

Commission Delegated Regulation (EU) 2017/891 of 13 March 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011

TITLE II

PRODUCER ORGANISATIONS

CHAPTER V

General provisions

Section 3

Administrative penalties

Article 59

Non-respect of recognition criteria

1 If [^{F1}the Secretary of State] has established that a producer organisation fails to respect one of the recognition criteria linked to the requirements of Articles 5 and 7, Article 11(1) and (2) and Article 17, [^{F2}the Secretary of State] shall send to the producer organisation in question no later than two months after the failure has been identified, by registered delivery, a warning letter stating the failure identified, the corrective measures required and the time periods within which these measures have to be taken, which shall not exceed four months. As from the moment a failure is established, [^{F3}the appropriate authority] shall suspend payments of aid until the corrective measures are taken to [^{F4}the Secretary of State's] satisfaction.

2 A failure to take the corrective measures referred to in paragraph 1 within the time period fixed by the [^{F5}Secretary of State] shall lead to the suspension of the recognition of the producer organisation. The [^{F5}Secretary of State] shall notify the producer organisation of the period of suspension, which shall start immediately after the expiry of the time period fixed for taking those corrective measures and shall not exceed 12 months from the date of the receipt of the warning letter by the producer organisation. This is without prejudice to the application of ^{F6}... legislation which may provide for the suspension of such an action following the commencement of connected legal proceedings.

During the suspension of the recognition, the producer organisation may continue its activity, but aid payments shall be withheld until the suspension of the recognition is lifted. The yearly aid amount shall be reduced by 2 % for each calendar month or part thereof during which recognition is suspended.

The suspension shall end on the day of the check which confirms that the recognition criteria in question have been fulfilled.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3. (See end of Document for details)

3 If the criteria are not fulfilled by the end of the period of suspension set by the [F7Secretary of State], the [F8Secretary of State] shall withdraw the recognition with effect from the date from which the conditions for recognition were not fulfilled, or, if it is not possible to identify that date, from the date when the failure was established. This is without prejudice to the application of F9... legislation which may provide for the suspension of recognition following the commencement of connected legal proceedings. Outstanding aid concerning the period during which the failure has been identified shall not be paid and unduly paid aid shall be recovered.

4 If [F10the Secretary of State] has established that a producer organisation fails to respect any of the recognition criteria laid down in Article 154 of Regulation (EU) No 1308/2013 other than those mentioned in paragraph 1, [F11the Secretary of State] shall send to the producer organisation in question, no later than two months after the failure has been established, by registered delivery, a warning letter stating the failure identified, the corrective measures required and the time periods within which these measures have to be taken, which shall not exceed four months.

5 A failure to take the corrective measures referred to in paragraph 4 within the time period fixed by the [F12Secretary of State] shall lead to a suspension of payments and a reduction of the yearly aid amount by 1 % for each calendar month, or part thereof, following the expiry of that time period. This is without prejudice to the application of F13... legislation which may provide for the suspension of such an action following the commencement of connected legal proceedings.

6 [F14 The Secretary of State] shall withdraw recognition if the producer organisation does not prove compliance with the minimum volume or value of marketed production criteria as required by Article 154(1)(b) of Regulation (EU) No 1308/2013 by 15 October of the second year following the year in which those criteria were not complied with. Withdrawal shall take effect from the date from which the conditions for recognition were not fulfilled, or, if it is not possible to identify that date, from the date when the failure was established. Outstanding aid concerning the period during which the failure has been identified shall not be paid and unduly paid aid shall be recovered.

However, when a producer organisation delivers to the [F15Secretary of State] proof that due to natural disasters, adverse climatic events, diseases or pest infestations, despite having undertaken the risk prevention measures it is not able to respect the recognition criteria laid down in Article 154(1)(b) of Regulation (EU) No 1308/2013 in respect of the minimum volume or value of marketable production laid down by [F16the Secretary of State] , the [F15Secretary of State] may, for the year in question, derogate from the minimum volume or value of marketable production for this producer organisation.

7 In cases where paragraphs 1, 2, 4 and 5 apply, [F17the appropriate authorities] may make payments after the deadline set out in Article 10 of Implementing Regulation (EU) 2017/892. However, these payments shall not be made later than 15 October of the second year following the year of implementation of the programme.

8 Paragraphs 1 to 5 shall apply *mutatis mutandis* in cases of failure by a producer organisation to provide the [F18appropriate authority] with the information required under Article 21 of Implementing Regulation (EU) 2017/892.

