when sold to the final consumer, be labelled with the following information:

- (i) the commercial designation of the species (i.e., an agreed common name for the species of fish).
- (ii) the production method (i.e., whether caught at sea, caught in inland waters, or farmed)

- (iii) the catch area. (i.e., either the ocean area, or in the case of freshwater fish, the country in which it was caught or farmed).

Commission Regulation 2065/2001 provides further detail for the way in which the information should be provided.

The additional labelling requirements apply only to whole fish, fillets and fish meat (whether fresh, chilled or frozen); smoked and salted fish; and some crustaceans and molluscs. The new requirements do not apply to processed products (such as fish fingers, battered and breaded portions and ready meals) or to foods containing fish as an ingredient. The requirements do not apply to catering sales, because cooking the fish, or serving it with any accompanying ingredients (whether sauce, salad, bread etc) will mean that the rules will not apply.

Regulation 104/2000 also requires that Member States publish a list of commercial designations for at least all the species in Annexes I to IV of the Regulation (around 60 species). These commercial designations must be used to describe these species when they are sold. This will help to prevent the mis-description of fish products. The list published by the Member States may also include further species not included in the Annexes.

Regulation 2065/2001 provides two optional provisions, which may be taken up at Member States' discretion. Article 4(2) (of Regulation 2065/2001) provides that where it is obvious from the commercial designation and catch area that the produce has been caught at sea, Member States may allow product labelling to omit the reference to production method. Article 5(1)c provides that where a product has been farmed in more than one Member State or third country, the Member State in which the product is sold may authorise the various Member States or third countries in which it was farmed to be declared.

Member States are required to bring into effect legislation providing for the enforcement of the EC Regulations by 1 January 2002.

(iv) Risk assessment

The purpose of the European Regulations is to ensure the accurate labelling of certain fish products, and to provide consumers with additional information relating to the origin of the products. If no provision were made in the UK for enforcement of the Regulations, consumers would not benefit from this additional labelling information. In addition, Member States are required to

provide for the enforcement of the EC Regulations. Failure to do so could leave the UK open to infraction proceedings from the Commission.

(v) Business sectors affected

Retailers (including larger retailers): will be required to provide the additional labelling information. Larger retailers selling own-brand pre-packed products will be required to re-design and re-print labelling. Those retailers who simply sell on pre-packed produce will not be affected, because re-labelling would be the responsibility of the producer or packer.

Fish product manufacturers: those businesses making pre-packed “branded” products would be required to re-design and re-print their labelling to provide the required additional information.

Fishmongers, Market stalls etc: will be required to provide the additional labelling information. They will have ready access to this information, because the traceability rules will require their suppliers to provide it. The majority of sales from these businesses will be sold loose or pre-packed for direct sale. The labelling information will therefore be provided by point of sale displays, which will be easier and cheaper to amend.

Wholesale fish suppliers: will be required to provide the labelling information to purchasers (although there is greater flexibility for the way in which it is provided e.g., in invoices and other documentation rather than product labelling as such). These businesses will also be required to provide the Latin name of the species. The businesses will have access to this information from their suppliers in turn.

Fish auctions, Trawlers etc (i.e., those businesses at the first stage of the supply chain): will be required to provide the traceability information to their customers. It is anticipated that this information can be incorporated into existing documentation systems. These businesses will of course be well aware of the species of the fish, the production method and where it has been caught / farmed.

Catering establishments: will not be affected by the new labelling requirements, because the requirements do not apply to fish products that have been processed in some way (e.g., by cooking) or that are served with accompanying ingredients (e.g., sauce, salad etc.).

(vi) Issues of equity and fairness

Regulations 104/2000 and 2065/2001 apply to businesses throughout the European Community. There is no disadvantage for businesses in Wales.

Options

Option 1 – Do nothing

Option 2 – Make legislation providing for the enforcement of the EC Regulations, without taking up the optional provisions

Option 3 – Make legislation providing for the enforcement of the EC Regulations, taking up the optional provisions (i.e., Article 4(2) and 5(1)c of Regulation 2065/2001).

Benefits

Option 1 – *Do nothing* - None.

Disadvantages – The EC Regulations are directly applicable in the UK, and businesses are legally obliged to comply. However, if no enforcing legislation were introduced, there would be no way of preventing some businesses ignoring the requirements. Under this situation, consumers might not receive the additional labelling information, and these businesses would gain an unfair advantage. In addition, the rules in the UK would be out of line with those in the rest of the Community. This may make it difficult for UK businesses to export their product to other Member States, thus placing them at a competitive disadvantage.

Most importantly, failure to provide for the enforcement of the EC Regulations would leave the UK open to infraction proceedings from the Commission. This is not a viable option therefore.

Option 2 - *make implementing regulations without the optional provisions* – This option would benefit consumers by providing them with additional information about the fish products they buy. In addition, the list of commercial designations will help to ensure that consumers are not misled by the misdescription of fish products. The traceability provisions will also ensure that the labelling information will be provided at each stage of marketing and this will assist businesses in that the labelling information will be available to enable them to meet the labelling requirements. Industry will benefit from the

harmonisation of the provisions across Member States. This will make it easier to trade fish products across the Community.

