
WELSH STATUTORY INSTRUMENTS

2009 No. 1551

**The Marketing of Fresh Horticultural
Produce (Wales) Regulations 2009**

PART 4

Controlled horticultural produce and related powers and offences

Powers to control the movement of horticultural produce

12.—(1) An authorised officer may, by written notice (a “stop notice”) pursuant to paragraph (2), prohibit the movement of any horticultural produce if the authorised officer reasonably suspects that an offence under these Regulations is being committed in respect of that horticultural produce.

(2) The written notice referred to in paragraph (1) must be served on the person appearing to the authorised officer to be in charge of the horticultural produce concerned and must—

- (a) state the date and time of service of the notice;
- (b) identify the recipient of the notice;
- (c) specify the horticultural produce in relation to which the power has been exercised;
- (d) state the reason for its detention;
- (e) confirm that options for bringing the horticultural produce into conformity with the Community marketing rules within a specified time or for the appropriate sale or disposal of that horticultural produce within a specified time in such a manner that no offence under these Regulations will be committed in respect of it have been discussed between the authorised officer and the person appearing to be in charge of the horticultural produce;
- (f) state the location of the horticultural produce;
- (g) state that the horticultural produce must not be moved from that location without the written consent of an authorised officer; and
- (h) contain information regarding the right to a review of the written notice under this regulation, when and how it may be exercised and contact details of persons to whom notice of exercise of the right must be given.

(3) The person on whom the stop notice is served, or the owner of the horticultural produce or an agent or employee acting on behalf of the owner, may request a review.

(4) The request must be made in the manner provided for in paragraph (8) as soon as reasonably practicable, and in any event within the time limit specified in paragraph (5) or (7) as is applicable.

(5) The time limit for a person on whom the stop notice was served is 48 hours from service of the stop notice.

(6) Where the person on whom the notice is served is not the owner, or an agent or employee acting on behalf of the owner, the authorised officer must use best endeavours to identify such a person and bring the contents of the stop notice to that person’s attention within 48 hours from service of the notice.

(7) The time limit for a person referred to in paragraph (6) is within 48 hours of the contents of the stop notice coming to that person's attention or within 96 hours from the time of service of the notice whichever is the sooner.

(8) A request for a review must be exercised by informing an authorised officer either in person, or by telephone to be confirmed in writing as soon as reasonably practicable, or by email or fax at the contact details indicated in the stop notice.

(9) The Welsh Ministers must maintain arrangements for the conduct of a review by an authorised officer unconnected with the original decision to determine whether there were valid grounds for serving the stop notice.

(10) The authorised officer conducting the review may cancel the notice or confirm it, with or without modification.

(11) The authorised officer must complete the review as soon as reasonably practicable and in any event within 48 hours of the request, and notify the person who requested it, and, if different, the person on whom the notice was served and any other person in possession of the horticultural produce, of the outcome, as soon as reasonably practicable.

Power to affix a stop notice label

13.—(1) An authorised officer may affix to any controlled horticultural produce, or to any container in which the controlled horticultural produce is packed, a label warning of the exercise of the power in regulation 12(1) (a “stop notice label”).

(2) The stop notice label is a label which shows the following information—

- (a) the personal number assigned to the authorised officer;
- (b) the date the stop notice label is affixed;
- (c) the number assigned by the authorised officer to the stop notice label;
- (d) the logotype of the Welsh Assembly Government or the Welsh Assembly Government's successor;
- (e) the logotype of the Rural Payments Agency the design of which is displayed on the website: www.rpa.gov.uk/rpa/index.nsf/home and the wording—

“The Rural Payments Agency is an Executive Agency of the Department for Environment, Food and Rural Affairs (Defra) acting in Wales on behalf of the Welsh Ministers”

or equivalent wording agreed by any successor to the Rural Payment Agency with the Welsh Ministers, and that successor's logotype;

(f) the words—

“This lot is subject to a Stop Notice. Any unauthorised movement of the horticultural produce to which this label applies or the removal of this label is an offence under the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009”.

Controlled horticultural produce — further provision

14.—(1) An authorised officer may, at any time, give written consent to the movement of controlled horticultural produce and to the lifting of the stop notice.

(2) An authorised officer must, upon request, give written consent to the movement of controlled horticultural produce and to the lifting of the stop notice if the circumstances in paragraph (3) apply.

(3) The circumstances in which this paragraph applies are where—

- (a) the authorised officer is satisfied that no offence under these Regulations would be committed in respect of the horticultural produce if it were sold in circumstances in which Community marketing rules apply; or
 - (b) the authorised officer, or another authorised officer, has been given a written undertaking that the horticultural produce will be sold or disposed of in a specified manner and the authorised officer is satisfied that if the horticultural produce is sold or disposed of in that manner no offence under these Regulations will be committed in respect of it and the authorised officer has no reason to doubt that the terms of the undertaking will be met.
- (4) An authorised officer must, upon request, give written consent to the movement of controlled horticultural produce if the circumstances in paragraph (5) apply.
- (5) The circumstances in which this paragraph applies are where—
- (a) the authorised officer, or another authorised officer, has been given a written undertaking to the effect that—
 - (i) the horticultural produce will be moved to a place approved by an authorised officer;
 - (ii) at the approved place the steps required to ensure that the horticultural produce may be sold in circumstances in which Community marketing rules apply without an offence under these Regulations being committed in respect of it will be taken;
 - (iii) the horticultural produce will not be moved from that place without the written consent of an authorised officer; and
 - (b) the authorised officer has no reason to doubt that the terms of the undertaking will be met.
- (6) A consent given by an authorised officer under this regulation must—
- (a) specify the horticultural produce to which it relates; and
 - (b) where the consent is given under paragraph (4), state that the horticultural produce continues to be controlled.

Offences relating to movement of controlled horticultural produce

15.—(1) A person is guilty of an offence if they move controlled horticultural produce or a container with controlled horticultural produce in it, or cause or permit them to be moved without the written consent of an authorised officer.

(2) A person, other than an authorised officer, is guilty of an offence if they remove or cause or permit to be removed from that controlled horticultural produce or its container a stop notice label affixed by an authorised officer under regulation 13.

(3) A person is guilty of an offence if they fail to comply with the undertaking they gave for the purposes of regulation 14.