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STATUTORY INSTRUMENTS

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**2012 No. 947**

**HORTICULTURE, ENGLAND AND WALES**

**The Quality Standards for Green Bananas  
(England and Wales) Regulations 2012**

<i>Made</i>	- - - -	<i>21st March 2012</i>
<i>Laid before Parliament</i>		<i>29th March 2012</i>
<i>Coming into force</i>	- -	<i>11th May 2012</i>

These Regulations are made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(1)</sup>.

The Secretary of State is a Minister designated<sup>(2)</sup> for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for any reference in these Regulations to Commission Implementing Regulation (EU) No 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector<sup>(3)</sup> to be construed as a reference to that instrument as amended from time to time.

There has been open and transparent public consultation during the preparation of these Regulations as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(4)</sup>.

Accordingly, the Secretary of State makes the following Regulations.

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(1) 1972 c. 68. Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51). The European Union (Amendment) Act 2008 (c. 7) amended the 1972 Act to reflect changes in terminology arising from the Treaty of Lisbon.

(2) S.I. 1972/1811. The power of the Secretary of State to make regulations in relation to Wales remains exercisable by virtue of article 6(1) of the European Communities (Designation) (No.5) Order 2010 (S.I. 2010/2690).

(3) OJ No L 336, 20.12.2011, p 23.

(4) OJ No L 31, 1.2.2002, p 1, as last amended by OJ No L 188, 18.7.2009, p 14.

## PART 1

### Introduction

#### **Title, commencement and application**

1. These Regulations—
  - (a) may be cited as the Quality Standards for Green Bananas (England and Wales) Regulations 2012;
  - (b) come into force on 11th May 2012;
  - (c) apply in England and Wales only.

#### **Interpretation**

2. In these Regulations—
  - “authorised officer” means any person appointed by the Secretary of State in accordance with regulation 3(3);
  - “bananas” means bananas of the varieties detailed in point I of Annex I of the Commission Regulation;
  - “Commission Regulation” means Commission Implementing Regulation (EU) No 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector, as amended from time to time;
  - “container” includes any basket, tray, package or receptacle of any kind, whether open or closed;
  - “label” includes any device for conveying information by written characters or other symbols, and any characters or symbols stamped or otherwise placed directly on to any bananas or container of bananas, and references to the affixing of a label are to be construed accordingly;
  - “lot” has the same meaning as in paragraph 1.5 of Annex V of Commission Implementing Regulation (EU) 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors<sup>(5)</sup>;
  - “marketing standards” means any of the minimum requirements, classification, sizing, presentation and marking standards provided for in Article 1 and Annex I of the Commission Regulation, subject to the tolerances in paragraph IV of that Annex; and
  - “premises” includes any place, vehicle or trailer, stall, vessel, freight container, moveable structure, aircraft, or hovercraft.

#### **Designations, provision of information and appointment of officers**

3.—(1) The Secretary of State is designated as the competent national authority for England and Wales for the purposes of the Commission Regulation and as the body responsible for the checks under that Regulation in England and Wales.

(2) For the purposes of fulfilling the obligations in the Commission Regulation on competent national authorities and bodies responsible for checks, the Secretary of State may, without prejudice to disclosure pursuant to an order of a court or pursuant to a rule of law, provide information to and request information from—

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(5) OJ No L 157, 15.6.2011, p 1, as last amended by OJ No L 335, 17.12.201, p. 66.

- (a) the competent national authorities and inspection bodies in other Member States and in Northern Ireland and Scotland;
  - (b) the European Commission.
- (3) The Secretary of State may appoint officers for the purposes of the enforcement of these Regulations.

## PART 2

### Offences and Penalties

#### Offences

4. It is an offence for a person—
- (a) to fail to comply with an obligation on that person in Article 7 of the Commission Regulation;
  - (b) to fail to comply with a written undertaking an authorised officer has accepted from that person under regulation 13(1);
  - (c) to fail to comply with a movement control notice served under regulation 15(1);
  - (d) to fail to comply with a warning notice served under regulation 14(1);
  - (e) intentionally to obstruct an authorised officer acting for the purpose of the enforcement of these Regulations or the checks under the Commission Regulation, or a person accompanying such an authorised officer under regulation 6(4)(a) (including obstruction by the unauthorised alteration, concealment or removal of a label, demarcation tape or any other material used by an authorised officer);
  - (f) without reasonable excuse, proof of which lies on that person, to—
    - (i) fail to give an authorised officer acting for the purpose of the enforcement of these Regulations or the checks under the Commission Regulation any assistance or information;
    - (ii) fail to provide any record or facilities that an authorised officer may reasonably require; or
    - (iii) supply to an authorised officer any information knowing it to be false, inaccurate or misleading.

