

EXPLANATORY MEMORANDUM TO
THE MARKETING OF FRESH HORTICULTURAL PRODUCE REGULATIONS 2009

2009 No. 1361

1. This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 EC Marketing Standards for fresh fruit and vegetables impose both quality standards and labelling requirements and were originally introduced to ensure that buyers had sufficient information and to facilitate trade. The European Commission has revised the EC Marketing Standards to focus more on consumer protection, and because they are considered to be too burdensome on industry. They are also thought to have removed a market for lower grade produce. Commission Regulation (EC) No 1221/2008, which amends Commission Regulation (EC) No 1580/2007, reduces the 36 Specific Marketing Standards (SMS) to ten and introduces a General Marketing Standard (GMS) for most other fresh produce not covered by a SMS. Commission Regulation (EC) No 1221/2008 is directly applicable in the UK and applies from 1 July 2009. This instrument provides for the enforcement of the revised EC Marketing Standards for fresh fruit and vegetables and exercises the ‘home processing’ derogation in Article 3(3) of Commission Regulation (EC) No 1580/2007 (as amended).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Department recognises that where specific powers already exist in domestic legislation, they should generally be used in preference to the general powers in s.2(2) of the European Communities Act 1972. However, the domestic legislation which has been used until now to implement and enforce the EC Marketing Standards is outdated, complex, inaccessible and not user-friendly. The Agriculture and Horticulture Act 1964 (“the 1964 Act”) has been amended or modified by a number of different instruments over time resulting in a lack of clarity, and its effectiveness in enforcing future EC obligations was called into question in the case of *Defra v Asda [2003] UKHL 71*.

3.2 The Department therefore considers that there is good reason to depart from this general position and has decided to make a new self-contained set of Regulations to implement the revised EC Marketing Standards by using the powers in s.2(2) of the European Communities Act 1972. The new Regulations reflect the requirements of the revised EC Marketing Standards. They retain, only in so far as is consistent with the revised EC regime and where continuity will facilitate compliance, the substantive content of the 1964 Act whilst updating, consolidating and simplifying it. They also add some additional powers and offences in order to provide for more effective enforcement.

3.3 The Regulations disapply in England the 1964 Act and the Horticultural Produce Act 1986 which modifies it, in relation to fresh fruit and vegetables covered by EC Marketing Standards (in accordance with the case of *R (Orange) v. Secretary of State for Trade and Industry [2001] 3 CMLR 36*) The Regulations do not repeal these Acts in relation to England because, although the EC regime occupies most of the field for fruit and vegetables, there are some fruit and vegetable products which are not caught by it which could come within the domestic legislation. Further, the definition in the 1964 Act of ‘fresh horticultural produce’ covers more than just fruit and

vegetables. The Regulations also disapply the Agricultural Produce (Grading and Marking) Acts 1928 and 1931, which apply to agricultural and fisheries produce, in relation to fruit and vegetables covered by EC Marketing Standards in the same way as the 1964 Act did. Further, the Regulations disapply the Agricultural Marketing Act 1958. Finally, they revoke a number of Statutory Instruments which relate only to EC Marketing Standards for fruit and vegetables under the 1964 Act and which, as a result of these Regulations, have become obsolete.

4. Legislative Context

4.1 The EC Marketing Standards are directly applicable in all EU Member States. In England and Wales the EC Marketing Standards have until now been enforced under the following legislation:

- Agriculture & Horticulture Act 1964
- The Grading of Horticultural Produce (Amendment) Regulations 1973
- Grading of Horticultural Produce (Forms of Labels) Regulations 1982
- The Grading of Horticultural Produce (Amendment) Regulations 1983
- Horticulture Produce Act 1986

4.2 In the past, in order to enforce EC Marketing Standards, the Department has made joint Statutory Instruments with Wales using the powers contained in the 1964 Act. However, in order to implement the revised EC Marketing Standards introduced by Commission Regulation (EC) No 1221/2008, we have used section 2(2) powers contained within the European Communities Act 1972. (Welsh Ministers are making a similar instrument).

4.3 The EC Marketing Standards are enforced in England and Wales by the Horticultural Marketing Inspection Branch of the Rural Payments Agency Inspectorate (RPAI) service. This will continue to be the case under this instrument, with RPAI acting on behalf of the Secretary of State in England and the Welsh Ministers in Wales. Separate arrangements apply in Scotland and Northern Ireland.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom. However, only a few provisions extend to the United Kingdom, namely regulations 1(1) and (2), 2(1) and (3) and 3(1) and (2) (relating to extent, interpretation and the coordinating authority for the United Kingdom referred to in Article 8(1)(a) of Commission Regulation 1580/2007), otherwise the provisions apply to England only. The devolved administrations are making their own arrangements to provide for the enforcement of the revised EC Marketing Standards.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Council Regulation (EC) No 1234/2007 established a common organisation of agricultural markets which includes specific provision as regards the fruit and vegetable sector, including

Marketing Standards. Commission Regulation (EC) No 1580/2007 lays down the implementing rules in the fruit and vegetable sector, which again covers Marketing Standards.

7.2 Statutory grading rules for fresh fruit and vegetables have been applicable in the UK for many years and since membership of the EU they have been standardised at that level.