Textual Amendments

- F1 Words in Art. 59(1) substituted (31.12.2020) by [The Common Organisation of the Markets in Agricultural Products \(Producer Organisations and Wine\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1446\)](#), regs. 1(3), **5(24)(a)(i)(aa)**

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TITLE II CHAPTER V Section 3

Document Generated: 2024-04-05

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3. (See end of Document for details)

- F2** Words in Art. 59(1) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(a)(i)(bb)**
- F3** Words in Art. 59(1) substituted (25.6.2021) by The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine) (Amendment etc.) Regulations 2021 (S.I. 2021/756), regs. 1(2), **4(36)(a)**, 7(a)
- F4** Words in Art. 59(1) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(a)(ii)**
- F5** Words in Art. 59(2) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(b)(i)**
- F6** Words in Art. 59(2) omitted (31.12.2020) by virtue of The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(b)(ii)**
- F7** Words in Art. 59(3) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(c)(i)(aa)**
- F8** Words in Art. 59(3) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(c)(i)(bb)**
- F9** Words in Art. 59(3) omitted (31.12.2020) by virtue of The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(c)(ii)**
- F10** Words in Art. 59(4) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(d)(i)**
- F11** Words in Art. 59(4) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(d)(ii)**
- F12** Words in Art. 59(5) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(e)(i)**
- F13** Words in Art. 59(5) omitted (31.12.2020) by virtue of The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(e)(ii)**
- F14** Words in Art. 59(6) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(f)(i)**
- F15** Words in Art. 59(6) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(f)(ii)(aa)**
- F16** Words in Art. 59(6) substituted (31.12.2020) by The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), regs. 1(3), **5(24)(f)(ii)(bb)**
- F17** Words in Art. 59(7) substituted (25.6.2021) by The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine) (Amendment etc.) Regulations 2021 (S.I. 2021/756), regs. 1(2), **4(36)(b)**, 7(a)
- F18** Words in Art. 59(8) substituted (25.6.2021) by The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine) (Amendment etc.) Regulations 2021 (S.I. 2021/756), regs. 1(2), **4(36)(c)**, 7(a)

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3. (See end of Document for details)

Article 60

Fraud

1 [F¹⁹The appropriate authority] shall suspend payments to and [F²⁰the Secretary of State shall suspend] the recognition of a producer organisation or an association of producer organisations, which are under investigation by a [F²¹public authority within the United Kingdom] in connection with a charge of fraud in respect of aid covered by Regulation (EU) No 1308/2013, until the charge has been determined.

2 Where a producer organisation or an association of producer organisations has committed fraud in respect of aid covered by Regulation (EU) No 1308/2013, [F²²the responsible authority] shall, without prejudice to any other penalties applicable [F²³in law] :

- a withdraw the recognition of that organisation or association;
- b exclude the actions concerned from support under the operational programme concerned and recover any aid already paid with respect to those actions; and
- c exclude that organisation or association from recognition during the following year.

[F²⁴In this paragraph, the ‘responsible authority’ is the appropriate authority for the constituent nation in which the producer organisation has its head office in respect of actions under point (b), and the Secretary of State in respect of actions under points (a) and (c).]

Textual Amendments

- F19** Words in Art. 60(1) substituted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(37)(a)(i)**, 7(a)
- F20** Words in Art. 60(1) inserted (31.12.2020) by [The Common Organisation of the Markets in Agricultural Products \(Producer Organisations and Wine\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1446\)](#), regs. 1(3), **5(25)(a)**
- F21** Words in Art. 60(1) substituted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(37)(a)(ii)**, 7(a)
- F22** Words in Art. 60(2) substituted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(37)(b)(i)(aa)**, 7(a)
- F23** Words in Art. 60(2) substituted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(37)(b)(i)(bb)**, 7(a)
- F24** Words in Art. 60(2) inserted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(37)(b)(ii)**, 7

Article 61

Penalty for ineligible amounts

1 Payments shall be calculated on the basis of eligible actions.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3. (See end of Document for details)

2 The [^{F25}appropriate authority] shall examine the aid application, and establish the amounts that are eligible for support. It shall establish the amount that:

- a would be payable to the beneficiary based solely on the application;
- b is payable to the beneficiary after an examination of the eligibility of the application.

3 If the amount established pursuant to paragraph 2(a) exceeds the amount established pursuant to paragraph 2(b) by more than 3 %, a penalty shall be applied. The amount of the penalty shall be the difference between the amounts calculated pursuant to paragraph 2(a) and (b). However, no penalty shall be applied if the producer organisation is able to demonstrate that it is not responsible for the inclusion of the ineligible amount.

