
STATUTORY RULES OF NORTHERN IRELAND

2019 No. 66

The Marketing of Bananas Regulations (Northern Ireland) 2019

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Marketing of Bananas Regulations (Northern Ireland) 2019 and come into operation on 29th March 2019.

Interpretation

2.—(1) In these Regulations—

“authorised officer” means an officer appointed by the Department for the purposes of these Regulations;

“banana marketing standards” means the marketing standards for bananas laid down in Annex I to the Commission Implementing Regulation;

“bananas” means bananas, intended to be supplied fresh to the consumer after preparation and packaging, which falls within—

(a) CN code 0803 90 10 as provided for in Part XI of Annex I to the Single CMO Regulation; and

(b) the description in Article 1 of, and Point I of Annex I to, the Commission Implementing Regulation;

“Commission Implementing Regulation” means Commission Implementing Regulation (EU) No 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector, as amended from time to time;

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

“contravention” includes a failure to comply;

“controlled” in relation to bananas, means that the power conferred by regulation 12(1) (stop notice) has been exercised in relation to those bananas and that consent to their movement has been given under regulation 14(1) when the circumstances in regulation 14(2) or (3) apply;

“the Department” means the Department of Agriculture, Environment and Rural Affairs;

“exit day” has the same meaning as given in section 20 of the European Union (Withdrawal) Act 2018(1);

“inspection body” means a body of a member State responsible for carrying out conformity checks of the Commission Implementing Regulation;

“label” includes any device for conveying information particulars by written characters or symbols, and any characters or symbols stamped or otherwise placed directly on to any bananas or container, and references to the affixing of a label are construed accordingly;

“non-compliance label”, in relation to any bananas, means a label indicating that the bananas do not comply with the banana marketing standards;

“notice” means notice in writing;

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

“Single CMO Regulation” means Council Regulation (EC) No 1308/2013 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), as amended from time to time;

“stop notice” has the meaning given by regulation 12;

“stop notice label” has the meaning given by regulation 13.

(2) Expressions used in these Regulations which are also used in the Single CMO Regulation or Commission Implementing Regulation have the same meaning as they have in those Regulations.

(3) Any reference in these Regulations to the Commission Implementing Regulation or to the Single CMO Regulation is a reference to that instrument as in force immediately preceding exit day.

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

Designation of Department and exchange of information

3.—(1) The Department is designated as the competent national authority and inspection body for the purposes of the Commission Implementing Regulation and Article 74 of the Single CMO Regulation in relation to bananas.

(2) For the purposes of fulfilling the obligations, laid down in Article 3 of the Commission Implementing Regulation and in Article 74 of the Single CMO Regulation, on competent national authorities and inspection bodies contained in the banana marketing standards and for the enforcement of these Regulations or the equivalent regulations in England, Scotland or Wales, the Department may, as appropriate or where required to do so, provide information to and request information from—

- (a) the competent national authorities and inspection bodies in other member States and in England, Scotland and Wales; or
- (b) the European Commission.

PART 2

General offences and exercise of powers on premises

Banana marketing standards: offences

4.—(1) It is an offence for a person to market bananas in contravention of any provision in Annex I to the Commission Implementing Regulation, as read with other provision(s) of that Regulation or the Single CMO Regulation of the banana marketing standards.

(2) It is an offence for a person to fail to comply with any provision of the Commission Implementing Regulation mentioned in column 1 of Schedule 1, as read with any provision mentioned in any corresponding entry in column 2 of that Schedule.

(3) Where—

- (a) an authorised officer has inspected bananas and found them not to be compliant with the banana marketing standards; and
- (b) the person in charge of those bananas has given an undertaking under regulation 14, or has been responsible for the giving of an undertaking under that regulation, in relation to those bananas,

it is an offence for that person to act in breach of the undertaking.

(4) A person is guilty of an offence if, in purporting to provide the information particulars, laid down in Paragraph VI of Annex I to the Commission Implementing Regulation, required by the banana marketing standards, they give a false description of those bananas on a label affixed to those bananas.

(5) It is an offence for a person, other than an authorised officer, to remove, conceal, deface or alter, or cause or permit another person to remove, conceal, deface or alter—

- (a) any information particulars, laid down in Paragraph VI of Annex I to the Commission Implementing Regulation, required by the banana marketing standards to accompany bananas or any label required by those standards to be affixed to those bananas or to their container;
- (b) a non-compliance label which has been affixed by an authorised officer to any bananas or to their container under regulation 9 or 10;
- (c) any demarcation tape or other material used by an authorised officer in accordance with regulation 7(1)(f) to identify bananas or a specific lot of bananas which are found not to be compliant with the banana marketing standards;
- (d) a stop notice affixed by an authorised officer under regulation 13(1).

