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WELSH STATUTORY INSTRUMENTS

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**2009 No. 1551**

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

**PART 3**

Powers of authorised officers

**Powers of entry**

7.—(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—

(a) be accompanied by—

(i) such other persons as the authorised officer considers necessary;

<sup>F1</sup>(ii) .....

(b) bring on to the premises such equipment as the authorised officer considers necessary.

(4) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises for the purposes 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 justice may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(5) A warrant under this regulation is valid for three months.

(6) An authorised officer who enters by virtue of this regulation any premises which are unoccupied or from which the occupier 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 the confidential information obtained, 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 <sup>M1</sup>.

#### Textual Amendments

- F1** Reg. 7(3)(a)(ii) omitted (31.12.2020) by virtue of [The Food \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/732\)](#), regs. 1(2), **2(6)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M1** 2001 c. 24.

### Other powers of an authorised officer

**8.—(1)** An authorised officer who has lawfully entered premises for the purposes of the enforcement of these Regulations, may for those purposes —

- (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 specific lot of horticultural produce which is found not to be compliant with [<sup>F2</sup>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), remove them to enable them to be copied or require copies to be made;
- (i) detach, or give permission to be detached, any re-graded label, out-graded label, labelling defect 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 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;
- (l) seize and detain any items in sub-paragraph (h) if that authorised officer has reason to believe that they may be required as evidence in proceedings under these Regulations.

(2) Where an authorised officer takes a bulk sample of horticultural produce from a specific lot in accordance with [<sup>F3</sup>Annex V to Commission Implementing Regulation 543/2011] and finds that horticultural produce not to be compliant with the [<sup>F4</sup>marketing rules], the power to affix—

- (a) a re-graded label under regulation 9(1);
- (b) an out-graded label under regulation 10(1);
- (c) a labelling defect label under regulation 11(1);
- (d) a stop notice label under regulation 13(1),

may be exercised in relation to all or any of the horticultural produce or containers of horticultural produce within that lot in the same way as in relation to the bulk sample taken.

- (3) 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 court proceedings.
- (4) Where an authorised officer has seized and detained items under paragraph (1) for use in evidence in court proceedings and—
- (a) it is subsequently decided—
    - (i) that no court proceedings are to be brought; or
    - (ii) that those items are no longer needed as evidence in court proceedings; or
  - (b) the court proceedings are completed and no order in relation to those items has been made by the court,

an authorised officer must return the items as soon as is reasonably practicable.

#### Textual Amendments

- F2** Words in [reg. 8\(1\)\(f\)](#) substituted (31.12.2020) by [The Food \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/732\)](#), [regs. 1\(2\), 2\(3\)\(d\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in [reg. 8\(2\)](#) substituted (8.11.2011) by [The Marketing of Fresh Horticultural Produce \(Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2486\)](#), [regs. 1\(3\), 7](#)
- F4** Words in [reg. 8\(2\)](#) substituted (31.12.2020) by [The Food \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/732\)](#), [regs. 1\(2\), 2\(3\)\(d\)](#); 2020 c. 1, Sch. 5 para. 1(1)

#### Power to affix a re-graded label

9.—(1) Where an authorised officer, who has lawfully entered premises for the purposes 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 [<sup>F5</sup>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 label indicating that fact (a “re-graded label”).

- (2) The re-graded label is a label which—
- (a) shows the following information—
    - (i) the personal number assigned to the authorised officer who carried out the inspection;
    - (ii) the date of the inspection;

- (iii) the logotype of the Welsh Assembly Government or the Welsh Assembly Government's successor;
  - (iv) the logotype of the Rural Payments Agency the design of which is displayed on the website: [www.rpa.gov.uk/rpa/index.nsf/home](http://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 Payments Agency with the Welsh Ministers, and that successor's logotype;
- (i) the wording— “ *It is an offence under the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 to remove, conceal, deface or alter this label without lawful authority* ”;
  - (b) shows one of the following, as appropriate—
    - (i) the words “RE-GRADED CLASS I”; or
    - (ii) the words “RE-GRADED CLASS II”.