7.3 Prior to the amendments made by Commission Regulation (EC) No 1221/2008, there were 36 separate standards for a wide range of fresh fruit and vegetables, although not all. These have now been reduced to ten Specific Marketing Standards. Subject to certain exemptions they apply to all stages of distribution - import, export, packing, distribution, wholesale, retail. Their objective is to keep products of unsatisfactory quality off the market. They also aim to ensure that produce is accurately labelled, guide production to meet consumer requirements and facilitate trade under fair conditions. Originally their primary purpose was to facilitate trade, enabling traders to talk the same international language, compare like with like and specify quality and other requirements and giving the market confidence in what they were dealing. More recently they have also taken account of organoleptic qualities of produce (e.g. sweetness of fruit). The market has been subject to rapid change over recent years and supermarket retailers in particular often have their own more exacting standards. A General Marketing Standard is introduced by Commission Regulation (EC) No 1221/2008.

7.4 The EC Marketing Standards provide a degree of consumer protection in a sector where most products are highly perishable and serious defects in the product can develop extremely rapidly. They help ensure that internal pests and disease, as well as soiling, do not affect produce, and determine whether produce is of the right maturity. They also ensure that produce is not marketed too early. In addition, where there are Specific Marketing Standards consumers benefit from labelling requirements at the retail stage where labelling or shelf displays must give details of nature of produce such as quality class (Extra Class, Class I or II); country of origin and variety and products now covered by the General Marketing Standard must show the country of origin.

7.5 Commission Regulation (EC) No 1221/2008 amends the Marketing Standards provisions of Commission Regulation (EC) No 1580/2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector. The aim of Regulation 1221/2008 is to harmonise, consolidate, simplify and deregulate the EC Marketing Standards and their application for all fresh fruit and vegetables. The Regulation has been driven by the Commission's reform of the sector in 2007, while also ensuring that produce traded is 'sound, fair and of marketable quality'.

7.6 This Statutory Instrument:

- Where relevant and still required carries across the powers and offences in the 1964 Act and the Horticultural Produce Act 1986 which modifies it, expanding or modifying those powers and offences as necessary.
- Make provision for exercising the derogation in Article 3(3) of Commission Regulation 1580/2007 (as amended) which gives an exemption from Specific Marketing Standards (although not the General Marketing Standard) for produce subject to Specific Marketing Standards when presented for retail sale to consumers for their personal use and labelled as 'intended for processing'.
- Contains a definition of 'Community marketing rules' to reflect the revised EC Marketing Standards and their implementing rules.
- Creates additional powers to allow for more effective inspections and enforcement, especially in relation to the new requirements for distance contracts in Article 4(3) of Commission Regulation 1580/2007, and to address weaknesses in the existing powers. Additional powers include, in particular:

- Power for authorised officers to be accompanied by representatives of the European Commission;
 - Power to allow authorised officers to have access to a broader range of records and to inspect and check computers and associated equipment and require records to be produced;
 - Power for authorised officers to seize computers where they have a reasonable suspicion that an offence under the Regulations has been committed, provided that a written receipt is given by the authorised officer and they are returned as soon as practicable;
 - Power to affix a ‘labelling defect label’ for produce which ought to be labelled under Community marketing rules but comes into the Community without any label at all, or has other labelling defects not relating to a particular Class under the relevant Specific Marketing Standard applying to that produce, if applicable.
 - Power to identify produce found not to be compliant with Community marketing rules with demarcation tape or otherwise.
- Expands the scope of the power to control the movement of horticultural produce by giving written notice (a stop notice), to enable authorised officers to issue such notice and put a ‘stop notice’ label on horticultural produce if they are satisfied that an offence under the Regulations is being committed, but where it has not been possible for an inspection to have taken place. The notice must give reasons and specify that options for bringing the produce into conformity with the Community marketing rules or for its disposal have been discussed and provide information regarding the right to a review.
 - Introduces a right to a review of the decision to issue a stop notice by a person aggrieved by it.
 - Provides for the content of re-graded, out-graded, labelling defect and stop notice labels.
 - Identifies (in a Schedule) specific offences relating to EC Marketing Standards by reference to numbered Articles of Regulation 1580/2007.
 - Revises provisions for penalties. There is no longer a term of imprisonment of three months and in order to reflect the increased occurrence and seriousness of the obstruction offence, the penalty for that offence has been brought into line with the other offences, namely a fine of up to level 5 on the standard scale.
 - Expands the offence of obstruction to specifically include obstruction of persons accompanying an authorised officer. At the same time the SI will not include a provision relating to ‘self-incrimination’. Protections for using such compulsorily acquired incriminating information in evidence are now provided via a trial court’s discretion.
 - Includes an offence at regulation 4(8) relating to exports and imports of consignments of horticultural produce to or from places outside the European Community to enable the prosecution of persons bypassing the system.
 - Does not include the requirement for consent of the Attorney General or Minister to institute proceedings. This is an outdated provision which is no longer relevant.
 - Includes a general defence of acting with lawful authority, or of taking all reasonable precautions and exercising due diligence, together with a procedure for defendants to give notice of exercising this defence. This general defence replaces the specific defences of

warranty and pleading of mistake, act of third party etc. The courts now play a greater role in protecting defendants in the case of obvious error or accident.