(6) A person is guilty of an offence if they export from or import to Northern Ireland any consignment of bananas to or from any place outside the European Union without the information particulars, laid down in Paragraph VI of Annex I to the Commission Implementing Regulation, required by the banana marketing standards to accompany those bananas.

Exercise of powers on premises

5. The powers under Part 3 and Part 4 of these Regulations may not be exercised on premises used wholly as a dwelling house.

PART 3

Powers of authorised officers

Powers of entry

6.—(1) An authorised officer may enter any premises at any reasonable hour for the purpose of the enforcement of these Regulations or the checks required by the Single CMO Regulation, or the Commission Implementing Regulation, or the enforcement of the banana marketing standards.

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

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

(4) A lay magistrate may by signed warrant authorise an authorised officer to enter any premises, if necessary by reasonable force, if the lay magistrate, is satisfied, on complaint on oath—

- (a) that there are reasonable grounds for entry into the premises for the purposes of enforcing these Regulations; and
- (b) that any one of the conditions in paragraph (5) is met.

(5) The conditions are—

- (a) that admission to the premises has been, or is likely to be, refused and (in either case) notice of the intention to apply for a warrant has been given to the occupier;
- (b) that asking for admission to the premises, or the giving of such a notice, would defeat the object of the entry;
- (c) that the premises are unoccupied or the occupier is temporarily absent; or
- (d) that entry is required urgently.

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

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

(8) 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⁽³⁾.

Powers of an authorised officer

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

- (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 for bananas, notices, documents or records, computers and associated equipment and machinery used in relation to banana consignments;
- (d) inspect any machinery or equipment and any other article on the premises;
- (e) inspect and take samples of any bananas found on the premises;
- (f) identify, with demarcation tape or other material, bananas or a specific lot of bananas which are found not to be compliant with the banana marketing standards;
- (g) inspect, seize and detain any container used in connection with bananas;
- (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 non-compliance 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,

(3) 2001 c.24.

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 the 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 the authorised officer has reason to believe that they may be required as evidence in proceedings under these Regulations.

(2) An authorised officer shall—

- (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.

(3) Where an authorised officer has seized 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.

Power to affix labels – bulk samples

8. Where an authorised officer, an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, takes a bulk sample of bananas from a specific lot⁽⁴⁾ and finds those bananas not to be compliant with the banana marketing standards, the power to affix—

- (a) a non-compliance label under regulation 9 or 10; or
- (b) a stop notice label under regulation 13;

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

Power to affix a non-compliance label

9.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of the banana marketing standards and these Regulations, finds any bananas subject to the banana marketing standards which have affixed to them a label or are accompanied by a notice

(4) The methodology to be applied is set out in Article 17 of, and Annex V to, Commission Implementing Regulation (EU) No. 543/2011 (O.J. No. L 157, 15.06.2011, p.1), as last amended by Commission Implementing Regulation (EU) No. 979/2013 (O.J. No. L 272, 12.10.2013, p.35). See also Commission Implementing Regulation (EU) No. 1333/2011 (O.J. No. L 336, 20.12.2011, p.23).

or a document required by the banana marketing standards or are 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 those bananas are of a particular class under the banana marketing standards; but
- (b) which the authorised officer has reasonable cause to believe to be of an inferior class under the banana marketing standards;

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

- (2) A non-compliance label under this regulation and regulation 10 shall be—
 - (a) in the form set out in Part 1 of Schedule 2; and
 - (b) completed in accordance with Part 2 of that Schedule.

10. Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any bananas, or container holding bananas, which—

- (a) do not have a label required by the banana marketing standards affixed to them;
- (b) are not accompanied by a notice or document required by the banana marketing standards;
- (c) have a label required by the banana marketing standards affixed to them, but the label appears to the authorised officer to be incorrect as laid down in Paragraph VI of Annex I to the Commission Implementing Regulation (other than in relation to the classification of the bananas under the banana marketing standards), or to have been altered or defaced; or
- (d) are accompanied by a notice or document required by the banana marketing standards, but which appears to the authorised officer to be incorrect as laid down in Paragraph VI of Annex I to the Commission Implementing Regulation (other than in relation to the classification of the bananas under the banana marketing standards), 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 those bananas, or, as the case may be, to the container, a non-compliance label.

Non-compliance notices

11.—(1) If an authorised officer affixes a non-compliance label to any bananas or container holding bananas under regulation 9 or 10, the officer shall at the same time serve a notice on the person who appears to be in charge of the bananas giving the reasons for the affixing of the non-compliance label and stating—

- (a) in a case where the label was affixed under regulation 9, which of the situations in paragraph 1(a) or 1(b) of that regulation is applicable;
- (b) in a case where the label was affixed under regulation 10, which of the circumstances in paragraphs (a) to (d) of that regulation is applicable.

