

2020 No. 272

AGRICULTRE

SUBSUBJECT

The Organic Products Regulations (Northern Ireland) 2020

Made - - - - - *19th November 2020*

Coming into operation - - - - - *31st December 2020*

The Department of Agriculture, Environment and Rural Affairs, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b), in relation to the common agriculture policy of the European Union.

The Department makes these Regulations in exercise of the powers conferred by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972 and section 56(1) and (2) of the Finance Act 1973.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department that it is expedient for references in these Regulations to an EU instrument or to any provision of an EU instrument to be construed as a reference to that instrument or that provision as amended from time to time.

In accordance with section 56(5) of the Finance Act 1973, the Department of Finance consent to the making of these Regulations.

PART 1

Introductory provisions

Citation and commencement

1. These Regulations may be cited as the Organic Products Regulations (Northern Ireland) 2020, and shall come into operation on 31 December 2020.

Interpretation

2.—(1) In these Regulations—

“authorised officer” means a person authorised in writing by a district council or the competent authority for the purposes of these Regulations;

(a) S.I. 2000/2812

(b) 1972 c. 68

“Commission Regulation 889/2008” means Commission Regulation (EC) 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control(a);

“Commission Regulation 1235/2008” means Commission Regulation (EC) 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) 834/2007 as regards the arrangements for imports of organic products from third countries(b);

“control body” means a control body, within the meaning of Article 2(p) of the Council Regulation, to whom the competent authority has delegated control tasks(c) in accordance with Article 27(4)(b) of the Council Regulation;

“controlled consignment” means any consignment the movement of which is, for the time being, prohibited under regulation 7;

“the Council Regulation” means Council Regulation (EC) No 834/2007 on organic production and labelling of organic products(d);

“the database” means the computerised database, established under Article 48(1) of the Commission Regulation 889/2008, listing varieties of seed and seed potatoes obtained by the organic production method (which term has the same meaning as in the Council Regulation) which are available in Northern Ireland;

“holding” has the meaning given in Article 2(e) of Commission Regulation 889/2008;

“importer” means any person who imports from a third country any products referred to in Article 1 of the Council Regulation with a view to the subsequent placing on the market of such products;

“organic product” means a product referred to in Article 1(2) of the Council Regulation, as read with Article 1(2) of Commission Regulation 889/2008;

“organic production” has the same meaning as in Article 2(a) of the Council Regulation;

“place of import” in relation to a consignment imported into Northern Ireland from a third country, means the place at which the consignment first arrives in Northern Ireland;

“specified EU provision” means those provisions specified in column 1 of the table in the schedule, as read with any supplementary provisions in column 2 of the table in the Schedule;

“the Soil Association” means the Soil Association Limited, a company limited by guarantee and registered charity No 206862 of Spear House, Victoria Street, Bristol BS1 6AD;

“third country” means any country or territory other than a country or territory in the European Union.

(2) Other expressions used in these Regulations have the same meaning as in Commission Regulation 889/2008, Commission Regulation 1235/2008 or the Council Regulation.

(3) A reference in these Regulations to any EU instrument, or any provision of an EU instrument, is a reference to that instrument or that provision as amended from time to time.

(4) The Interpretation Act (Northern Ireland) 1954(e) shall apply to these Regulations as it applies to an Act of the Assembly.

(a) OJ L250, 18.09.08, p 1 as last amended by Commission Implementing Regulation (EU) 2019/2164

(b) OJ L334, 12.12.08, p 25 as last amended by Commission Implementing Regulation (EU) 2020/786

(c) The list of approved control bodies is available from the website of the Department for Environment, Food and Rural Affairs at <https://www.gov.uk/government/publications/organic-certification-list-of-uk-approved-organic-control-bodies>

(d) OJ No L 189, 20.07.07 p 1 as last amended by Council Regulation (EU) No 517/2013

(e) 1954 c. 33 (N.I.).

PART 2

Designations and exemptions

Designation of competent authority etc.

3.—(1) The Secretary of State is the competent authority for the purposes of the Council Regulation, Commission Regulation 889/2008, Commission Regulation 1235/2008 and these Regulations.

(2) Each control body is an authority responsible for the purposes of Article 28(3) of the Council Regulation for the receipt of notification of the information specified in Article 63(3) of Commission Regulation 889/2008 made by an operator under Article 28(1)(a) of the Council Regulation.