- **Consolidation**

7.7 Although this is a new set of Regulations being made under powers contained in the European Communities Act 1972, it effectively consolidates those elements of the existing legislation which are still relevant, omitting any unnecessary elements and extending others to ensure that the offences and powers are fit for purpose. We have also added some new offences and powers in order to fully cover the requirements of the revised EC Marketing Standards and to strengthen the enforcement regime.

8. Consultation outcome

8.1 A joint consultation was undertaken with the Welsh Assembly Government in line with the Code of Practice on Consultation from 27 February to 24 April 2009. The consultation was emailed directly to 142 organisations across the industry covering growers, packers, wholesalers, importers and retailers, as well as trade associations and other Government Departments.

8.2 The consultation period was reduced from 12 weeks to 8 weeks for a number of reasons:

- the revised EC Marketing Standards proposal was not voted through in Brussels until 12 November 2008 which meant that despite making initial plans for implementation we were not able to progress these to a great extent.
- this Statutory Instrument (SI) needs to be in place by 1 July 2009 to allow us to apply certain provisions and enforce the revised EC Marketing Standards and a full 12 weeks would not have allowed us to do that.
- in addition we undertook a joint consultation exercise with the Welsh Assembly Government as the RPAI enforce the standards for England and Wales.

8.3 In view of the shortened consultation period we combined a written consultation with three industry workshops held around the country. We also met with consumer representatives at one of Defra's Consumer Engagement meetings and with the British Retail Consortium as part of the exercise. The Government believes that supplementing the written consultation in this way was a good method of engaging with those affected directly and provided a valuable opportunity to help stakeholders understand the changes, seek their views and also deal with their concerns.

8.4 We had six written responses and 40 organisations attended the 3 workshops. In addition, key consumer groups and retailers were represented at the meetings referred to above. The key outcomes and points raised were:

- widespread support for the aim of the revised EC Marketing Standards e.g. to simplify and deregulate;
- general support for the reduction from 36 to ten Specific Marketing Standards, although a few suggested that they should all be retained;
- general concern over the introduction of a General Marketing Standard e.g. the wide range of products it will cover, the need to have a definitive list of the products it will cover and the fact it is seen as being a subjective standard;
- very strong opposition to the proposal to require PEACH¹ notification for all products subject to the General Marketing Standard due to the increased cost and burden this would place on industry;

¹ PEACH is a web-based system allowing importers to notify RPA Inspectorate of consignments of fruit and vegetables being imported into the UK – the system has built in criteria for making a risk assessment and allows Inspectors to determine which consignments to physically check.

- widespread support for the home processing derogation (derogation from the Specific Marketing Standards for products sold at retail to consumers for their personal use which are specifically labelled as intended for processing), although there was some concern that it might not in fact lead to cheaper fruit and vegetables or a reduction in waste;
- widespread support for extending the Approved Trader Scheme;
- support for the existing risk-based criteria to be maintained;
- strong view that the current limit of four consignments per PEACH application should be raised as this would reduce costs for importers;
- there would be practical difficulties for online shopping sites to be definitive about the country of origin of a product e.g. different stores around the country would receive, for example, apples from a variety of different countries; and
- request for guidance in a number of areas like distance selling, the home processing derogation and the Approved Trader Scheme.

8.5 The Government has responded to this by:

- not requiring import notification via PEACH for products subject to the General Marketing Standard. Instead as an alternative an in-country risk assessment will be built up via inspectors' routine trader visits. We estimate this will result in substantial cost savings for industry (see Impact Assessment);
- implementing the home processing derogation;
- extending the Approved Trader Scheme; and
- providing guidance to industry of areas of concern like distance selling, home processing derogation, Approved Trader Scheme, and a list of products subject to the General Marketing Standard.

8.6 A full summary of responses will be available on the Defra consultation website at: <http://www.defra.gov.uk/corporate/consult/fruitandveg/index.htm>

9. Guidance

9.1 Defra and the RPAI will be making sure that advice and guidance is available to stakeholders. This will be placed on the RPAI website and the Fresh Produce Consortium (main trade association) has agreed to notify industry of the availability of the guidance and where it can be accessed. This will not be 12 weeks prior to the 1 July implementation date as the consultation did not end until 24 April and the timetable for implementation did not allow for this period of time. However, the RPAI will be focusing their enforcement efforts from July to October on advising and educating industry as to what they need to do to comply with the Regulations and to allow the new requirements to bed in.

10. Impact

10.1 The impact on business will be positive as there will be substantial cost benefits as indicated in the Impact Assessment. We do not believe that there will be any impact on charities or the voluntary sector.

10.2 The impact on the public sector will be on both Defra and its executive agency, the Rural Payments Agency (Inspectorate). Overall there will be a positive cost benefit as indicated in the Impact Assessment i.e. the cost saving from reduced inspections outweighs the cost burdens in relation to training staff and changing IT systems.

