

EXPLANATORY MEMORANDUM TO
THE MARKETING OF FRUIT PLANT MATERIAL REGULATIONS 2010
2010 No. 2079

1. This explanatory memorandum has been prepared by the Food and Environment Research Agency (Fera), an Executive Agency of Defra, and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

These Regulations continue to implement Council Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production. They also implement Council Directive 2008/90/EC which applies from 30 September 2012 on the same subject. These Directives set out quality, health and identity standards which fruit plants and propagating material must meet in order to be marketed.

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

None.

4. **Legislative Context**

4.1 This instrument fulfils the requirement to transpose certain Articles in Directive 2008/90/EC relating to species regulated, quality standards, registration and duties of suppliers, identity and registration of fruit plant varieties, labelling of material, duties of official bodies and transitional measures for material in production on 30 September 2012. The Directive requires that Implementing Measures be adopted for several articles, so further regulations will be required to amend, or revoke and remake these regulations.

It supersedes The Marketing of Fruit Plant Material Regulations 1995 which applied to Great Britain and the Marketing of Fruit Plant Material Regulations (Northern Ireland) 1995.

4.2 A transposition note is attached.

5. **Territorial Extent and Application**

The Marketing of Fruit Plant Material Regulations 2010 apply to the UK.

6. **European Convention on Human Rights**

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

7. Policy background

Council Directive 1992/34/EC was substantially amended several times. It was further amended and recast in Council Directive 2008/90/EC. This Directive introduced new provisions, to apply from 30 September 2012, but to be transposed by 31 March 2010. Transposition has been achieved by means of these Regulations.

8. Consultation outcome

Stakeholders in the fruit breeding and propagating industry and others were consulted prior to the negotiation of Directive 2008/90. Details are available from Fera. See paragraph 13. Implementing Measures are required for several elements of the Directive including measures relating to registration of suppliers and of fruit plant varieties and to the standards fruit plants and propagating material must meet in order to be marketed. Discussions with stakeholders will take place regarding the Implementing Measures and a formal consultation will be conducted prior to the introduction of amending regulations.

9. Guidance

Current procedures and guidance remain the same.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none immediately as the regulations transposing Directive 2008/90 do not come into effect until 30 September 2012. By that time amended or remade regulations will have been made.

An Impact Assessment was prepared prior to the negotiation of Directive 2008/90 and is available from Fera. See paragraph 13. A further Impact Assessment will be prepared in relation to regulations introduced as a result of Implementing Measures referred to in paragraph 8.

10.2 The impact on the public sector is none.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Businesses affected are largely small ones. The Directive, and therefore the regulations, allow for some exemptions from the requirements of the regulations eg for certain businesses marketing locally to non-professional final users. Monitoring is combined with other activities where appropriate. Businesses may choose to submit material for certification of material to a higher standard than that required by the regulations. This is subject to more inspections but is voluntary.

11.3 The basis for the final decision on what action to take to assist small business was what was permitted by the Directive.

12. Monitoring & review

Success of this instrument will be demonstrated by the introduction of the register of suppliers and of fruit plants before 30 September 2012.

13. Contact

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TRANSPOSITION NOTE

COMMISSION DIRECTIVE 2008/90/EC ON THE MARKETING OF FRUIT PLANT PROPAGATING MATERIAL AND FRUIT PLANTS INTENDED FOR FRUIT PRODUCTION

The Marketing of Fruit Plant Material Regulations 2010 implement the Directive. These Regulations do not go beyond what is necessary to implement the Directive.

Article	Objective	Implementation
1.2	List the species to which the Directive applies	Regulation 3 and Schedule 1 of The Regulations
2	Define terms	Regulations 2 and 3 of the Regulations
3.1	Set minimum standards for the quality of marketed material	Regulation 12 and 15 of the Regulations
3.2	Limit marketing of GM material to that which is covered by Directive 2001/18 or Regulation 1829/2003	The Genetically Modified Organisms (Deliberate Release) Regulations (England) 2002, (Northern Ireland) 2003, Scotland (2002), Wales 2002. EC Regulation 1829/2003
3.3	Limit marketing of material covered by novel foods Regulations to that permitted to be marketed under those regulations.	EC Regulation 258/97 Novel Foods EC Regulations 1829/2003
3.4	Exemption for trials, scientific or selection work; and for preservation of genetic diversity	Regulation 4 of the Regulations

Article	Objective	Implementation
4	Establish specific requirements for CAC and certified material for species covered by the regulations	Implementing measures have not yet been adopted
5	Registration of suppliers	Regulation 7 of the Regulations
6.1	General requirements for producers of fruit plant propagating material	Regulations 17 of the Regulations
6.3	Registered suppliers must keep records for 3 years	Regulation 18 of the Regulations
7.1	Requires that varieties be sold under their variety name	Regulation 13 of the Regulations and section 19 of the Plant Varieties Act 1997
7.2	Defines what constitutes a variety	Regulations 11 and 13 of the Regulations
7.4	Introduces a register of varieties of fruit plant	Regulation 10 and Schedule 2 to the Regulations
8.1	Material is to be kept in separate lots during production	Regulation 16(b) of the Regulations
8.2	Batches of mixed origin must be identifiable	Regulation 18 of the Regulations
9.1 and 9.2	Material is to be marketed in homogeneous lots and meet labelling requirements	Regulations 12 and 14 of the Regulations
9.3	Labelling of GM material	Regulation 14 of the Regulations

Article	Objective	Implementation
10	Exempts small producers marketing to local, non-professional markets from labelling, minimum quality requirements, and checks and inspections	Regulation 3 of the Regulations
12.2	Requirements for material from third countries must be the same as for home produced material	The Regulations apply to all material equally whatever the source. No distinction is made between home or imported material
13.1	Have power of entry to premises in order to inspect material and activities to ensure that material meets relevant standards.	Paragraph 1 of Schedule 4 to the Regulations
16	Ensure compliance with the Directive	Regulations 19 to 22 and Schedule 4 to the Regulations
21	Allow a derogation for material in production at 30 September 2012	Regulation 23 of the Regulations