
STATUTORY RULES OF NORTHERN IRELAND

2019 No. 66

The Marketing of Bananas Regulations (Northern Ireland) 2019

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⁽¹⁾.

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, 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(2) 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 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.

(2) 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).

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.