10.3 The Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business as well as larger ones.

11.2 The vast majority of organisations that attended our consultation workshops were Small and Medium Enterprises (SMEs). They had a number of key concerns (see section 8.4) and as a result of this feedback we are taking the following action to minimise the impact of the requirements on such firms:

- we considered reducing the burden of requiring PEACH notification for products subject to the General Marketing Standard by having, for example, a minimum weight limit for applications or excluding some products imported in small amounts. However after discussing with industry and weighing up the cost burdens we decided not to implement this but instead to use regular visits to traders by inspectors to build up an in-country risk assessment of GMS produce.
- for products subject to the Specific Marketing Standards we will continue to use existing PEACH import risk assessment criteria such as the consignment weight i.e. very small consignments or samples generally confer a low risk and are resource intensive from an inspector's point of view. There is therefore a minimum number of boxes in a consignment, or a minimum weight of the total consignment below which an automatic return will be made to the applicant supplying them with a certificate. This will help ensure that smaller traders dealing in smaller volumes would receive fewer visits. In addition the risk based systems used ensure that any trader regardless of size can reduce the frequency of visits by having a good track record.
- imports of products subject to the ten remaining Specific Marketing Standards will still need to be notified via PEACH. However, to reduce the cost of this we will increase the number of consignments that an agent can include in one PEACH application.
- we have also undertaken to produce guidance in various areas to ease the transition by all businesses.

11.3 The Department consulted with the key industry organisations informally prior to launching the formal consultation. The formal written consultation was launched by email and the trade were also notified of the consultation via industry representatives, an article in the Fresh Produce Journal and an email to all registered PEACH users. The dates and locations of the industry workshops, which were held around the country, and formed part of the consultation, were advertised by the same methods as the written consultation. The Department also had informal discussions with the Fresh Produce Consortium at the end of the consultation exercise to discuss outcomes and options.

12 Monitoring & review

12.1 Defra, in consultation with the RPA Inspectorate, will review the implementation and enforcement of these Regulations within 3 years of their coming into force.

13. Contact

Amanda Scarfe at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 6780 or email amanda.scarfe@defra.gsi.gov.uk can answer any queries regarding the instrument. Alternative contact is David Read on 020 7238 1031 or email david.read@defra.gsi.gov.uk

Summary: Intervention & Options

Department /Agency: Defra	Title: Impact Assessment on the implementation and enforcement of the EC marketing standards in fresh fruit and vegetables as revised by Commission Regulation (EC) No. 1221/2008	
Stage: Final	Version: 4	Date: 06/05/2009
Related Publications: Commission Regulation on HMI website		

Available to view or download at:

<http://www.>

Contact for enquiries: Amanda Scarfe

Telephone: 020 7238 6780

What is the problem under consideration? Why is government intervention necessary?

EC Marketing Standards for fresh fruit and vegetables exist for a wide range of produce. These standards impose both quality standards and labelling requirements. They were implemented to ensure that buyers had sufficient information and to facilitate trade. The European Commission has revised the marketing standards as they are believed to have been too burdensome, and to have removed a market for lower grade products. Commission Regulation (EC) No. 1221/2008 reduces the current 36 Specific Marketing Standards (SMS) to 10 and introduces a General Marketing Standard (GMS) for all other fresh produce not covered by a SMS. The Regulation is directly applicable in the UK and comes into force from 1 July 2009.

What are the policy objectives and the intended effects?

To continue to protect the consumer from the purchase of fruit and vegetables which are not of sound, fair and marketable quality whilst allowing the purchase of lower grade produce. Also, reducing costs of the marketing standards imposed on the fruit and vegetable industry.

What policy options have been considered? Please justify any preferred option.

It is a requirement that the Regulation is implemented so whilst there is some subsidiarity within that, we have no choice but to implement it. The policy options therefore consulted on to implement the Regulation were (i) taking account of a derogation from the specific marketing standards for products presented for retail sale to consumers for their personal use and specifically labelled as intended for processing and enabling an extension of the Approved Trader Scheme and (ii) taking account of the derogation as mentioned in option (i) but not extending the Approved Trader Scheme. As a result of the consultation Option 1 has been taken forward as this would provide trade with the opportunity of utilising the additional derogations which are optional for Member States and therefore provide the possibility for industry to realise the full deregulatory benefits of the revised system. This IA therefore only contains information on Option 1.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We intend to review this policy within three years of implementation, including any effects that it might have on competition on quality and standards.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Jane Kennedy

