Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

2009 No. 1551 (W.151)

HORTICULTURE, WALES

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009

Made - - - -	*23 June 2009*
Laid before the National Assembly for Wales - -	*24 June 2009*
Coming into force - -	*16 July 2009*

These Regulations are made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 [F1].

The Welsh Ministers are designated [F2] for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Community.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Welsh Ministers that it is expedient for references to provisions of Community instruments to be construed as a reference to those provisions as amended from time to time.

There has been open and transparent public consultation during the preparation of these Regulations as required by Article 9 of Regulation (EC) No 178/2002[F3] 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.

Accordingly, the Welsh Minister for Rural Affairs makes the following Regulations.

F1 1972 c. 68. Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

F2 S.I. 2005/2766. By virtue of sections 59(1) and 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006, functions conferred on the National Assembly for Wales by this designation are exercisable by the Welsh Ministers.

F3 OJ No L 31, 1.2.2002, p.1, last amended by Commission Regulation (EC) No 202/2008 (OJ No L 60, 5.3.2008, p.17).

PART 1

Introduction

Title, commencement, extent and application

1. The title of these Regulations is The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 and they come into force on 16 July 2009 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

[F4"Commission Implementing Regulation 543/2011" ("*Rheoliad Gweithredu'r Comisiwn 543/2011*") means Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, as amended from time to time.**]**

(2) In these Regulations—

"authorised officer" ("*swyddog awdurdodedig*") means an officer appointed by the Welsh Ministers in accordance with regulation 3(3) of these Regulations;

[F5"EU marketing rules" ("*rheolau marchnata'r UE*") means the general marketing standard and the specific marketing standards covering fresh fruit and vegetables listed in Part IX of Annex I to **[**F6Regulation (EU) 2013, and includes the rules relating to those standards contained in Articles 74, 75 and 76**]** and Title II of Commission Implementing Regulation 543/2011**]**

"container" ("*cynhwysydd*") includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

"controlled" ("*sydd dan reolaeth*") in relation to horticultural produce, means that the power conferred by regulation 12(1) (stop notice) has been exercised in relation to it and that the stop notice is for the time being in force;

F7...

[F8"general marketing standard" ("*safon farchnata gyffredinol*") means the requirements of **[**F9Article 76(1) of Regulation (EU) 2013**]** as detailed in Article 3(1) and Part A of Annex I to Commission Implementing Regulation 543/2011**]**

"horticultural produce" ("*cynnyrch garddwriaethol*") means fruit and vegetables listed in Part IX of Annex I to **[**F10Regulation (EU) 2013**]** to which **[**F11EU marketing rules**]** apply;

"label" ("*label*") includes any device for conveying information by written characters or other symbols, and any characters or symbols stamped or otherwise placed directly on to any horticultural produce or container, and references to the affixing of a label are construed accordingly;

"labelling defect label" ("*label labelu diffygiol*") has the meaning given in regulation 11;

"out-graded label" ("*label allraddio*") has the meaning given in regulation 10;

"premises" ("*mangre*") includes any place, vehicle or trailer, stall, vessel, container, moveable structure, aircraft, or hovercraft;

"re-graded label" ("*label ailraddio*") has the meaning given in regulation 9;

[F12"Regulation (EU) 2013" ("*Rheoliad (EU) 2013*") means Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products, as amended from time to time;**]**

"specific marketing standards" ("*safonau marchnata penodol*") means the marketing standards provided for under **[**F13Article 75(1)(b) of Regulation (EU) 2013**]** as detailed in **[**F14Article 3(2) and Part B of Annex I to Commission Implementing Regulation 543/2011**]**, and "specific marketing standard" ("safon farchnata benodol") means one of those specific marketing standards;

"stop notice label" ("*label hysbysiad atal*") has the meaning given in regulation 13.

(3) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in **[**F15Regulation (EU) 2013**]** and **[**F16Commission Implementing Regulation 543/2011**]**.

F4 Words in reg. 2(1) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **4(a)**
F5 Words in reg. 2(2) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **4(b)(i)**
F6 Words in reg. 2(2) substituted (1.1.2014) by The Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013 (S.I. 2013/3270), regs. 1(c), **6(2)(a)**
F7 Words in reg. 2(2) omitted (1.1.2014) by virtue of The Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013 (S.I. 2013/3270), regs. 1(c), **6(2)(b)**
F8 Words in reg. 2(2) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **4(b)(ii)**
F9 Words in reg. 2(2) substituted (1.1.2014) by The Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013 (S.I. 2013/3270), regs. 1(c), **6(2)(c)**
F10 Words in reg. 2(2) substituted (1.1.2014) by The Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013 (S.I. 2013/3270), regs. 1(c), **6(2)(d)**
F11 Words in reg. 2(2) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**
F12 Words in reg. 2(2) substituted (17.12.2018) by The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/1216), regs. 1(3), **23**
F13 Words in reg. 2(2) substituted (1.1.2014) by The Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013 (S.I. 2013/3270), regs. 1(c), **6(2)(f)**
F14 Words in reg. 2(2) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **4(b)(iii)**
F15 Words in reg. 2(3) substituted (1.1.2014) by The Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013 (S.I. 2013/3270), regs. 1(c), **6(3)**
F16 Words in reg. 2(3) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **4(c)**

Designations, provision of information, and appointment of authorised officers

3.—(1) The Welsh Ministers are designated as the inspection body under **[**F17Article 9(1)(b) of Commission Implementing Regulation 543/2011**]**.