#### Penalties

5. 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.

## PART 3

### Powers of Authorised Officers

#### Powers of entry

- 6.—(1) An authorised officer may, on giving reasonable notice, and on producing a duly authenticated authorisation if required, enter any premises at any reasonable hour for the purposes of the enforcement of these Regulations or the checks under the Commission Regulation.

- (2) The requirement to give notice does not apply—
  - (a) where the entry is required for checks under the Commission Regulation;
  - (b) where the requirement is waived by the occupier of the premises;
  - (c) where reasonable efforts to agree an appointment have failed; or
  - (d) where an authorised officer has reasonable suspicion of a failure to comply with these Regulations or the Commission Regulation.
- (3) Paragraph (1) does not apply in relation to any premises which are used wholly or mainly as a private dwelling.
- (4) An authorised officer entering premises (whether under paragraph (1) or under the authority of a warrant under paragraph (5)) may—
  - (a) be accompanied by—
    - (i) such other persons as the authorised officer considers necessary; and
    - (ii) any representative of the European Commission;
  - (b) bring on to the premises such equipment as the authorised officer considers necessary.
- (5) A justice of the peace may, by signed warrant, permit an authorised officer to enter premises, if necessary by reasonable force, if the justice, on sworn information in writing is satisfied that—
  - (a) there are reasonable grounds to enter those premises for the purpose of the enforcement of these Regulations or the checks under the Commission Regulation; and
  - (b) that any of the conditions in paragraph (6) are met.
- (6) The conditions are—
  - (a) entry to the premises has been, or is likely to be, refused to an authorised officer and notice of the intention to apply for a warrant has been given to the occupier;
  - (b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
  - (c) entry is required urgently; or
  - (d) the premises are unoccupied or the occupier is temporarily absent.
- (7) A warrant under this regulation is valid for one month.
- (8) An authorised officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

#### **Other powers and obligations of authorised officers**

- 7.—(1) An authorised officer who has entered premises under regulation 6 may—
  - (a) require any person to provide such assistance, information or facilities as the authorised officer may reasonably require;
  - (b) make any enquiries, observe any activity or process, and take photographs;
  - (c) inspect and search the premises for bananas, notices, documents or records, computers and associated equipment and machinery used in relation to banana consignments;
  - (d) inspect any machinery or equipment, and any other article on the premises;
  - (e) inspect and take samples of any bananas found on the premises;
  - (f) identify, with demarcation tape or other material, bananas or a specific lot of bananas which are found not to be compliant with the marketing standards;
  - (g) inspect, seize and detain any container used in connection with bananas;

- (h) have access to, inspect and copy any label, notice, document or record (in whatever form they are held), remove them to enable them to be copied or require copies to be made;
  - (i) detach, or give permission to be detached, any label affixed by an authorised officer when the reasons for it being affixed no longer apply;
  - (j) have access to, inspect and check the data on, and operation of, any computer and any associated apparatus or material that is or has been in use in connection with a label, notice, document or record mentioned in this regulation, including data relating to deleted files and activity logs; and for this purpose may require any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material to afford such assistance as may reasonably be required and, where these items are kept by means of a computer, may require them to be produced in a form in which they may be taken away;
  - (k) seize any computers and associated equipment for the purpose of copying any data, but only if that authorised officer has a reasonable suspicion that an offence under these Regulations has been committed, and provided they are returned as soon as practicable;
  - (l) seize and detain any items in sub-paragraph (h) if that authorised officer has reason to believe that they may be required as evidence in proceedings under these Regulations.
- (2) Where an authorised officer takes a bulk sample of bananas from a specific lot the power to affix a label under regulation 8(1), regulation 9(1), regulation 10(1) or regulation 11(1) may be exercised in relation to all or any of the bananas or containers of bananas within that lot in the same way as in relation to the bulk sample taken.
- (3) An authorised officer must—
- (a) as soon as is reasonably practicable, provide to the person appearing to be responsible for any items that the authorised officer seizes under paragraph (l) a written receipt identifying those items; and
  - (b) as soon as is reasonably practicable after deciding that those items are no longer required, return them, apart from those to be used as evidence in court proceedings.
- (4) Where an authorised officer has seized items under paragraph (l) for use in evidence in court proceedings and—
- (a) it is subsequently decided—
    - (i) that no court proceedings are to be brought; or
    - (ii) that those items are no longer needed as evidence in court proceedings; or
  - (b) the court proceedings are completed and no order in relation to those items has been made by the court,
- an authorised officer must return the items as soon as is reasonably practicable.