.....Date: 3rd June 2009

Summary: Analysis & Evidence

Policy Option: 1	Description: To implement the Regulation taking account of a derogation from the specific marketing standards for products presented for retail sale to consumers for their personal use and specifically labelled as intended for processing and extending the Approved Trader Scheme.
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' One-off costs to RPAI of approximately £57k.
	One-off (Transition)	Yrs	
	£ 57k	1	
	Average Annual Cost (excluding one-off)		
	£ -		
Total Cost (PV)			£ 32k – 82k
<p>Other key non-monetised costs by 'main affected groups' Consumers may lose out if there is an increase in unsuitable produce sold, or if any of the information that would no longer be provided is valued by consumers. There may also be one-off costs to businesses in developing their understanding of the new regime. In addition there may be some labelling changes needed by certain areas of industry e.g. packers, but it is thought these costs can be absorbed as part of the regular changes made to meet customers changing demands and a transition period will be allowed to use up existing labels. Possibility of some adhoc costs to importers due to limited inspections needed at import on GMS products to deal with a specific risk highlighted by in-country risk assessment.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Industry will benefit from reduced delays and the removal of the need to re-grade or re-label produce as well as reduced registration costs, which together currently cost around £1.5M per annum. RPA will save costs associated with reduced inspections, of around £135k per annum.
	One-off	Yrs	
	£ -		
	Average Annual Benefit (excluding one-off)		
	£ £1.7m		
Total Benefit (PV)			£ 13.3M – 14.4M
<p>Other key non-monetised benefits by 'main affected groups' Opens a market for products sold for home processing. Increased availability of information about goods not covered by specific marketing standards. Added consumer protection as the GMS will introduce a basic level of protection and information to consumers. The Approved Trader Scheme will provide further deregulatory benefits.</p>			

Key Assumptions/Sensitivities/Risks There are large sensitivities around many of the monetised estimates. With the inclusion of costs and benefits which are not currently quantified the net benefit could change. Unfortunately consultation has not given any specific information of the likely costs and benefits of extending the ATS facility other than the fact it would be beneficial and there is a high level of interest in seeking approval.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ 13.2M – 14.3M	NET BENEFIT (NPV Best estimate) £ 13.8M
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	1/7/09
Which organisation(s) will enforce the policy?	RPA
What is the total annual cost of enforcement for these organisations?	£ (65k-205k)
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £	0	Decrease of £	Net Impact	£ 1.1M Decrease

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

Council Regulation (EC) No 1234/2007 established a common organisation of agricultural markets which includes specific rules as regards the fruit and vegetable sector, including marketing standards. Commission Regulation (EC) No 1580/2007 lays down the implementing rules in the fruit and vegetable sector, which again covers marketing standards.

EC Marketing Standards for fresh fruit and vegetables exist for a wide range of produce (although not all) i.e. there are currently 36 separate standards. Subject to certain exceptions, they apply to all stages of distribution (import, export, packing, distribution, wholesale, retail) although there are certain exceptions (see RPAI website for further details). Their objective is to keep products of unsatisfactory quality off the market, as well as ensuring that produce is accurately labelled; guiding production to meet consumer requirements and facilitating trade under fair conditions. However, over recent years retailers, in particular supermarkets, often have their own more exacting standards.

Often the full impact of the standards goes largely unseen by the consumer and their benefits are taken for granted, for example defects such as maggots in apples and lettuces full of grit are rarities these days due to the requirements of the standards and the way that they are enforced. In addition, they help determine whether produce is of the right maturity and ensure that produce is not marketed too early. In addition, consumers benefit from labelling requirements at the retail stage where labelling or shelf displays must give details of the nature of produce: quality class (Extra, Class I or II); country of origin and variety.

Commission Regulation (EC) No 1221/2008 amends Commission Regulation (EC) No 1580/2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector. The aim of the new regulation is to harmonise, consolidate, simplify and deregulate the EC marketing standards and their application for all fresh fruit and vegetables.

The key features of Commission Regulation (EC) No 1221/2008, which enters into force on 1 July 2009, are:

- There should be a strengthening of the role of risk assessment in selecting products for checks.
- A reduction from 36 to 10 Specific Marketing Standards (SMS) which are to be enforced as at present at all stages of the marketing chain (i.e. import, grower, wholesale, distribution and retail).
- A General Marketing Standard (GMS) is to be introduced that will apply to all fresh produce not covered by a Specific Marketing Standard (see Annex D of consultation document for a list of products).
- This will be legally binding on all traders in these products. Member States may opt to adjust the frequency of selective checks on low risk products based on risk assessment.
- The database of traders needs to be maintained (RPAI will update and extend to cover all products).
- Data on the conformity of all products is required to ensure conformity checks can be carried out with appropriate frequency based on risk.
- Approved Inspection Services (AIS) for selected approved Third Countries to remain.

- Approved Trader Scheme (ATS) may be extended to allow traders to self certify consignments at import and export.
- Removal of requirement to notify and certify consignments for processing.
- Extension of regulatory powers to distance selling, such as internet.
- Option for derogation from the Specific Marketing Standards for products presented for retail sale to consumers for their personal use and labelled as intended for processing.

The fresh fruit and vegetable industry in the United Kingdom is worth around £1.5bn a year for home produced fruit and vegetables, along with £3.6bn of imports².

Rationale for Government intervention

This Regulation is directly applicable and Defra and the Welsh Assembly Government therefore need to implement it in England and Wales.

The aim of this revision was to harmonise, consolidate, simplify and deregulate the marketing standards and their application for all fresh fruit and vegetables. Whilst there is an element of deregulation the whole market is not deregulated as some 10 Specific Marketing Standards will remain as well as a new General Marketing Standard being introduced for all other products covered by the Regulation.

The main rationale for the change is that the current regulation imposes costs on businesses and government which may not be necessary to maintain the standards to protect consumers. In addition, the current regulations are considered to lead to excessive waste, where produce do not meet the standards – the new regulation will enable sellers to market such produce for 'processing at home'. The GMS will allow consumers of produce which do not have a Specific Marketing Standard to benefit from the labelling and quality requirements.