(3) The Soil Association is the manager of the database for the purposes of Article 48(2) of Commission Regulation 889/2008.

Exemption from requirement to adhere to control system

4. Article 28 of the Council Regulation (requirements to notify activities and submit undertakings to the control system) does not apply to an operator who sells an organic product directly to the final consumer or user, provided that the operator does not produce, prepare, store other than in connection with the point of sale, or import such a product from a third country, or has not contracted out such activities to a third party.

Permitted exceptions to the organic production rules

5. A control body may permit the use of non-organic seed and seed potatoes for the purposes of Article 45(1)(b) and in accordance with Article 45 of the Commission Regulation 889/2008.

PART 3

Control of third country imports

Advance notification

6.—(1) A person seeking the release for free circulation in the European Union of a consignment must, during normal office hours of the district council at the place of import, give to an authorised officer advance notice in writing of the intended arrival of the consignment at that place of import.

(2) Any such notice must be given at least six hours in advance in relation to a consignment arriving by air and at least twenty four hours in advance in relation to a consignment arriving by any other means.

Control on movement

7.—(1) An authorised officer may prohibit the movement of a consignment from the place of import, or from any other place from which release for free circulation in the European Union is being sought if the officer has reason to believe that there has been a failure to comply with any relevant provision of the Council Regulation or Community Regulation 1235/2008.

(2) An authorised officer who has prohibited such movement must, as soon as possible, give written notice to the importer or person who appears to the authorised officer to be in charge of the consignment.

- (3) The notice must—
- (a) specify the controlled consignment;
 - (b) state that it may not be moved without the written consent of an authorised officer;
 - (c) specify the relevant provision of the Council Regulation or Commission Regulation 1235/2008 in respect of which the officer has reason to believe that there has been a failure to comply; and
 - (d) specify what steps, if any, might be taken to show that there has been compliance with those provisions, and within what time such steps must be taken.
- (4) Where—
- (a) no steps are specified for the purposes of paragraph (3)(d), or
 - (b) there has been a failure to take such steps as are specified within the time specified,
- an authorised officer may order that, under supervision, the controlled consignment be destroyed or otherwise disposed of.
- (5) If the person to whom the authorised officer gives the notice does not appear to the officer to be the importer or an agent, contractor or employee of the importer, the officer must use best endeavours to bring the contents of the notice to the attention of such a person as soon as possible.
- (6) An authorised officer may affix to any controlled consignment, or to any container in which the controlled consignment is packed, labels warning of the prohibition on movement.
- (7) An authorised officer who is satisfied that the steps specified in the notice under paragraph (3)(d) have been taken must, as soon as possible, remove the prohibition on movement.

Consent to movement

- 8.**—(1) An authorised officer may, at any time, give written consent to the movement of a controlled assignment.
- (2) An authorised officer must, on request, give written consent to the movement of a controlled consignment if that officer or another authorised officer has been given a written undertaking by the importer to the effect that the consignment will—
- (a) be moved to a place specified by an authorised officer; and
 - (b) not be moved from that place without the written consent of an authorised officer.
- (3) Any consent given under this regulation must—
- (a) specify the controlled consignment to which it relates;
 - (b) specify the place to which the controlled consignment is to be moved; and
 - (c) state that the controlled consignment continues to be controlled.
- (4) Where such a consent has been given and the consignment has been moved to the place in question, the prohibition on movement under regulation 7 applies to it at the place in question as it applied at the place where the prohibition on movement under that regulation last applied.

PART 4

Fees

Fees – general

9.—(1) All fees payable under this Part are payable on invoice.

(2) In any proceedings for recovery of an amount payable under this part, a certificate issued by the person to whom the amount is payable stating that payment of an amount payable under this Part was not received by a date specified in the certificate is evidence of the facts stated.

Fees for registering information on the database

10.—(1) Subject to paragraph (2), the Soil Association must charge a supplier a fee of £182 for registering information in the database in accordance with Articles 49(1) and 51(1) of Commission Regulation 889/2008.

(2) The Soil Association may waive the whole or part of any fee payable under paragraph (1).

Fees for ingredient authorisation

11. The competent authority may charge a fee of £38 for issuing or for renewing a provisional authorisation to permit the use of a non-organic agricultural ingredient in organic production for the purposes of Article 19(2)(c) of the Council Regulation.