(2) For the purposes of fulfilling the obligations on inspection bodies contained in the **[**F18EU marketing rules**]** and for the enforcement of these Regulations, the Welsh Ministers may as appropriate or where required to do so provide information to the Secretary of State, the Northern Ireland and Scotland inspection bodies or the European Commission.

(3) The Welsh Ministers may appoint officers for the purposes of the enforcement of these Regulations, in these Regulations referred to as authorised officers.

F17 Words in reg. 3(1) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **5**

F18 Words in reg. 3(2) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**

PART 2

General offences, derogation and exercise of powers on premises

[F19EU marketing rules] offences

4.—(1) A person is guilty of an offence if they display, offer for sale, deliver or market in any other manner, horticultural produce in contravention of or which is not compliant with—

(a) the general marketing standard, if applicable; or

(b) any specific marketing standard applying to that horticultural produce.

(2) Paragraph (1) does not apply in the circumstances mentioned in regulation 5.

(3) A person is guilty of an offence if they fail to comply with any provision of **[**F20Commission Implementing Regulation 543/2011**]** mentioned in column 1 of the Schedule, as read with any provision mentioned in any corresponding entry in column 2 of that Schedule.

(4) Where—

(a) an authorised officer has inspected horticultural produce and found it not to be compliant with **[**F21EU marketing rules**]**, and

(b) the person in charge of that horticultural produce has given an undertaking, or has been responsible for the giving of an undertaking in relation to that horticultural produce,

it is an offence for that person to act in breach of the undertaking or to cause or permit their agent or employee to act in breach of the undertaking.

(5) A person is guilty of an offence if, in purporting to provide the information particulars required by **[**F22EU marketing rules**]** for horticultural produce, they give an inaccurate or false description of that horticultural produce on a label affixed to, or in a notice or document accompanying, that horticultural produce.

(6) A person, other than an authorised officer, is guilty of an offence if they affix, or cause or permit to be affixed, a re-graded label, an out-graded label or a labelling defect label to the container of horticultural produce, or to the horticultural produce itself, or to any notice or document which is required by **[**F23EU marketing rules**]** to accompany that horticultural produce.

(7) A person, other than an authorised officer, is guilty of an offence if they remove, conceal, deface or alter, or cause or permit to be removed, concealed, defaced or altered—

(a) any notice or document which is required by **[**F24EU marketing rules**]** to accompany horticultural produce or any label required by **[**F24EU marketing rules**]** to be affixed to that horticultural produce or to its container;

(b) a re-graded label, an out-graded label or a labelling defect label which has been applied by an authorised officer in the execution of these Regulations to the horticultural produce or to its container;

(c) any demarcation tape or other material used by an authorised officer in accordance with regulation 8(1)(f) to identify horticultural produce or a specific lot of horticultural produce which is found not to be compliant with **[**F25EU marketing rules**]** .

(8) A person is guilty of an offence if they export or import any consignment of horticultural produce to or from any place outside the European Community without a document, label or notice required by **[**F26EU marketing rules**]** to accompany that horticultural produce.

F19 Words in reg. 4 heading substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**
F20 Words in reg. 4(3) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **6**
F21 Words in reg. 4(4)(a) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**
F22 Words in reg. 4(5) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**
F23 Words in reg. 4(6) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**
F24 Words in reg. 4(7)(a) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**
F25 Words in reg. 4(7)(c) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**
F26 Words in reg. 4(8) substituted (8.11.2011) by The Marketing of Fresh Horticultural Produce (Wales) (Amendment) Regulations 2011 (S.I. 2011/2486), regs. 1(3), **3**

Derogation from specific marketing standards

5. Horticultural produce to which a specific marketing standard applies is not required to comply F27 with that specific marketing standard if that horticultural produce complies with the general marketing standard and if it is—

(a) presented for retail sale to consumers for their personal use;

(b) labelled "product intended for processing" or with any other equivalent wording; and

(c) not intended for industrial processing.

F27 Regulation 5 exercises the derogation in Article 3(3) of Commission Regulation (EC) No 1580/2007, as replaced with new text by virtue of Article 1(c) of Commission Regulation (EC) No 1221/2008 amending Regulation (EC) No 1580/2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector as regards marketing standards (OJ No L 336, 13.12.2008, p 1 as corrected by Corrigendum (OJ No L 36, 5.2.2009, p.84)).

Exercise of powers on premises

6. The powers under Part 3 and Part 4 of these Regulations may not be exercised on premises, or part of any premises, used only as a dwelling-house.