### **Power to affix a re-graded label**

**8.—(1)** Where an authorised officer who has entered premises under regulation 6 finds bananas which have affixed to them a label or are accompanied by a notice or a document, or are in a container to which a label is affixed or that is accompanied by a notice or document—

- (a) indicating that the bananas are of a particular class provided for in the marketing standards, but
- (b) which the authorised officer has reasonable cause to believe to be of an inferior class under the marketing standards,

the authorised officer may amend or cancel the label, notice or document and may affix to those bananas, or, as the case may be, to the notice, document or container, a label indicating that fact (a “re-graded label”).

- (2) The re-graded label must show one of the following as appropriate—
- (a) the words “RE-GRADED CLASS I”; or
  - (b) the words “RE-GRADED CLASS II”.

**Power to affix an out-graded label**

**9.**—(1) Where an authorised officer who has entered premises under regulation 6 finds bananas which have affixed to them a label or are accompanied by a notice or a document, or are in a container to which a label is affixed or that is accompanied by a notice or document—

- (a) indicating that the bananas are of a particular class provided for in the marketing standards, but
- (b) which the authorised officer has reasonable cause to believe do not comply with any class under the marketing standards,

the authorised officer may amend or cancel the label, notice or document and may affix to those bananas or, as the case may be, to the notice, document or container, a label indicating that fact (an “out-graded label”).

- (2) The out-graded label must show the word “OUTGRADED”.

**Power to affix a labelling defect label**

**10.**—(1) Where an authorised officer who has entered premises under regulation 6 finds bananas or containers of bananas which—

- (a) do not have a label required by the marketing standards affixed to them;
- (b) are not accompanied by a notice or document required by the marketing standards;
- (c) have a label required by the marketing standards affixed to them, but the label appears to the authorised officer to be incorrect (other than in relation to a particular class under the marketing standards), or to have been altered or defaced; or
- (d) are accompanied by a notice or document required by the marketing standards but which appears to the authorised officer to be incorrect (other than in relation to a particular class under the marketing standards), or to have been altered or defaced with the result that it is incorrect,

the authorised officer may, as appropriate, amend or cancel the label, notice or document and may affix to those bananas, or, as the case may be, to the notice, document or containers, a label indicating that fact (a “labelling defect label”).

- (2) The labelling defect label must show the words “LABELLING DEFECT”.

**Power to affix a movement control label**

**11.**—(1) An authorised officer may affix to any bananas or to any container of bananas a label warning that a movement control notice has been served under regulation 15(1) (a “movement control label”).

- (2) The movement control label must show the words—

“This lot is subject to a Movement Control Notice. The bananas to which this label applies must not be moved without authorisation”.

**Content of labels**

**12.** A label affixed by an authorised officer under regulation 8(1), regulation 9(1), regulation 10(1) or regulation 11(1) must contain the following information—

- (a) the personal number assigned to the authorised officer who carried out the inspection;
- (b) the date of the inspection;
- (c) the logotype of the Department for Environment, Food and Rural Affairs (Defra) the design of which is displayed on the website: [www.defra.gov.uk](http://www.defra.gov.uk) or the logotype of Defra's successor;
- (d) the logotype of the Rural Payments Agency the design of which is displayed on the website: [www.rpa.gov.uk/rpa/index.nsf/home](http://www.rpa.gov.uk/rpa/index.nsf/home) and the wording—  
“The Rural Payments Agency is an Executive Agency of the Department for Environment, Food and Rural Affairs (Defra)”  
or equivalent wording agreed by any successor to the Rural Payments Agency with the Secretary of State, and that successor's logotype;
- (e) the wording—  
“This label must not be removed without authorisation.”.

### **Written undertakings**

**13.**—(1) An authorised officer may accept a written undertaking from a person who appears to the officer to be in control of bananas where the officer has—

- (a) inspected the bananas and the accompanying notices, documents or labels which purport to satisfy the requirements of the marketing standards and found them not to comply with those standards;
  - (b) discussed with the person the options for—
    - (i) bringing the bananas, accompanying documents or labels into conformity with the marketing standards within an agreed time; or
    - (ii) the appropriate sale or disposal of the bananas within an agreed time in such a manner that there shall be no contravention of these Regulations.
- (2) A written undertaking must—
- (a) specify the identity of the person giving the undertaking;
  - (b) identify the bananas, or lot of bananas, which are the subject of the undertaking;
  - (c) give details of the contravention of the marketing standards found by the authorised officer;
  - (d) specify the action agreed to be taken by the person giving the undertaking;
  - (e) specify the agreed date by which such action will be taken; and
  - (f) be signed and dated by the person giving the undertaking and the authorised officer.

