
WELSH STATUTORY INSTRUMENTS

2002 No. 3159

The Organic Products (Wales) Regulations 2002

Title, commencement and application

1. These Regulations are called the Organic Products (Wales) Regulations 2002; they come into force on 31st December 2002 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations, except where the context requires otherwise—

“authorised officer” (“*swyddog awdurdodedig*”) means any person (whether or not an officer of a local authority) who is authorised by a local authority in writing, either generally or specially, to act in matters arising under these Regulations;

“business” (“*busnes*”) includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a public or local authority;

“the Commission Regulations” (“*Rheoliadau'r Comisiwn*”) means the Commission Regulations listed in Schedule 1 to these Regulations;

“the Council Regulation” (“*Rheoliad y Cyngor*”) means Council Regulation (EEC) No. 2092/91(1) on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, as read in accordance with Schedule 2 to these Regulations;

“inspection” (“*arolygu*”) means a precautionary or inspection measure described in Annex III to the Council Regulation;

“inspection body” (“*corff arolygu*”), otherwise than in the expression “private inspection body” (“*corff arolygu preifat*”), means a private inspection body holding a current approval from the National Assembly under Article 9 of the Council Regulation;

“local authority” (“*awdurdod lleol*”) means for each county and county borough, the council of that county or county borough;

“the National Assembly” (“*y Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

“notification” (“*hysbysiad*”) means a notification of the information specified in Annex IV to the Council Regulation made by an operator under Article 8(1)(a) of that Regulation;

“organic products” (“*cynhyrchion organig*”) means the products referred to in Article 1(1) of the Council Regulation;

“public analyst” (“*dadansoddydd cyhoeddus*”) has the same meaning as in the Food Safety Act 1990(2);

(1) OJ No. L198, 22.7.91, p.1.

(2) 1990 c. 16.

“specified Community provisions” (“*darpariaethau Cymunedol penodedig*”) means those provisions of the Council Regulation which are specified in column 1 of Schedule 3 to these Regulations, as read with

- (a) any supplementary provisions specified in column 2 thereof;
- (b) with Article 3 of Council Regulation (EC) No. 1804/1999⁽³⁾ supplementing Regulation (EEC) No. 2092/91 to include livestock production; and
- (c) any additional provisions thereto contained in the UKROFS Livestock Standards;

“UKROFS” means the United Kingdom Register of Organic Food Standards;

“UKROFS Livestock Standards” (“*Safonau Da Byw UKROFS*”) means the standards for organic livestock and livestock products contained in the UKROFS Standards for Organic Food Production, February 2001 Edition, published by the Ministry of Agriculture, Fisheries and Food.

(2) Other expressions used in these Regulations, where they also appear in the Council Regulation and the Commission Regulations, have the same meanings as in those Regulations.

Designation of authority for the reception of notifications and operation of inspection system, and information to local authorities

3.—(1) The National Assembly is designated as—

- (a) the authority responsible for the receipt of notifications under Article 8(1) of the Council Regulation and making available to interested parties the updated list referred to in Article 8(3) of that Regulation;
- (b) the inspection authority responsible for the operation of the inspection system referred to in Article 9(1) of the Council Regulation;
- (c) the authority responsible for the approval and supervision of private inspection bodies, in accordance with Articles 9(4) to (9), (11) and (12) and 10(3) of the Council Regulation, and
- (d) the competent authority for the purposes of Articles 9(9)(b), 10(3)(b) and 11(6) of the Council Regulation.

(2) Where, following the attempted exercise of a function under Article 9(9) or 10(3) of the Council Regulation by the National Assembly or an inspection body, the National Assembly or body, as the case may be, has reason to believe that any person is using in any local authority area any indication which the National Assembly and the inspection body are required by that Article to prevent that person using—

- (a) the National Assembly or the inspection body, as appropriate, shall notify in writing that use to the local authority of that area;
- (b) where the notification referred to in sub-paragraph (a) above is given by an inspection body, it shall also notify in writing that use to the National Assembly, and
- (c) the National Assembly or the inspection body, as the case may be, giving such notification shall give the local authority any information which the local authority may reasonably require for the purpose of enforcement under regulation 6 below in relation to the use of that indication.

