STATUTORY RULES OF NORTHERN IRELAND

2010 No. 198

HORTICULTURE

The Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010

Made - - - -	*3rd June 2010*
Coming into operation	*25th June 2010*

The Department of Agriculture and Rural Development is designated(**1**) for the purposes of section 2(2) of the European Communities Act (1972)(**2**) in relation to the common agricultural policy of the European Community.

The Department of Agriculture and Rural Development makes the following Regulations under the powers conferred by section 2(2) of the European Communities Act 1972.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Department 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(**3**) 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.

Title and commencement

1.—(1) These Regulations may be cited as the Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010 and shall come into operation on 25th June 2010.

Interpretation

2.—(1) In these Regulations—

"authorised officer" means an officer appointed by the Department in accordance with Regulation 3(3);

(**1**) S.I. 2000/2812
(**2**) 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
(**3**) O.J. No L 31, 1.2.2002, p.1, last amended by Commission Regulation (EC) No 202/2008 (O.J. No L 60, 5.3.2008, p.17)

"Commission Regulation 1580/2007" means Commission 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 (**4**) as amended from time to time;

"Community marketing rules" means the general marketing standard and the specific marketing standards covering fresh fruit and vegetables listed in Part IX of Annex I to Council Regulation 1234/2007, and includes the rules relating to those standards contained in Articles 113 and 113a of Council Regulation 1234/2007 and Title II of Commission Regulation 1580/2007;

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

"controlled" in relation to horticultural produce, means that the power conferred by regulation 10 (1) has been exercised in relation to it and that no consent to its movement has been given under regulation 13(1) when the circumstances in paragraph 13(2) and (3) apply;

"Council Regulation 1234/2007" means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(**5**) as amended from time to time;

"the Department" means the Department of Agriculture and Rural Development(**6**)

"general marketing standard" means the requirements of Article 113a(1) of Regulation 1234/2007 as detailed in Article 2a(1) and Part A of Annex I to Commission Regulation 1580/2007;

"horticultural produce" means fruit and vegetables listed in Part IX of Annex I to Council Regulation 1234/2007 to which Community marketing rules apply;

"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;

"Lay magistrate" means a lay magistrate appointed under section 9 of the Justice (Northern Ireland) Act 2002(**7**);

"non compliance label" means a label indicating that a produce is not compliant with Community marketing rules;

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

"specific marketing standards" means the marketing standards provided for under Article 113(1)(b) of Council Regulation 1234/2007 as detailed in Article 2a(2) and Part B of Annex I to Commission Regulation 1580/2007(**8**)

"stop notice label" has the meaning given in regulation 12.

(2) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in Council Regulation 1234/2007 and Commission Regulation 1580/2007.

(3) A reference in these Regulations to anything done "in writing" or produced "in written form" includes a reference to an electronic communication as defined in the Electronic Communications Act (Northern Ireland) 2001(**9**).

(**4**) OJ No L 350, 31.12.2007, p 1, last amended by Commission Regulation (EC) No 313/2009 (OJ No L 98, 17.4.2009, p.24)
(**5**) OJ No L 299, 16.11.2007, p 1, last amended by Commission Regulation (EC) No 183/2009 (OJ No L63, 7.3.2009, p 9)
(**6**) Formerly the Department of Agriculture for Northern Ireland; see S.I. 1999/283 (N.I.1), Article 3(4)
(**7**) 2002 c.26 (N.I.)
(**8**) Part B of Annex I to Commission Regulation 1580/2007 contains specific marketing standards for the following products: apples, citrus fruit, kiwifruit, lettuces, curled leaved and broad-leaved endives, peaches and nectarines, pears, strawberries, sweet peppers, table grapes and tomatoes; last amended by Commission Regulation (EC) No 313/2009
(**9**) 2001 c.26 c.9; amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c.21)

(4) The Interpretation Act (Northern Ireland) 1954(**10**), except section 20(2) and (3), shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Designations, provisions of information and appointment of authorised officers

3.—(1) The Department is designated as the inspection body responsible for the purposes of Article 8 (1)(b) of Commission Regulation 1580/2007.

(2) For the purposes of fulfilling the obligations on inspection bodies contained in the Community marketing rules and for the enforcement of these Regulations, the Department may as appropriate or where required to do so provide information to the Secretary of State, the Scottish and Welsh inspection bodies or the European Commission.

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

Authorised officer: powers of entry

4.—(1) An authorised officer may enter any premises at any reasonable hour for the purposes of the enforcement of these Regulations.

(2) An authorised officer must, if requested to do so, produce a duly authenticated authorisation document.

(3) An authorised officer may be accompanied by any other persons and any equipment as the authorised officer considers necessary.

(4) If a lay magistrate on sworn information in writing, is satisfied there are reasonable grounds for entry into any premises for the purpose of enforcing these Regulations, and either—

(a) admission to an authorised officer has been refused, or a refusal is expected, and (in either case) that notice of the intention to apply for a warrant has been given to the occupier; or

(b) that an application for admission to the premises, or the giving of such a notice, would defeat the object of the entry; or

(c) that the premises are unoccupied or the occupier is temporarily absent; or

(d) that the case is one of urgency,

the lay magistrate may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(5) A warrant granted under paragraph (4) is valid for a period of three months.