Fees for approvals of control bodies and post-approval inspections

12.—(1) The competent authority may charge a person who has applied for approval as a control body for the purposes of Article 27 of the Council Regulation a fee of £203.

(2) The competent authority may charge a control body a fee in respect of any expenses reasonably incurred in carrying out, for the purposes of Article 27(8) or (9) of Council Regulation—

- (a) any further inspection of a control body's offices or facilities;
- (b) any inspection of an operator's premises, facilities or holding; and
- (c) any associated administrative work (including verification of the competence of the inspectors employed by the control body).

(3) Any fee payable by a control body under this regulation remains payable even if its approval as a control body has subsequently been withdrawn by the competent authority under Article 27(8) or 27(9)(d) of the Council Regulation.

Fees relating to the control system

13.—(1) A control body must charge an operator a fee in respect of any expenses reasonably incurred by it in carrying out an inspection of the operator's holding, premises or facilities.

(2) Where an operator has been unable to reach agreement with a control body for the carrying out of an inspection, the competent authority must, if so requested by the operator, arrange for another control body to carry out an inspection.

(3) In this regulation, "inspection" means an inspection or control visit carried out for the purposes of Article 65 of Commission Regulation 889/2008.

Fees relating to third country imports

14.—(1) Subject to paragraph (2), district council must charge an importer of a consignment a fee in respect of any expenses reasonably incurred by it—

- (a) in carrying out its functions under regulation 7 in respect of that consignment; and
- (b) in carrying out a verification of the consignment.

(2) A district council may waive the whole or part of any fee payable under paragraph (1), but in deciding to do so must consider the extent to which it would have been reasonable for it not to have taken the action in respect of which any such expenses have been incurred.

PART 5

Offences and enforcement

Notification requirement

15. For the purposes of Article 30 of the Council Regulation (measures in case of infringements and irregularities), where a control body believes that an irregularity, severe infringement or infringement with prolonged effect has been found, it must—

- (a) notify that belief in writing to the competent authority and the district council; and
- (b) give the district council any information which it may reasonably require for the purpose of enforcing these Regulations.

Obtaining samples and analysis etc

16.—(1) An authorised officer may, for the purposes of ascertaining whether any offence under these Regulations has been committed, purchase or take a sample of any organic product.

(2) An authorised officer who considers that the sample should be analysed, examined or tested, must submit it for that purpose to the public analyst for the district in which the sample was purchased or taken. If in any case where a sample is proposed to be submitted for analysis the office of public analyst for the district in question is vacant, the sample may be submitted to the public analyst for another district.

(3) The public analyst must then—

- (a) ensure that the sample is analysed, examined or tested as soon as practicable; and
- (b) give the person who submitted the sample a certificate specifying the result.

(4) In any proceedings, the production by one of the parties—

- (a) of a document purporting to be a certificate under paragraph 3(b), or
- (b) of a document supplied to the party by the other party as being a copy of such a certificate,

is evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the public analyst be called as a witness.

(5) In any such proceedings, if a person charged or summoned intends to produce a certificate of a public analyst or require, under paragraph (4), the public analyst to be called as a witness, written notice of intention together with a copy of the certificate (if appropriate) must be given to the other party at least three clear days before the hearing or trial.

(6) If such a notice is not given, the court may adjourn the proceedings on such terms as it thinks fit.

(7) In this regulation “public analyst” has the same meaning as in section 27 of the Food Safety (Northern Ireland) Order 1991^(a).

Offences

- 17.**—(1) The Schedule (specified EU provisions) has effect.
- (2) It is an offence for a person to contravene any of the specified EU provisions or regulation 6.
- (3) It is an offence for a person, knowing a consignment to be a controlled consignment—
- (a) to move it or cause it to be moved otherwise than in accordance with the written consent of an authorised officer, or
 - (b) to remove or cause to be removed from it a label which has been affixed under regulation 7(6).

Penalties

18. 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.

Offence due to fault of another person

- 19.**—(1) Where the commission by a person (“A”) of an offence under regulation 17 is due to an act of default of another person (“B”), B is guilty of the offence.
- (2) B may be charged with and convicted of the offence whether or not proceedings are taken against A.