Consultation

Within Government

Defra has consulted with the FSA, Local Authorities Co-ordinators of Regulatory Services, the Welsh Assembly Government, the Scottish Government and the Department for Agriculture and Rural Development in Northern Ireland.

Public consultation

An 8 week public consultation was undertaken and ended on 24th April 2009. The consultation combined a written exercise with 3 industry focused workshops and a presentation given to Defra's Consumer Representatives Group. The responses to that consultation have been analysed and a summary of responses will be published on the Defra website at the following link within 12 weeks of the consultation closing date <http://www.defra.gov.uk/corporate/consult/foodfarming.htm>

Policy Options

The two policy options were broadly similar, save for the allowance for Approved Trader Status in option 1.

Option 1 - To implement the Regulation taking account of a derogation from the specific marketing standards for products presented for retail sale to consumers for their personal use and specifically labelled as intended for processing and extending the Approved Trader Scheme.

² Basic Horticultural Statistics, see <https://statistics.defra.gov.uk/esg/publications/bhs/2008/default.asp>

There are a number of key impacts on traders from this option:

- The reduction to 10 SMS from the current 36 will reduce for the remaining 26 products the requirement to:
 - Grade products into classes.
 - To label, indicating packer/dispatcher ID, size, class, etc
- Reduction of the burden on the trade imposed by the current level of Marketing Standard legislation e.g. each Specific Marketing Standard had its own specific regulation. The 10 remaining SMSs have been brought into this one new regulation.
- General Marketing Standard for an extended product range, which, for example, will require produce to be labelled with country of origin
- Auditable risk based checking system for 10 SMS to be consistently applied across England and Wales.
- Removal of requirement to notify and certify consignments for processing (for 2007 this amounted to 106,000 tonnes of produce, with 2,250 certificates being issued).
- The reduction of SMS to 10 accounts for 50% of the UK trade in fresh fruit and vegetables and so this has a potential (subject to risk assessment) to reduce RPAI inspections.
- Approved Trader Status to remain, with a provision for this to be extended to more traders. This allows the concession to be extended to allow these traders to issue their own certificates of conformity where there is a regulatory requirement for such a certificate. The consultation was expected to help form a view on the benefits (and costs) to individual traders, as these were unclear and the appetite for extending ATS. Unfortunately the consultation has not given any specific information of the likely costs and benefits of extending the ATS facility other than the fact it would be beneficial and there is a high level of interest in seeking approval.

There are also a number of benefits to consumers from this option:

- Products not previously checked for quality are now covered by the GMS.
- Rural Payment Agency Inspectorate (RPAI) staff will be able to advise, educate and inform the trade over a broader range of fresh products.
- Requirement for country of origin labelling on all products which allows the purchaser to make an informed choice.
- The introduction of a transparent generic simple minimum standard to protect the consumer.
- New opportunities for consumers to buy appropriately labelled and specifically marketed product at retail for home processing, i.e. making jam, pickles, juicing, etc.
- Possibility for a price reduction in some fruit and vegetables due to reduced industry costs.
- Extends consumer protection to internet sales.
- Existing benefits of marketing standards to remain for all products:
 - Removal of rotten produce,
 - Transparency of marketing standards,
 - Facilitation of trade.

Option 2 - To implement the Regulation taking account of the derogation as mentioned in option 1 but not extending the Approved Trader Scheme .

Sectors affected

This applies to all stages in the fruit and vegetable chain (import, export, packing, distribution, wholesale, retail and consumption).

Implications for Government

There will be some initial costs to RPAI/Government from changes that will be needed to IT systems such as PEACH and ICRAS, for example to allow for the incorporation of the General Marketing Standard and for retraining. Whilst the deletion of 26 Specific Standards effectively relate to 50% of UK trade and could in theory mean a sizable reduction in the number of inspections i.e. by 12,500, inspectors will now have to apply the General Marketing Standard to a number of products and a wider trader base so the exact impact is not currently measurable.

Costs and Benefits

The costs and benefits for option 1 and 2 were similar, except for those costs and benefits relating to the Approved Trader Scheme which do not accrue for option 2. The main parties affected are the RPAI and industry, as well as consumers.

Monetised Costs

The main costs to the RPAI relate to the one-off costs of modifying the IT systems and retraining staff.

The one off cost of modifying the IT systems is expected to be in the range of £25,000 to £75,000 (based on similar sized projects).

The average RPAI inspector will require one day's training relating to the changes to marketing standards. The salary for an HEO/EO is equivalent to around £130 per day, including employment-related costs, such as pensions and National Insurance. There are 57 staff who are expected to require this training. The total one off cost of retraining is therefore expected to be around £7,000.

Monetised Benefits

The major benefit to the RPAI is the ability to reduce the number of inspections, as the regulation allows for inspections to be more targeted. This should lead to cost savings (estimated at £65,000 to £205,000) as activities are reduced and staff numbers can decline slightly (by approximately two full-time-equivalents).