4 Paragraphs 2 and 3 shall apply *mutatis mutandis* to ineligible expenditure identified during on-the-spot or subsequent checks.

5 If the value of marketed production is declared and checked before the application for aid, the declared and approved values shall be used when establishing the amounts pursuant to paragraph 2(a) and (b), respectively.

6 Where at the end of the operational programme, the conditions referred to in Article 33(5)(b) of Regulation (EU) No 1308/2013 have not been complied with, the total amount of support for the last year of the operational programme shall be reduced in proportion to the amount of expenditure not incurred on environmental actions.

Textual Amendments

F25 Words in Art. 61(2) substituted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(38)**, 7(a)

^{F26}Article 62

Administrative penalties following first-level checks on withdrawal operations

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Textual Amendments

F26 Arts. 62-65 omitted (25.6.2021) by virtue of [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(39)**, 7(a)

^{F26}Article 63

Administrative penalty applicable to producer organisations regarding withdrawal operations

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Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3. (See end of Document for details)

Textual Amendments

F26 Arts. 62-65 omitted (25.6.2021) by virtue of The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine) (Amendment etc.) Regulations 2021 (S.I. 2021/756), regs. 1(2), **4(39)**, 7(a)

F26 Article 64

**Administrative penalties applicable to recipients
of products withdrawn from the market**

Textual Amendments

F26 Arts. 62-65 omitted (25.6.2021) by virtue of The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine) (Amendment etc.) Regulations 2021 (S.I. 2021/756), regs. 1(2), **4(39)**, 7(a)

F26 Article 65

Administrative penalties in relation to green harvesting and non-harvesting

Textual Amendments

F26 Arts. 62-65 omitted (25.6.2021) by virtue of The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine) (Amendment etc.) Regulations 2021 (S.I. 2021/756), regs. 1(2), **4(39)**, 7(a)

Article 66

Preventing an on-the-spot check

A request for recognition, approval of an operational programme or an aid application shall be rejected for the item or the part of expenditure concerned, if a producer organisation, including its members or relevant representatives, prevents an on-the-spot check from being carried out.

Article 67

Payment of recovered aid and penalties

1 Producer organisations and associations of producer organisations or other operators concerned shall reimburse unduly paid aid with interest and pay the penalties provided for in this Section.

The interest shall be calculated:

a on the basis of the period elapsing between receipt of undue payment and its reimbursement by the beneficiary;

[^{F27}b at the following rates—

i if the undue payment was made from European Union funds, at the rate applied by the European Central Bank to its main refinancing operations published in the ‘C’ series of the *Official Journal of the European Union* and in force on the date on which the undue payment is made, plus three percentage points;

ii if the undue payment was made from public funds, at the Bank of England base rate in force on the date on which the undue payment is made, plus three percentage points.]

[^{F28}1A. In paragraph 1, “Bank of England base rate” for any particular day means—

a except where point (b) applies, the rate as last announced at a meeting of the Monetary Policy Committee of the Bank of England held prior to that day as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets; or

b if an order under section 19 (reserve powers) of the Bank of England Act 1998 is in force, any equivalent rate determined by the Treasury under that section.]

[^{F29}2 Payments recovered, and interest and penalties imposed in relation to aid paid from European Union funds must be paid to the EAGF. Payments recovered, and interest and penalties imposed in relation to aid paid from public funds must be paid to the relevant authority that provided the aid.]

Textual Amendments

F27 Art. 67(1)(b) substituted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(40)(a)**, 7(a)

F28 Art. 67(1A) inserted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(40)(b)**, 7(a)

F29 Art. 67(2) substituted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(40)(c)**, 7(a)

[^{F30}Article 67A

Apportionment of recovered aid, interest and penalties

1. Aid paid from public funds that is recovered under this Regulation, together with any interest payable thereon in accordance with this Regulation, must be apportioned between the relevant authorities in accordance with the proportion of that aid that was provided by each authority.

2. Penalties imposed under this Regulation in relation to aid paid from public funds must be paid to the relevant authority for the constituent nation in which the head office of the producer organisation was located during the period to which the penalty relates.]

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3. (See end of Document for details)

Textual Amendments

F30 Art. 67A inserted (25.6.2021) by [The Common Organisation of the Markets in Agricultural Products \(Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/756\)](#), regs. 1(2), **4(41)**, 7(a)

Changes to legislation:

There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3.