Defence of due diligence

- 20.**—(1) In proceedings against a person for an offence under regulation 17, it is a defence for the person to prove that all reasonable precautions were taken and due diligence was exercised to avoid committing the offence.
- (2) However, where 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, a person (“A”) is not, without leave of the court, entitled to rely on that defence unless A has served on the prosecutor a notice in writing in accordance with paragraph (3) giving such information identifying or assisting in the identification of that other person as was then in A’s possession.
- (3) The notice must be served—
- (a) at least seven clear days before the hearing, and
 - (b) where A has previously appeared before a court in connection with the alleged offence, within one month of A’s first such appearance.

Enforcement

- 21.**—(1) Subject to paragraphs (2), these Regulations and the specified EU provisions are enforced by the district council within its district.
- (2) In relation to cases of a particular description, or a particular case, the competent authority may give written directions to a district council concerning the enforcement of these Regulations, and such directions may also be given by the Department of Agriculture, Environment and Rural Affairs.

(a) S.I. 1991/762 (N.I.7), to which there are amendments not relevant to these Regulations.

Powers of entry

22.—(1) An authorised officer may, on producing (if so required) a duly authenticated document showing the officer’s authority, at all reasonable hours enter any premises for the purposes of enforcing the specified EU provisions or these Regulations.

(2) The authorised offence may be accompanied by such other persons as the officer considers necessary.

(3) If a lay magistrate is satisfied on a complaint on oath that there are reasonable grounds for believing—

- (a) that an offence under these Regulations is being, or has been committed on any premises, and
- (b) that any of the conditions in paragraph (4) is met in relation to the premises,

the lay magistrate may by signed warrant authorise an authorised person to enter the premises, if necessary by force.

(4) The conditions referred to are—

- (a) that entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant under this regulation has been given to the occupier;
- (b) that the case is one of urgency and the premises are unoccupied or the occupier is temporarily absent;
- (c) that an application for admission to the premises or the giving or notice of the intention to apply for a warrant would defeat the object of entry.

(5) A warrant under this regulation is valid for one month.

(6) An authorised officer who enters any premises that 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 entered premises under or by virtue of these Regulations to disclose any information obtained on the premises with regard to any trade secrets, unless the disclosure is made in the performance of the person’s duty.

(8) In this regulation, “premises” includes any vehicle stall or movable structure but does not include any premises, or part of any premises, used only as a dwelling.

Powers following entry

23.—(1) An authorised officer entering premises under regulation 22 may—

- (a) inspect any documents or records (in whatever form they are held) relating to a business dealing with any organic product; and
- (b) seize and detain any such records which the officer has reason to believe may be required as evidence in any proceedings under these Regulations.

(2) For the purposes of paragraph (1), an authorised officer may—

- (a) have access to, inspect and check the operation of any computer and any associated apparatus or material which is or has been used in connection with the records;
- (b) require any person having charge of, or otherwise concerned with the operation of, any such computer, apparatus or material to give the officer such assistance as may reasonably be required;
- (c) where the records are kept by means of a computer, require them to be produced in a form in which they can be taken away.

(3) If it is decided that records seized and detained under paragraph (1)(b) are no longer needed as evidence in proceedings under these Regulations, an authorised officer must return them as soon as reasonably practicable after that decision.

(4) In this regulation, “business” includes any undertaking whether it operates for profit or not and any undertaking or activity carried out by a public authority, including a district council.

Power to require assistance

24. An authorised officer may require any person to provide the officer with such assistance, information or facilities as the officer may reasonably require for the purposes of carrying out functions under these Regulations.

Obstruction etc. of authorised officers

25.—(1) It is an offence for a person—

- (a) intentionally to obstruct a person acting in the execution or enforcement of these Regulations or the specified EU provisions; or
- (b) without reasonable excuse, the proof of which lies on the person, to fail to comply with any requirement made by an authorised officer under regulation 24.

(2) A person who, in response to a requirement made under regulation 24, makes any representation which is false or misleading in a material particular and does so recklessly or knowing it to be false or misleading in that particular is guilty of an offence.

(3) Nothing in paragraph (1)(b) requires a person to answer any question or give any information if to do so might incriminate the person.

Extended time limit for bringing prosecutions

26. No prosecution for an offence under these Regulations may be begun after the expiry of one year from the commission of the offence or six months from its discovery by the prosecutor, whichever is the earlier.