It is likely that activities relating to grading produce will largely continue, however, benefits to industry are likely to arise relating to the reduction in activities relating to regrading and relabelling produce where the RPAI would currently deem this necessary, but would no longer be necessary for those 26 products which will be moving from having their own specific standard to the general standard (for example where foreign bodies must be removed from produce). Again we can consider the duration of activities as follows: around 2 hours per tonne, multiplied by 13,500 tonnes (relating to the number of tonnes of produce for which action was required in 2007) and the employment cost of £8.91 per hour, giving total cost savings of £240,500.

A benefit to importers will be from reduced registrations on PEACH. Importers will not be required to make PEACH applications for products subject to the General Marketing Standard as proposed in our pre consultation IA. This means there will be a benefit in relation to the 26 products that will be moving from having their own specific standard to the general standard. In 2008/09 there were approximately 194,000 PEACH applications. Of these applications we have estimated that approximately 83,000 were for HMI only regulated crops that will be covered by the GMS. We have therefore estimated a reduction of 83,000 applications multiplied by the average agent fee of £15, giving a total cost saving of £1,245,000.

Another benefit to importers of consignments for processing is the removal of the need to register these using PEACH. In 2007 there were 2,250 certificates issued for these consignments and this multiplied by the £15 agent cost per application would bring benefits of £33,750.

Another benefit that could arise is a reduction in the delays to consignments awaiting inspection decisions due to more targeted risk assessment. The reduction in delays is estimated at around

17,000 consignments, for around four hours each. The benefit to traders of this reduction depends on the value of consignments, the rate of deterioration (if any) and the time value of money. The high, medium and low benefit scenarios in this Impact Assessment consider a range of average container values of £10,000, £20,000 and £25,000, with real interest rates on business overdrafts (i.e. the rate charged, adjusted for inflation) of 2.5%, 4.5% and 6.5%³. For the middle impact scenario, the delays are to produce worth £20,000 x 17,000 (£340M), but only for a very small proportion of the year, around a sixth of a day. This is equivalent to a delay of one year on around £150,000 worth of produce (£340M divided by 365, divided by 6). At 4.5% interest, this would bring benefits to traders/sellers of around £7,000 per annum.

Table 1 shows the sum of the monetised costs and benefits.

Table 1

Cost/Benefit Description	One-off/Annual	Amount	Net Present Value
Modifying IT Systems	One-off	(£25k-75k)	(£25k-75k)
Retraining RPAI Staff	One-off	(£7k)	(£7k)
Reduction in RPAI Staff numbers	Annual	£65k-£205k	£0.5M-1.7M
Reduction in Re-grading/Re-labelling Costs	Annual	£241k	£2.0M
Reduction in Registration of Consignments in PEACH	Annual	£1.3M	£10.6M
Reduced delays	Annual	£7k	£58k
Net Present Value			£13.2M-14.3M

Non-Monetised Costs

We acknowledge that there will be some labelling changes required as a result of these policy changes and intend to mitigate this by allowing a period of transition to allow old labels to be used up. We also understand that labels are changed by packers on a regular basis to meet their customers changing demand and so believe that any changes necessary can be made as part of these other routine changes and thereby limit the cost to industry. We are therefore not able to cost these changes and have not been included in the monetised costs section as we do not believe them to be very significant.

Rather than requiring complete PEACH notification for GMS produce which in our pre consultation IA we estimated would cost approximately £13,000 but based on figures supplied during the consultation would be more in the region of £675,000 (based on an extra 45,000 PEACH applications multiplied by £15 agent costs) we have decided not to require GMS produce to be notified via PEACH. However, GMS produce may occasionally be inspected at import point if in-country risk assessment has shown that there is a perceived risk and trade once notified have not dealt with this risk sufficiently. In the event of this being necessary this could cause some delays to an importer and thereby increase costs. However, these inspections are likely to take place only after trade have been made aware of the issues and have not been able to rectify the problem and only until the risk has reduced sufficiently. For these reasons we are unable to quantify how much of a cost this could add to industry and it will obviously vary on an annual basis.

Consumers who are aware of the changes could believe that a reduction in the number of inspections by the RPAI might lead to a reduction in the expected quality of produce, imposing a

³ 4.5% is close to the average from January 1999 to November 2008

cost. Furthermore, where customers are used to buying graded produce, and the grade of a product is no longer provided, the consumer may suffer.

There may also be a cost imposed on industry in developing their understanding of the new regime. This would be a one-off cost, e.g. the time spent due to having to read through the regulation.

Non-Monetised Benefits

Consumers will benefit from higher quality produce where fruits/vegetables which were not covered by the former standards are covered by the new GMS.

The main benefit which is not monetisable is the impact of allowing a new market for fruit and vegetables to be sold for processing at home. The possible benefits include: a reduction in costs of production for standard quality produce, which could benefit producers and/or consumers; consumer benefits from additional choice, and; producer benefits from increasing revenues. There is a large range as to the estimated extent of these benefits. The key uncertainties are (i) the potential size of the market, and (ii) the value added by selling produce 'for processing at home', compared with the current alternative use. The greatest benefit would arise where firms are able to sell produce that would otherwise be discarded at a price only slightly below the price of standard quality produce. The worst case scenario would exist if shops decline to sell produce for processing at home.