(2) Where the person on whom the notice is served under paragraph (1) is not the owner of the bananas, or an agent or employee acting on behalf of the owner, the authorised officer must use reasonable endeavours to identify such a person and bring the contents of the notice to that person's attention within 48 hours from the service of the notice.

(3) A notice issued under paragraph (1) shall, contain the following additional information and words—

- (a) the notice shall be named “Notice of non-compliance with the banana marketing standards”;
- (b) reference to the Marketing of Bananas Regulations (Northern Ireland) 2019;

- (c) the reference number assigned, corresponding with the conformity check, to be entered on the non-compliance label affixed to the bananas or, as the case may be, to the container;
- (d) the name and address of the person in charge of the bananas or an agent or employee of the owner;
- (e) reasons for the non-compliance with the banana marketing standards;
- (f) a warning that it is an offence in terms of these Regulations to display or offer for sale, deliver or market in any other manner bananas in contravention of the banana marketing standards;
- (g) country of origin of the bananas stated;
- (h) class of bananas stated or attained;
- (i) quantity of bananas in the consignment;
- (j) signature of the authorised officer;
- (k) date, time and place of the compliance check; and
- (l) an official stamp bearing the personal number assigned to the authorised officer.

PART 4

Controlled bananas and related powers and offences

Powers to control the movement of bananas

12.—(1) An authorised officer may serve a stop notice prohibiting the movement of any bananas if the authorised officer reasonably suspects that an offence under these Regulations is being or has been committed in respect of the bananas.

(2) A stop notice shall be served on the person appearing to the authorised officer to be in charge of the bananas to which the notice relates and shall—

- (a) specify the date, place and time of service of the notice;
- (b) identify the recipient of the notice;
- (c) state the bananas or lot of bananas in relation to which the notice has been served;
- (d) give the reason for the service of the notice;
- (e) confirm that the authorised officer has discussed with the person appearing to be in charge of the bananas the options for either—
 - (i) bringing the bananas into conformity with the banana marketing standards within a specified time; or
 - (ii) the appropriate disposal of the bananas within a specified time in such a manner that no offence will be committed under these Regulations in respect of them;
- (f) specify the location of the bananas;
- (g) state that the bananas may not be moved from that location without the written consent of an authorised officer;
- (h) specify the personal number assigned to the authorised officer and be stamped with authorised officer's official stamp.

(3) A stop notice shall inform the person on whom the notice is served of the right of review of the notice under paragraph (4) and how it may be exercised.

(4) A relevant person may request the Department to arrange a review of the decision to serve the stop notice 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).

(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 under paragraph (4) shall be made to the Department to do so in person or by telephone (in both cases to be confirmed in writing as soon as reasonably practicable thereafter) or by e-mail at the contact details indicated in the notice.

(9) The review shall be determined by a person (unconnected with the original decision) appointed by the Department ("the appointed person") under arrangements maintained by it for the purpose of this regulation.

(10) The appointed person conducting the review may cancel the stop notice or confirm it, with or without modifications.

(11) The appointed person shall—

- (a) complete the review as soon as reasonably practicable and in any event within two working days of the request being made under paragraph (4); and
- (b) serve notice on the relevant person of the decision.

(12) A notice is not suspended pending a review unless the appointed person conducting the review decides otherwise.

(13) The appointed person's determination is final.

(14) In this regulation "relevant person" means the person on whom a stop notice has been served under paragraph (1), the owner of the bananas to which the notice relates or an agent or employee acting on behalf of the owner.

Power to affix a stop notice label

13.—(1) An authorised officer may affix to any controlled bananas, or to any container in which the controlled bananas are packed, a label warning that a stop notice has been served under regulation 12(1).

(2) A stop notice label shall be—

- (a) in the form set out in Part 3 of Schedule 2; and
- (b) completed in accordance with Part 4 of that Schedule.