Disadvantages – There would be costs to industry as a result of the required changes to labelling, and the new traceability requirements.

Option 3 – *make implementing legislation including the optional provisions* - This option would provide all the benefits provided by option 2. In addition, businesses would be able to take advantage of the full flexibility provided by the optional provisions.

Disadvantages – There would be the same costs to industry as under option 2 above.

Compliance costs for charities and voluntary organisations

No significant costs are expected.

Compliance costs for industry

(i) Implementation costs

Labelling requirements: (applies to options 2 and 3). The additional labelling requirements of the EC Regulations will require changes to be made to current product labelling. In addition, some write-off of packaging material may occur. However, the costs associated with re-labelling will be off-set by transitional provisions allowing produce and packaging placed on the market before the coming into force date to be used up. It is estimated that each major retailer will be required to change the labelling for around 50 products, at a cost of around £1000 per product. In addition, changes will be required to the point of sale labelling for loose products. In the case of larger retailers, costs may arise from the re-design and printing of point of sale materials. However in the case of smaller businesses (such as fishmongers and market stalls) the widespread use of temporary media for point of sale labelling will mean that substantial costs will not arise. Therefore the cost of re-labelling across the industry is estimated to be around £2-3million.

Traceability requirements: (applies to options 2 and 3). Many businesses (particularly larger suppliers and retailers) already have detailed traceability systems in place. In any case, the flexibility provided by the Regulations will allow the information to appear on sales documents, and all supply businesses will already be using sales documentation of some form. Accommodating the new labelling information within existing systems should

not give rise to significant costs. It is not anticipated that significant additional costs will arise from the requirement for businesses at the first stage in the supply chain to provide information. The catch area and production method of the produce will be self evident. Those working in the industry also have a high level of expertise in identifying fish species. Finally, the requirement to provide the Latin name of the species will at most require the producer to consult the list of species published in the Regulations, or an authoritative text book.

(ii) Policy (ongoing) costs

No significant ongoing costs are expected.

(iii) Costs for a typical business

Major retailer: One major retailer has reported that the new Regulations will require changes to the labelling of around 40 pre-packed products, at a costs of around £1000 per product – giving a total of £40k. In addition, the costs of replacing point of sale ticketing for loose products is estimated at £600 for each of 130 branches – giving a total of £78k. No additional costs are expected in relation to the traceability requirements, because of the sophisticated system already in place. Total - £118k.

Fishmongers and other Small businesses: See “small business litmus test” below.

Consultation with small business: the “litmus test”

The Agency has conducted a “litmus test” with assistance and advice from the Small Business Service. This involved contacting three SME’s to discuss the impact of the new Regulations.

(i) A small independent fishmonger, located in a Cornish fishing village. The shop sells around 40 species, some of which are purchased from local boats, and the remainder from Plymouth fish market. The anticipated costs arise from the need to change some labels to provide the additional labelling information. All the stock is sold loose, and is therefore labelled by point of sale ticketing. The one-off cost of replacing these tickets is estimated to be around £200. However, because all the produce is caught in British waters (with the exception of some farmed bass) the required information on catch area and production method could be provided by a single sign (i.e, along the lines “all produce sold in this shop has been caught in the North East Atlantic”). In which case, there would be no need to change the point of sale

tickets (except for the farmed produce). This would clearly reduce the costs significantly.

Total estimated implementation costs: less than £200. There are no estimated ongoing costs.

(ii) A large fishmonger located in an inland town. The shop supplies restaurants as well as consumers, and stocks up to 1000 species (of which 200-300 are in stock at any one time). The stock is sourced from all over the world. Although the majority is caught in the wild, some farmed produce is also sold. The shop has around 10 regular suppliers, all of whom deliver direct to the shop. Again, the estimated costs arise from re-labelling. Current labelling is provided by point of sale ticketing, which is produced on the premises (the tickets are hand-written, and then laminated). The cost of replacing 1000 tickets is estimated at £500 with associated staff costs of around £100. In addition, the shop produces some pre-packed produce, which is sold on to other shops. The shop has a machine for printing this labelling, which they plan to replace at a cost of around £2000. However, the machine was due to be replaced notwithstanding the new labelling requirements.

Total estimated implementation costs: £600. There are no estimated ongoing costs.

(iii) A wholesale fishmonger, supplying restaurants and catering firms. The business sells a very wide range of finned fish and seafood, the majority of which is purchased directly from suppliers in Britain, Europe and further afield; the remainder is purchased from Billingsgate Market in London. They currently operate a system of computer printed invoices, detailing the species and size of the produce. In some cases, in response to customer requests, they already provide details on the origin and production method of the produce. In order to comply with the new requirements, they will simply need to extend this labelling to all their invoices. They intend to take advantage of the flexibility allowing the information to be provided on commercial documents. Compliance will simply be a case of typing in the additional details when preparing the invoices. The new Regulations will of course require their suppliers in turn to provide the necessary information.

There are no estimated implementation or ongoing costs.