(6) An authorised officer who enters, by virtue of this regulation, any premises which are unoccupied or the occupier of which is temporarily absent, must leave them as effectively secured against unauthorised entry as they were before entry.

(7) It is an offence for a person who has obtained confidential information in the course of acting for the purposes of the enforcement of these Regulations to disclose that information, whether it was obtained on premises entered under or by virtue of these Regulations or otherwise, unless the disclosure is made in the performance of that person's duty or in accordance with section 17(2) of the Anti-terrorism, Crime and Security Act 2001(**11**).

Authorised officer: other powers

5.—(1) An authorised officer who has lawfully entered premises for the purpose of the enforcement of these Regulations, may for that purpose—

(**10**) 1954 c.33 (N.I.)
(**11**) 2001 c.24.

(a) require any person to provide such assistance, information or facilities as the authorised officer may reasonably require;

(b) make any enquiries, observe any activity or process, and take photographs;

(c) inspect and search the premises;

(d) inspect any machinery or equipment and any other article on the premises;

(e) inspect and take samples of any horticultural produce found on the premises;

(f) identify, with demarcation tape or other material, horticultural produce or a specified lot of horticultural produce which is found not to be compliant with Community marketing rules;

(g) inspect, seize and detain any container used in connection with horticultural produce;

(h) have access to, inspect and copy any label, notice, document or record (in whatever form they are held) and remove them to enable them to be copied or require copies to be made;

(i) detach, or give permission to be detached, any produce not compliant with community marketing rules label, or stop notice label when the reasons for their being affixed no longer apply;

(j) have access to, inspect and check the data on, and operation of, any computer and any associated apparatus or material that is or has been in use in connection with a label, notice, document or record mentioned in this Regulation, including data relating to deleted files and activity logs; and for this purpose may require any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material to afford such assistance (including the provision of passwords) as may reasonably be required and, where these items are kept by means of a computer, may require them to be produced in a visible and legible form in which they may be taken away;

(k) seize any computers and associated equipment for the purpose of copying any data, but only if that authorised officer has a reasonable suspicion that an offence under these Regulations has been committed, and provided they are returned as soon as practicable; and

(l) seize and detain any items in sub-paragraph (h) if the authorised officer has reason to believe they may be required as evidence in proceedings under these Regulations.

(2) An authorised officer must—

(a) as soon as is reasonably practicable, provide to the person appearing to be responsible for any items that that authorised officer seizes and detains under paragraph (1) a written receipt identifying those items; and

(b) as soon as is reasonably practicable after deciding that those items are no longer required, return them, apart from those to be used as evidence in proceedings under these Regulations.

Authorised officer: power to affix a non compliance label

6.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds horticultural produce subject to a specific marketing standard which has affixed to it a label or is accompanied by a notice or a document required by Community marketing rules, or is in a container to which such a label is affixed or which is accompanied by such a notice or document—

(a) indicating in either case that that horticultural produce is of a particular class under the relevant specific marketing standard; but

(b) which the authorised officer has reasonable cause to believe to be of an inferior class under that specific marketing standard,

the authorised officer may amend or cancel the label, notice or document and may affix to the horticultural produce, or, as the case may be, to the notice or container, a non compliance label.

(2) For the purposes of regulations 6, 7 and 8, a non compliance label shall be—

(a) in the form set out in Part 1 of Schedule 1; and

(b) completed in accordance with Part 2 of that Schedule.

7.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any horticultural produce which either has affixed to it a label or is accompanied by a notice or a document required by Community marketing rules, or is in a container to which such a label is affixed or which is accompanied by such a notice or document, indicating in either case that one of the situations in paragraphs (2) to (4) applies, an authorised officer may amend or cancel the label, notice or document and may affix to the horticultural produce, or, as the case may be, to the notice or container, a non compliance label.

(2) Situation 1 is where the label, notice or document indicates—

(a) that horticultural produce is of a class marketable under the specific marketing standard applicable to it; but

(b) which the authorised officer has reasonable cause to believe does not comply with any class of that specific marketing standard but only complies with the general marketing standard.

(3) Situation 2 is where the label, notice or document indicates—

(a) that horticultural produce is of a class marketable under the specific marketing standard applicable to it; but

(b) which the authorised officer has reasonable cause to believe is not of a standard marketable under Community marketing rules.

(4) Situation 3 is where the label, notice or document indicates—

(a) that horticultural produce complies with the general marketing standard; but

(b) which the authorised officer has reasonable cause to believe is not of a standard marketable under Community marketing rules.

8.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any horticultural produce, or container holding horticultural produce, which—

(a) does not have a label required by the Community marketing rules affixed to it;

(b) is not accompanied by a notice or document required by the Community marketing rules;

(c) has a label required by the Community marketing rules affixed to it, or to its container, but the label appears to the authorised officer to be incorrect (other than in relation to a particular class under the specific marketing standard applying to that horticultural produce, if applicable), or to have been altered or defaced; or

(d) is accompanied by a notice or document required by the Community marketing rules but which appears to the authorised officer to be incorrect (other than in relation to a particular class under the specific marketing standard applying to that horticultural produce, if applicable), or to have been altered or defaced with the result that it is incorrect,

the authorised officer may, as appropriate, amend or cancel the label, notice or document and may affix to the horticultural produce, or, as the case may be, to the container, a non compliance label.