

**EXPLANATORY MEMORANDUM TO**  
**THE MARKETING OF FRESH HORTICULTURAL PRODUCE (AMENDMENT)**  
**REGULATIONS 2011**

**2011 No. 2587**

**1.** 1.1 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.

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

**2. Purpose of the instrument**

2.1 European law imposes requirements on those who market fruit and vegetables in the EU (e.g. in relation to issues such as quality, packaging and labelling such as country of origin). Whilst the Secretary of State has already made regulations in this area, an amendment to those regulations is needed because the instrument in which the requirements are set out in European law has changed. Without the change brought about by this instrument, there would not be a means of enforcing the obligations against those who might breach them.

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

3.1 None.

**4. Legislative Context**

4.1 This instrument is made to implement EU legislation.

**5. Territorial Extent and Application**

5.1 This instrument extends to the United Kingdom and applies to England only except with respect to the amending provisions to reference the updated EU legislation regarding the competent authority which apply to the UK.

## **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**

7.1 EU law requires that fresh fruit and vegetables and processed fruit and vegetables intended to be sold fresh to the consumer are sound, fair and of marketable quality and country of origin is indicated. Domestic law is needed to enable enforcement of the marketing standards as set out in the EU law. The existing domestic law needs to be updated because the EU law referenced in it is no longer the applicable law. Without this instrument, the marketing standards would not be enforceable. The instrument is needed, therefore, for legal reasons.

## **8. Consultation outcome**

8.1 This instrument does not change how Defra enforces the EU marketing standards regime for fruit and vegetables. Since the instrument merely amends the EU law reference to ensure enforceability of the existing obligations rather than changing anything of substance, Defra has not consulted in this instance.

## **9. Guidance**

9.1 Defra and the Rural Payments Agency will make sure that information on these regulations will be placed on the Rural Payments Agency website and also disseminated out to stakeholders via PEACH, the electronic notification system used by traders, importers and inspectors.

## **10. Impact**

10.1 No impacts on the private or voluntary sector are foreseen. There will be no change in respect of public sector impacts.

10.2 The nominal impact will be on both Defra and its executive agency - the Rural Payments Agency. This is purely a technical change and there are no new policy impacts. However, as indicated in paragraph 2.1 without the change in regulatory references there would not be a means of enforcing the EU obligations.

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

## **11. Regulating small business**

11.1 The legislation applies to small business. However, the legislation does not change the status quo. It is a purely technical change to take account of a change in the EU regulatory reference. There are no new policy impacts.

11.2 The Commission Implementing Regulation allows Member States to:

*“exempt from the marketing standards provisions products sold directly by the producer to the final consumer for personal use on markets reserved only for producers within a given production area defined by the Member State.”*

11.3 Defra is in practice already exercising this derogation such that inspections of products at relevant markets do not take place. This is based on risk assessment policy which ensures that the inspection regime is targeted at the point of high risk and/or where the majority of produce is traded.

11.4 That said, Defra has re-confirmed instructions to inspectors in this regard and will, in view of the policy to exercise the derogation in the Commission Implementing Regulation, make the position clear in guidance to stakeholders.

## **12. Monitoring & review**

12.1 These amending regulations insert a provision requiring the Secretary of State to review them as they apply in England at least every five years. In addition, Defra has an existing obligation to the Ministry of Justice, made at the time of the introduction of the original regulation, to review our enforcement and penalties policy. This will take place as envisaged in 2012.

## **13. Contact**

13.1 Steve Gilson at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 1044 or email [steve.gilson@defra.gsi.gov.uk](mailto:steve.gilson@defra.gsi.gov.uk) can answer any queries regarding the instrument.