### **Warning notices**

**14.**—(1) An authorised officer may serve a warning notice on a person if that authorised officer is of the opinion that there has been or may have been a contravention of any relevant rule.

(2) In addition to the information required for labels under regulation 12(a) to (d), a warning notice must—

- (a) specify the relevant rule that the authorised officer believes the person has or may have contravened;
- (b) require the person on whom the notice is served not to breach that relevant rule.

- (3) A warning notice has effect for two years.
- (4) “Relevant rule” means any of the following—

- (a) any of the marketing standards;
- (b) Article 6(6) of the Commission Regulation;
- (c) the requirement on exempted traders in Article 9(3) of the Commission Regulation.

### **Movement control notice**

**15.**—(1) An authorised officer may serve a movement control notice on a person if that authorised officer is of the opinion that there has been or may have been a contravention of any of the marketing standards.

(2) A movement control notice is a notice—

- (a) prohibiting the movement of bananas; or
- (b) restricting the movement of bananas to a place approved by an authorised officer.

(3) When serving a movement control notice which restricts movement to an approved place, the officer must be of the opinion that—

- (a) steps to remedy the contravention will be taken at that place; and
- (b) the bananas will not be moved from that place until the movement control notice is either varied to provide for further movement or withdrawn.

(4) Where the person on whom the notice is served is not the owner of the bananas, or an agent or employee acting on behalf of the owner, the authorised officer must use reasonable endeavours to identify such a person and bring the contents of the notice to that person's attention within 48 hours from service of the notice.

(5) In addition to the information required for labels under regulation 12(a) to (d), a movement control notice must—

- (a) state that the officer is of the opinion in paragraph (1);
- (b) specify the matters constituting the contravention;
- (c) specify why a movement control notice is necessary;
- (d) specify the location of the bananas at the time the notice is served;
- (e) specify the place approved under paragraph (2)(b), if appropriate, for the detention of the bananas;
- (f) confirm that the authorised officer has discussed with the person appearing to be in control of the bananas the options for either—
  - (i) bringing the bananas, accompanying documents or labels into conformity with the marketing standards within a specified time;
  - (ii) the appropriate sale or disposal of the bananas within a specified time in such a manner that there shall be no contravention of these Regulations or the Commission Regulation;
- (g) specify the period within which the steps required further to sub-paragraph (f) must be taken.

(6) An authorised officer must, upon a request in writing, withdraw the movement control notice where the officer is satisfied that—

- (a) the bananas to which the movement control notice applies have been brought into conformity with the marketing standards; or
- (b) the bananas to which the movement control notice applies will be sold or disposed of within the specified time in such a manner that there shall be no contravention of these Regulations or the Commission Regulation.



- (7) An authorised officer's withdrawal of a movement control notice must be in writing.

### **Content of notices**

**16.** A notice served under regulation 14(1) or regulation 15(1) must show the following information—

- (a) the date and time of service of the notice;
- (b) the identity of the recipient of the notice;
- (c) identification of the bananas, or lot of bananas, in relation to which the notice has been served;
- (d) details of the right of review of the notice, including when and how it may be exercised and the contact details of persons to whom notice of exercise of the right must be given.

### **Service of notices**

**17.—**(1) A notice under regulation 14(1) or regulation 15(1) must be served on the person who appears to the authorised officer to be in control of the bananas to which the notice relates.

(2) A notice must be in writing.

(3) Subject to regulation 15(7), an authorised officer may, in writing, at any time withdraw or vary a notice.

### **Right of review of notices**

**18.—**(1) Subject to paragraph (2), a person served with a notice under regulation 14(1) or regulation 15(1) has a right to a review of the notice.

(2) A request for a review must be made in writing to the person indicated in the notice as soon as reasonably practicable, and in any event —

- (i) for a person on whom the notice was served, within 48 hours from the time of service of the notice.
- (ii) for a person referred to in regulation 15(4), within 48 hours from the time of the contents of the notice coming to that person's attention or 96 hours from the time of service of the notice, whichever is the sooner.

(3) The Secretary of State must maintain arrangements for the conduct of a review by an authorised officer unconnected with the original decision to determine whether there were valid grounds for serving the notice.

(4) The authorised officer conducting the review may cancel the notice or confirm it, with or without modification.

(5) The authorised officer must—

- (a) complete the review as soon as reasonably practicable and in any event within 48 hours of the request; and
- (b) notify the person who requested it, and, if different, the person on whom the notice was served and any other person in possession of the bananas, of the outcome, as soon as reasonably practicable.