Additional costs to enforcement bodies

Local Authority enforcement bodies already have responsibility for the enforcement of the current labelling and traceability requirements for fish products. The new provisions represent merely an extension to these requirements. However, LACORS (Local Authorities Co-ordinating Body on Regulatory Services) have commented that some additional demands on resources may arise where traders seek advice on the new requirements from local Authorities. In addition, there could be additional costs for Local Authorities in areas with many shellfish producers, as Trading Standards Officers are not usually required to visit such businesses, although LACORS have noted that these costs are difficult to quantify.

The Food Standards Agency has taken the following steps to minimise costs:

The Agency has produced Guidance Notes for businesses and enforcement bodies, which have been subject to public consultation. This Guidance will assist individual businesses to ensure their compliance with the requirements of the Regulations, and will assist in ensuring a consistent approach to enforcement.

The Guidance clarifies a number of points, which will allow businesses to continue some current practices: e.g., The requirement to give the Member State of production does not preclude labelling such as “Scottish smoked salmon” (where the Member State in question is the UK rather than Scotland). In addition, the Agency has chosen to take up the two optional provisions in the Regulation (as described above) for the same reason.

The Guidance also clarifies that catering sales are not included in the new labelling requirements. In addition, the Agency has also urged the Commission to clarify this point for the benefit of all Member States. This will ensure that caterers avoid any costs arising from the new Regulations.

Competition Assessment

A competition filter assessment has been carried out in accordance with Guidance from the Office of Fair Trading (OFT) (this is attached in the Annex). The results of the competition filter conclude that it is unlikely that the MPR will have a deleterious effect of the competition within the UK industry.

Further information on this process can be found in “Guidelines to Competition Assessment – A Guide to Policy Makers Completing Regulatory Impact Assessment” on the OFT website at www.offt.gov.uk

Enforcement and Sanctions

Enforcement of the Wales Regulations will be the responsibility of Local Authority Trading Standards or Environmental Health Departments.

The penalty on conviction for an offence under the regulations is:

- (i) in respect of the consumer labelling requirements, a fine not exceeding level 5 on the standard scale (currently £5,000).
- (ii) in respect of the traceability requirements, a fine not more than level 3 on the standard scale (currently £3,000).

Monitoring and Review

The effectiveness and impact of the new Regulations will be monitored via feedback from stakeholders, as part of the ongoing policy process.

Consultation

(i) Within government

Regulations 104/2000 and 2065/2001 were agreed in the EC Fisheries Management Committee, for which DEFRA (Department for the Environment, Food and Rural Affairs) is the lead UK department. The Agency has therefore worked in close co-operation with colleagues in DEFRA throughout the negotiation and implementation process. In addition, the Small Business Service was consulted (see “litmus test” above). Government Departments with an indirect interest were also included in the public consultation.

(ii) Public consultation

Draft Fish Labelling (Wales) Regulations were issued for a 12-week public consultation in February 2002, along with accompanying Guidance Notes and a draft Regulatory Impact Assessment. The consultation package was issued to around 60 stakeholders from industry, enforcement and consumer groups, in Wales and was publicly available on the Agency’s website.

There were no responses received to the consultation exercise in Wales. The Agency received 16 responses in total. No significant changes to the Regulations were requested. There were a number of comments on the Guidance Notes requesting clarification on certain points, and the Guidance was subsequently amended to take account of these points. A small number of comments were received on the draft RA; these have been included in the final RA. A full summary of the responses received can be viewed on the Agency's website.

Summary and Recommendation

| | Costs | Effect |
|----------|-------|--|
| Option 1 | None | Would not deliver additional consumer labelling information required by the new EC Regulations. UK rules would be out of line with the rest of the EU. Would leave UK open to infraction proceedings from the Commission. <u>Not a viable option.</u> |
| Option 2 | £2-3m | Would deliver the additional labelling requirements of the new EC Regulations. Traceability provisions would give businesses access to the information required to meet labelling requirements. The rules will be in line with the rest of the Community, allowing businesses in the UK to trade freely with those in other Member States. |
| Option 3 | £2-3m | Would deliver all the benefits of option 2 and in addition, would provide businesses with the full flexibility of the EC Regulations' optional provisions. |

It is recommended that option 3 is taken up, and the domestic Regulations have been drafted accordingly. This option provides the full consumer benefits, while offering the maximum available flexibility for businesses. DEFRA has estimated that UK consumers' expenditure on fish was more than £2bn in the year 2000. The anticipated costs therefore represent around 0.1% of the revenue earned by selling fish to the ultimate consumer.

Minister's Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

Date

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Annex

Competition Filter Assessment

| Competition filter | |
|---|-------------------------|
| Question | Answer yes or no |
| Q1. In the market(s) affected by the new regulation, does any firm have more than 10% market share? | NO |
| Q2. In the market(s) affected by the new regulation, does any firm have more than 20% market share? | NO |
| Q3. In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? | NO |
| Q4. Would the costs of the regulation affect some firms substantially more than others? | NO |
| Q5. Is the regulation likely to affect the market structure, changing the number or size of firms? | NO |
| Q6. Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet? | NO |
| Q7. Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet? | NO |
| Q8. Is the market characterised by rapid technological change? | NO |
| Q9. Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products? | NO |