#### Textual Amendments

- F5** Words in reg. 9(1) substituted (31.12.2020) by [The Food \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/732\)](#), regs. 1(2), **2(3)(e)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Power to affix an out-graded label

**10.**—(1) Where an authorised officer, who has lawfully entered premises for the purposes 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 [<sup>F6</sup>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 label indicating that fact (an “out-graded label”).

(2) Situation 1 is where the label, notice or document indicates that horticultural produce is of a class marketable under the specific marketing standard applicable to it but the authorised officer has reasonable cause to believe that the horticultural produce 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 that horticultural produce is of a class marketable under the specific marketing standard applicable to it but the authorised officer has reasonable cause to believe that the horticultural produce is not of a standard marketable under [<sup>F7</sup>marketing rules].

(4) Situation 3 is where the label, notice or document indicates that horticultural produce complies with the general marketing standard but the authorised officer has reasonable cause to believe that the horticultural produce is not of a standard marketable under [<sup>F7</sup>marketing rules].

- (5) The out-graded label is a label which—
  - (a) shows the following information—
    - (i) the personal number assigned to the authorised officer who carried out the inspection;
    - (ii) the date of the inspection;
    - (iii) the logotype of the Welsh Assembly Government or the Welsh Assembly Government's successor;

(iv) the logotype of the Rural Payments Agency the design of which is displayed on the website: [www.rpa.gov.uk/rpa/index.nsf/home](http://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 Payments Agency with the Welsh Ministers, and that successor's logotype;

- (i) the wording— “ *It is an offence under the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 to remove, conceal, deface or alter this label without lawful authority* ”;
- (b) shows one of the following, as appropriate—
  - (i) in the case of paragraph (2) of this regulation the words “SPECIFIC MARKETING STANDARD OUTGRADED; GENERAL MARKETING STANDARD COMPLIANT”;
  - (ii) in the case of paragraph (3) of this regulation the words “SPECIFIC MARKETING STANDARD OUTGRADED; GENERAL MARKETING STANDARD NON-COMPLIANT”;
  - (iii) in the case of paragraph (4) of this regulation the words “GENERAL MARKETING STANDARD NON-COMPLIANT”.

#### Textual Amendments

- F6** Words in reg. 10(1) substituted (31.12.2020) by [The Food \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/732\)](#), regs. 1(2), **2(3)(f)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in reg. 10(3)(4) substituted (31.12.2020) by [The Food \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/732\)](#), regs. 1(2), **2(3)(f)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Power to affix a labelling defect label

**11.**—(1) Where an authorised officer, who has lawfully entered premises for the purposes 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 [F8marketing rules] affixed to it; or
- (b) is not accompanied by a notice or document required by the [F8marketing rules]; or
- (c) has a label required by the [F8marketing 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 [F8marketing 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 label indicating that fact (a “labelling defect” label).

- (2) The labelling defect label is a label which shows the following information—
  - (a) the personal number assigned to the authorised officer who carried out the inspection;
  - (b) the date of the inspection;

- (c) the logotype of the Welsh Assembly Government or the Welsh Assembly Government's successor;
- (d) the logotype of the Rural Payments Agency the design of which is displayed on the website: [www.rpa.gov.uk/rpa/index.nsf/home](http://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 Payments Agency with the Welsh Ministers, and that successor's logotype;
- (e) the wording— “ *It is an offence under the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 to remove, conceal, deface or alter this label without lawful authority* ”;
- (f) the words “LABELLING DEFECT”.

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**Textual Amendments**

- F8** Words in [reg. 11\(1\)\(a\)-\(d\)](#) substituted (31.12.2020) by [The Food \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/732\)](#), regs. 1(2), **2(3)(g)**; 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:**

There are currently no known outstanding effects for the The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009, PART 3 .