For background, wasted fruit/vegetables are said to amount to up to 40% of the cultivated product⁴, but only a smaller proportion, about one eighth, is due to not meeting quality standards. These standards are a combination of those imposed by supermarkets, as well as the current marketing standards. As such, there is a risk that a reduction in marketing standards would not have any impact – if supermarkets demand that suppliers continue to grade/label fruit and vegetables as they do currently.

Additional non-monetisable benefits may arise due to reduced delays to containers awaiting inspection decisions, such as more efficient haulage.

The benefits of the Approved Trader Scheme relate to the cost savings associated with gaining Approved Trader Status, which may be realised by both industry and the RPAI. Traders may all face different (one-off or ongoing) costs in meeting the requirements of ATS, these are difficult to estimate with any certainty. The decision for each firm to participate in the scheme or not will depend on whether or not they believe that the benefits will outweigh the costs, as such it is hard to tell what appetite traders have for gaining ATS. As only traders who expect to benefit overall from the scheme are likely to join, it is suggested that including the extension to ATS is likely to represent a positive net benefit, the scale of which is currently not clear. Over the consultation it was hoped that an improved awareness of the potential extent of the benefits of ATS could be gained. However, the consultation has not given any specific information of the likely costs and benefits of extending the ATS facility other than the fact it would be beneficial and there is a high level of interest in seeking approval.

Impact on Administrative Burdens

Some of the costs calculated above relate to Administrative activities which must be calculated in 2005 prices. Table 2 shows the impact on Administrative Burdens in 2005 prices.

⁴ [http://www.foodchaincentre.com/FoodChainFiles/NEW%20foodchainfiles/Cutting%20Costs%20-%20Adding%20Value%20in%20Fresh%20Produce/u\)%20Applying%20Lean%20Thinking%20to%20the%20Fresh%20Produce%20Industry.pdf](http://www.foodchaincentre.com/FoodChainFiles/NEW%20foodchainfiles/Cutting%20Costs%20-%20Adding%20Value%20in%20Fresh%20Produce/u)%20Applying%20Lean%20Thinking%20to%20the%20Fresh%20Produce%20Industry.pdf)

Table 2

Cost/Benefit Description	Annual Amount
Registration of Additional Consignments in PEACH ⁵	(£0)
Reduction in Registration of Consignments in PEACH	£1.1M
Net Impact	£1.1M

Conclusion

The monetised costs and benefits of both options show a positive Net Present Value of around 14 million pounds. It is likely that the non-monetised costs and benefits also represent a positive value. Option 1 includes the derogation to allow traders to seek Approved Trader Status, so is likely to have benefits which equal or exceed the benefits of Option 2.

As a result of the consultation Option 1 has been taken forward.

⁵ This figure was originally (12k) however the policy decision taken post consultation not to require notification via PEACH of all GMS produce has meant that in this revised IA it is now zero.

Specific Impact Tests

Competition Test

The Regulation is unlikely to have a negative impact on competition in the fruit and vegetable industry as all areas of the industry will have to adhere to the same rules.

Small Firms Impact Test

The proposal will have no disproportionate effect on small and medium sized businesses as the vast majority of the businesses that will be impacted by the changes are SMEs.

Legal Aid

Our current domestic regulations, which define the offences and penalties to ensure we are able to enforce the EC marketing standards, need to be replaced to ensure we can fully enforce the new requirements. The new Regulations will provide some additional powers to enforcement officers and contain the offences and penalties relating to the revised marketing standards. We have undertaken a Ministry of Justice legal aid impact test that has not highlighted any material impact on the legal system.

Sustainable Development

The Regulation will not have an effect on sustainable development.

Carbon Impact Assessment

The Regulation will have no effect on carbon emissions.

Other Environmental Issues

The Regulation has no additional impact in relation to other environmental issues.

Health Impact Assessment

The Regulation will not directly impact on health or well being and will not result in health inequalities.

Race/Disability/Gender

This Regulation will not have an impact on these groups.

Human Rights

The Regulation is consistent with the Human Rights Act 1998.

Rural Proofing

There are no identified impacts on rural communities.

Enforcement and sanctions

The standards are directly applicable in all EU Member States. In England and Wales, the standards are currently implemented by:

Agriculture & Horticulture Act 1964

The Grading of Horticultural Produce (Amendment) Regulations 1973

The Grading of Horticultural Produce (Forms and Labels) Regulations 1982

The Grading of Horticultural Produce (Amendment) Regulations 1983

Horticulture Produce Act 1986

The standards are enforced in England and Wales by the Horticultural Marketing Inspection arm of the Rural Payments Agency Inspection (RPAI) service. Separate arrangements apply in Scotland and Northern Ireland.

The RPAI has invested heavily in risk based assessment in both assessing frequency of inspections as well as in targeting those that need to be guided in changing behaviours. The Hampton and Macrory Reviews have been central to the risk based approach. However, failure to comply with the legislation may give rise to a criminal offence. The inspectorate endeavours to assist traders to comply with the law, although in some cases where traders blatantly or persistently fail to meet their obligations prosecution may be considered as a last resort.

We will be introducing a new set of domestic regulations using s.2(2) of the European Communities Act 1972.

Monitoring and review

We intend to review implementation of the Regulation within 3 years of implementation, including any effects that it might have on competition on quality and standards.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No