Protection of officers etc. acting in good faith

27.—(1) An authorised officer or an officer or agent of a control body is not liable in any civil or criminal proceedings for anything done in the purported execution of these Regulations, the Council Regulation, Commission Regulation 889/2008 or Commission Regulation 1235/2008 if the court is satisfied that the act was done in good faith and there were reasonable grounds for doing it.

(2) But this does not relieve the competent authority, a control body or a district council from liability in respect of these acts of their officers.

PART 6

Supplementary provisions and revocations

Use of electronic communications

28.—(1) Any requirement under or by virtue of these Regulations for a person to give a notice to another person may be met by means of an electronic communication if—

- (a) it results in the information contained in that notice being available to the other person in all material respects as it would appear in a notice given in printed form; and
- (b) the other person consents to the information being sent by such means.

(2) In paragraph (1), “electronic communication” has the meaning given in section 15(1) of the Electronic Communication Act 2000(a).

(a) 2000 c. 7.

(3) For purposes of paragraph (1)(a), “in all material respects” means in all respects material to an exact reproduction of the content of the information as it would appear in a notice given in printed form.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 19 November 2020



Dave Foster
A senior officer of the
Department of Agriculture, Environment and Rural Affairs

Sealed with the Official Seal of the Department of Finance, that consents to Part 4 of the Regulations.



Patrick Neeson
A senior officer of the
Department of Finance

SCHEDULE

Regulations 2(1) and 17

Specified EU Provisions

<i>Column 1</i> <i>Provision</i>	<i>Column 2</i> <i>Supplementary provision</i>	<i>Column 3</i> <i>Subject matter</i>
Article 23(1), (2), (3) or (4) of the Council Regulation	Title III of Commission Regulation 889/2008	Use of terms referring to organic production in labelling, advertising and commercial documents of products
Article 24(1) or (2) of the Council Regulation	Articles 23 and 25 of the Council Regulation and Title III of Commission Regulation 889/2008	Compulsory indications
Article 25(1) of the Council Regulation	Article 57 and 58 of Commission Regulation 889/2008	Use of the Community organic production logo in labelling, presentation and advertising of products
Article 25(2) of the Council Regulations		Use of National or private logo in labelling, presentation and advertising of products
Article 32(1) of the Council Regulations	Articles 6 to 10, 13 to 15, 18 and 19 of Commission Regulation 1235/2008	Requirements for placing on the market of compliant products imported from third countries
Article 33(1) of the Council Regulation	Articles 6 to 10, 13 to 15, 18 and 19 of Commission Regulation 1235/2008	Requirements for placing on the market of compliant products imported from third countries
Article 62 of Commission Regulation 889/2008		Use of indication “product under conversion to organic farming” in relation to products of plant origin
Article 13(9) of Commission Regulation 1235/2008		Requirements on first consignees relating to certificates of inspection of consignments imported from third countries
Article 14 of Commission Regulation 1235/2008		Special customs procedures for consignments imported from third countries
Article 15 of Commission Regulation 1235/2008		Requirements relating to non-compliant products imported from third countries
Article 19(1) of Commission Regulation 1235/2008		Requirements relating to placing on the market, by importers authorised by the competent authority, of products imported from third countries not referred to in Article 33(2) of the Council Regulation

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations replace the Organic Products Regulations 2009 (S.I. 2009 No. 842) which cease to extend to Northern Ireland due to the UK's withdrawal from the EU and the Northern Ireland Protocol.

These regulations provide for the administration and enforcement of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products (OJ No L 189, 20.7.07, p.1), Commission Regulation (EC) 889/2008 laying down detailed rules for the implementation rules of Council Regulation (EC) 834/2007 (OJ No L 250, 18.9.08, p. 1), and Commission Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (OJ No L 334, 12.12.08. p. 25), each as amended from time to time.

Part 1 sets out introductory provisions and interpretation

Part 2 contains designations and exemptions

Part 3 sets out notification requirements and controls of the movement of consignments of organic products imported from third countries.

Part 4 makes provision for fees.

Part 5 creates offences and makes provision for enforcement. They are enforced by the local authority or, in relation to imports of products from third countries, the port health authority.

Part 6 contains supplementary provisions and revocations.

The Schedule lists provisions of the Council Regulation and two Commission Regulations referred to above for the purposes of offences and enforcement.

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