Additional requirement relating to the labelling of organic products

4. For the purposes of Article 5(1)(d), (3)(g), (5)(e) and (5a)(h) of the Council Regulation, the operator in question shall include on the labelling a reference to the code number of the inspection authority or body to which the operator is subject.

(3) OJ No. L222, 24.8.1999, p.1.

Inspection system

5.—(1) The National Assembly and each inspection body may make a charge for any inspection which it carries out, of an amount not exceeding the expenses reasonably incurred in connection with the inspection, and any such charge shall be recoverable by the National Assembly or the inspection body, as the case may be.

(2) Where an operator has been unable to reach agreement with an inspection body for the carrying out of an inspection, the National Assembly, shall if so requested by the operator, take such steps as are necessary to ensure an inspection is carried out by such other inspection body as may agree to do so.

(3) For the purposes of this regulation “operator” shall have the same meaning as it bears in Article 9(2) of the Council Regulation.

Enforcement, offences and penalties

6.—(1) Each local authority shall enforce and execute within its area the specified Community provisions and regulation 4 above.

(2) Any person who contravenes or fails to comply with any of the specified Community provisions or regulation 4 above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) For the purposes of the enforcement and execution of the specified Community provisions and regulation 4 above, the supply in the course of a business of organic products, otherwise than on sale, shall be deemed to be a sale of such products and for those purposes sale shall include possession for sale, or offer or exposure for sale.

(4) For the purposes of the enforcement and execution of the specified Community provisions and regulation 4 above in respect of products intended for human consumption within the meaning of Article 1(1)(b) of the Council Regulation, any such product commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale for human consumption.

Procurement of samples

7. An authorised officer may, for the purposes of ascertaining whether any offence under these Regulations has been committed, purchase or take samples of any organic product.

Analysis, testing and examination

8.—(1) If an authorised officer who has procured a sample of any organic product considers that it should be analysed, examined or tested, the officer shall submit such sample to be analysed, examined or tested, as the case may be, by the public analyst for the area in which it was procured, or, if the office of the public analyst for the area is vacant, to the public analyst for some other area.

(2) The public analyst shall analyse, examine or test or have analysed, examined or tested, as soon as practicable, any sample submitted to him or her in pursuance of this regulation.

(3) A public analyst who has analysed, examined or tested a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis, examination or test.

(4) Any certificate of the results of an analysis, examination or test given by a public analyst in pursuance of this regulation shall be signed by the public analyst, but the analysis, examination or test may be made by any person acting under the direction of the analyst.

(5) In any proceedings under these Regulations, the production by one of the parties—

(a) of a document purporting to be a certificate under paragraph (3) above, or

(b) of a document supplied to that party by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated in it unless, in a situation falling within subparagraph (a) above, the other party requires that the analyst shall be called as a witness.

(6) In any such proceedings if a person charged intends to produce a certificate of a public analyst, or under paragraph (5) above to require that the public analyst shall be called as a witness, notice of that intention, together, in the first-mentioned situation, with a copy of the certificate, shall be given to the other party at least three clear days before the hearing or trial, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing or trial on such terms as it thinks proper.

Analysis by Government Chemist

9.—(1) The court before which any proceedings are taken under these Regulations, may, if it thinks fit for the purposes of the proceedings, cause any product which—

- (a) is the subject of the proceedings, and
- (b) if it has already been analysed, examined or tested, is capable of being further analysed, examined or tested,

to be sent to the Government Chemist, who shall make such analysis, examination or test as is appropriate and transmit to the court a certificate of the result thereof; and the costs of the analysis, examination or test shall be paid by the prosecutor or the person charged, as the court may order.

(2) If, in a case where an appeal is brought, no action has been taken under paragraph (1) above, the provisions thereof shall apply also in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis, examination or test transmitted by the Government Chemist under this regulation shall be signed by or on behalf of the Government Chemist, but the analysis, examination or test may be made by any person under the direction of the person by whom the certificate is signed; and any certificate so transmitted by the Government Chemist shall be evidence of the facts stated therein unless any party to the proceedings requires that the person by whom it is signed shall be called as a witness.