Consents to the movement of controlled bananas

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

(2) An authorised officer shall, upon request in writing, give consent to withdraw 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 bananas if they were marketed after preparation and packaging; or
 - (b) the authorised officer, or another authorised officer, has been given a written undertaking that the bananas will be marketed or disposed of in a specified manner and the authorised officer is satisfied that if the bananas are marketed or disposed of in that manner no offence under these Regulations will be committed in respect of them and the authorised officer has no reason to doubt that the terms of the undertaking will be met.
- (4) An authorised officer shall, upon request in writing, give consent to the movement of controlled bananas if the circumstances in paragraph (5) apply.
- (5) The circumstances in which this paragraph applies are where—
- (a) the authorised officer, or any other authorised officer, has been given a written undertaking that—
 - (i) the bananas will be moved to a place approved by an authorised officer;
 - (ii) at the approved place the steps required to ensure that the bananas may be marketed in compliance with the banana marketing standards and without an offence under these Regulations being committed in respect of them or will be disposed of in such a manner that no offence under these Regulations would be committed in respect of them will be taken; and
 - (iii) the bananas will not be moved from that place without the consent of an authorised officer; and
 - (b) the authorised officer has no reason to doubt that the person giving the undertaking will comply with it.
- (6) A consent given by an authorised officer under this regulation shall—
- (a) be in writing;
 - (b) identify the bananas or lot of bananas to which it relates; and
 - (c) where the consent is given under paragraph (4), state that the bananas continue to be controlled bananas.

Written undertakings

- 15.—**(1) An authorised officer may accept a written undertaking from a person who appears to the officer to be in control of bananas where the officer has—
- (a) inspected the bananas and the accompanying notices, documents or labels which purport to satisfy the requirements of the banana marketing standards and found them not to comply with those standards;
 - (b) discussed with the person the options for—
 - (i) bringing the bananas, accompanying documents or labels into conformity with the banana marketing standards within an agreed time; or
 - (ii) the appropriate sale or disposal of the bananas within an agreed time in such a manner that there shall be no contravention of these Regulations.
- (2) A written undertaking must—
- (a) specify the identity of the person giving the undertaking;
 - (b) identify the bananas or lot of bananas which are the subject of the undertaking;
 - (c) give details of the contravention of the banana marketing standards found by the authorised officer;

- (d) specify the action agreed to be taken by the person giving the undertaking;
- (e) specify the agreed date by which such action will be taken; and
- (f) be signed and dated by the person giving the undertaking and the authorised officer.

Offences relating to movement of controlled bananas

- 16.—**(1) It is an offence for a person to—
- (a) to fail to comply with a stop notice, or cause or permit another person to do so, without, or otherwise than in accordance with, the consent of an authorised officer given under regulations 14(1), (2) and (4); or
 - (b) to fail to comply with a written undertaking an authorised officer has accepted from that person under regulation 15(1).

PART 5

Additional offences and penalties

Obstruction

- 17.** It is an offence for a person to—
- (a) intentionally obstruct an authorised officer acting for the purpose of the enforcement of these Regulations, or a person accompanying such an authorised officer under regulation 6(3);
 - (b) without reasonable excuse, fail to give an authorised officer acting for the purpose of the enforcement of these Regulations any assistance or information or to provide any record or facilities that the authorised officer may reasonably require; or
 - (c) supply to an authorised officer acting for the purpose of the enforcement of these Regulations any information knowing it to be false or misleading.

Offence due to fault of another person

18.—(1) Where the commission by a person (“A”) of an offence under these Regulations is due to an act or default of another person (“B”), B is guilty of the offence.

- (2) Proceedings may be taken against B whether or not proceedings are taken against A.

Offences by bodies corporate

19.—(1) If an offence under these Regulations is committed by a body corporate or a partnership or other unincorporated association and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a relevant individual; or
- (b) an individual purporting to act in the capacity of a relevant individual,

that individual as well as the body corporate, partnership or unincorporated association is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) In paragraph (1) “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;

- (ii) in a case where the affairs of the body are managed by its members, a member;
- (b) in relation to a partnership, a partner;
- (c) in relation to an unincorporated association other than a partnership, a person who is concerned in the management or control of the association.

Defences

20.—(1) In any proceedings for an offence under these Regulations, except under regulation 17, it is a defence for the person (“C”) charged to prove that their actions were carried out with lawful authority or that C took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(2) If C intends to rely on the defence provided by paragraph (1), C shall serve on the prosecutor a notice of that fact in accordance with paragraph (4).

(3) If the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or default of another person, C is not, without leave of the court, entitled to rely on that defence unless C has served on the prosecutor a notice in accordance with paragraph (4) giving such information identifying or assisting in the identification of that person as was then in C’s possession.

(4) The notice shall be served—

- (a) at least seven clear days before the hearing; and
- (b) where C has previously appeared before a court in connection with the alleged offence, within one month of C’s first such appearance.

Penalties

21. A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 6

Miscellaneous

Disapplications

22.—(1) The Horticulture Act (Northern Ireland) 1966⁽⁵⁾ does not apply to bananas.

(2) In so far as it applies to Northern Ireland, the Agricultural Marketing Act 1958⁽⁶⁾ does not apply to bananas.

(5) 1966 c. 15 (N.I.).

(6) 1958 c.47.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 27th March 2019.



Colette McMaster
A senior officer of the
Department of Agriculture, Environment and
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