Powers of entry

10.—(1) An authorised officer shall, on producing, if so required, some duly authenticated document showing his or her authority, have a right at all reasonable hours to enter any premises for the purposes of ascertaining whether there is or has been any contravention of, or failure to comply with, the specified Community provisions or regulation 4 above.

(2) If a justice of the peace, on sworn information in writing, is satisfied that there is a reasonable ground for entry into any premises for any such purpose as is mentioned in paragraph (1) above and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier, or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the justice may sign a warrant to authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation shall continue in force for a period of one month.

(4) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may take with him or her such other persons as he or she considers necessary, and on leaving

any unoccupied premises which the officer has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as when the officer arrived.

(5) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a business dealing with any organic product and, where any such records are kept by means of computer—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as the authorised officer may reasonably require.

(6) Any officer exercising any power conferred by paragraph (5) above may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in any proceedings under these Regulations; and
- (b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.

(7) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained in the premises with regard to any trade secret, he or she shall, unless the disclosure was made in the performance of his or her duty, be guilty of an offence.

(8) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(4), to enter any premises—

- (a) in which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

(9) In this regulation “premises” includes any vehicle, stall or moveable structure, but does not include any premises used only as a dwelling.

Offences due to fault of another person and defence of due diligence

11.—(1) Where the commission by any person of an offence under regulation 6(2) above is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under regulation 6(2) above, it shall, subject to paragraph (3) below, be a defence for the person charged to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself, herself or by a person under his or her control.

(3) If in any case the defence provided by paragraph (2) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven clear days before the hearing, and
- (b) where he or she has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he or she has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

(4) 1981 c. 22.

Obstruction, etc. of officers

12.—(1) Any person who—

- (a) intentionally obstructs any person acting in the enforcement or execution of the Council Regulation or these Regulations, or
- (b) without reasonable cause, fails to give to any person acting in the enforcement or execution of the Council Regulation or these Regulations any assistance or information which that person may reasonably require for the performance of his or her functions under the Council Regulation or these Regulations, shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b) above—

- (a) furnishes information which that person knows to be false or misleading in a material particular, or
- (b) recklessly furnishes information which is false or misleading in a material particular,

shall be guilty of an offence.

(3) Nothing in paragraph (1)(b) above shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him or her.

(4) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offences by bodies corporate

13.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any negligent on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1) above, “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Protection of officers acting in good faith

14.—(1) An officer or agent of the National Assembly, of any inspection body or of any local authority is not personally liable in respect of any act done by him or her in the execution or purported execution of these Regulations or the Council Regulation within the scope of his or her employment, if he or she did that act in the honest belief that his or her duty under these Regulations or the Council Regulation required or entitled him or her to do it.

(2) Nothing in paragraph (1) above shall be construed as relieving the National Assembly or any inspection body or any local authority from any liability in respect of acts of their officers.

Revocations and amendments

15.—(1) The Regulations specified in Schedule 4 to these Regulations are hereby revoked in so far as they apply to Wales.

(2) In the Organic Farming (Aid) Regulations 1994⁽⁵⁾, in so far as they apply to Wales, in regulation 2(1), in the definition of “inspection authority” there shall be substituted for the words “Organic Products Regulations 1992” the words “Organic Products (Wales) Regulations 2002”.

(3) In the Arable Area Payments Regulations 1996⁽⁶⁾, in so far as they apply to Wales, in regulation 2(1), in sub-paragraph (b) of the definition of “accepted organic farmer” there shall be substituted for the words “notified the relevant competent authority (as defined by regulation 2(1) of the Organic Products Regulations 1992)” the words “and regulation 3(1) of the Organic Products (Wales) Regulations 2002 notified the National Assembly”.

(4) In the Organic Farming Scheme (Wales) Regulations 2001⁽⁷⁾, in regulation 2(1), in sub-paragraph (a) of the definition of “inspection authority” there shall be substituted for the words “Organic Products Regulations 1992” the words “Organic Products (Wales) Regulations 2002”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁸⁾.

17th December 2002

D. Elis-Thomas
The Presiding Officer of the National Assembly

(5) S.I.1994/1721, to which there are amendments not relevant to these Regulations.

(6) S.I. 1996/3142, to which there are amendments not relevant to these Regulations.

(7) S.I. 2001/424 (W.18).

(8) 1998 c. 38.