(6) A notice is not suspended pending a review unless the authorised officer conducting the review decides otherwise.

## PART 6

### Additional Enforcement Provisions

#### Offence due to fault of another person

**19.**—(1) Where the commission by a person (“A”) of an offence under these Regulations was due to an act or default of another person (“B”), B is guilty of an offence.

(2) B may be charged with and convicted of the offence whether or not proceedings are taken against A.

#### Offences by bodies corporate etc.

**20.**—(1) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “officer” in relation to the body corporate, means a director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if that member were a director of the body corporate.

(4) If an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of that partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In paragraph (4) “partner” includes a person purporting to act as a partner.

(6) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body (or a person purporting to act in that capacity), or
- (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) For the purposes of proceedings brought in the name of a partnership or an unincorporated association—

- (a) rules of court relating to the service of documents are to have effect as if the partnership or the unincorporated association were a body corporate;
- (b) section 33 of the Criminal Justice Act 1925<sup>(6)</sup> and Schedule 3 to the Magistrates’ Courts Act 1980<sup>(7)</sup> apply in relation to the partnership or unincorporated association as they apply in relation to a body corporate.

(6) 1925 c. 86. Subsections (1) and (2) of section 33 were repealed by the Magistrates’ Courts Act 1952 (c. 55), section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, part II, paragraph 19; subsection (4) was amended by the Courts Act 2003 (c. 39), section 109(1) and (3), Schedule 8, paragraph 71 and Schedule 10,

(8) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or the unincorporated association.

## PART 7

### Final provisions

#### Review of Regulations

**21.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the marketing standards are enforced in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

#### Disapplications

**22.** The following Acts do not apply in England and Wales to bananas—

- (a) the Agriculture and Horticulture Act 1964<sup>(8)</sup> and the Horticultural Produce Act 1986<sup>(9)</sup> which modifies it;
- (b) the Agricultural Produce (Grading and Marking) Acts 1928<sup>(10)</sup> and 1931<sup>(11)</sup>; and
- (c) the Agricultural Marketing Act 1958<sup>(12)</sup>.

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and by the Magistrates' Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 5 (since repealed); subsection (5) was repealed by the Magistrates' Courts Act 1952, section 132, Schedule 6.

(7) 1980 c. 43. Sub-paragraph 2(a) was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 47, Schedule 1, paragraph 13, and was repealed by the Criminal Justice Act 2003 (c. 44), sections 41 and 332, Schedule 3, part 2, paragraph 51, sub-paragraphs (1), (13)(a), and Schedule 37, part 4 (with effect from a date to be appointed); paragraph 5 was repealed by the Criminal Justice Act 1991 (c. 53), sections 25(2) and 101(2) and Schedule 13; paragraph 6 was amended by the Criminal Justice Act 2003, section 41, Schedule 3, part 2, paragraph 51, sub-paragraphs (1) and (13)(b) (with effect from a date to be appointed).

(8) 1964 c. 28.

(9) 1986 c. 20.

(10) 1928 c. 19.

(11) 1931 c. 40. This Act amended the Agricultural Produce (Grading and Marking) Act 1928 and the two Acts may be cited together as the Agricultural Produce (Grading and Marking) Acts 1928 and 1931.

(12) 1958 c. 47.

21st March 2012

*Jim Paice*  
Minister of State  
Department for Environment, Food and Rural  
Affairs

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the enforcement in England and Wales of EU marketing standards for bananas set out in Commission Implementing Regulation (EU) No 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector (OJ No L 336, 20.12.2011, p 23).

Annex I of the Commission Regulation sets out detailed requirements relating to quality, size, presentation and marking of bananas at the “un-ripened green stage” of marketing after preparation and packaging where the bananas are intended for supply fresh to the consumer.

The marketing standards are applicable to bananas falling within CN code 0803 00, excluding plantains, fig bananas and bananas intended for processing, and apply to bananas originating in third countries at the stage of release for free circulation, to bananas originating in the EU at the stage of first landing at a Community port, and to bananas delivered fresh to the consumer in the producing region at the stage of leaving the packing shed.

These Regulations designate the Secretary of State as the competent national authority for England and Wales and provide for the Secretary of State to provide information and to appoint authorised officers (regulation 3).

Under regulation 4, it is an offence to fail to comply with Article 7 of the Commission Regulation, a written undertaking, a movement control notice or a warning notice. It is also an offence under that regulation to intentionally obstruct an authorised officer or to fail to give information or to give false information to an authorised officer. Regulation 5 sets out the maximum penalty for an offence under the Regulations.

Regulation 6 provides authorised officers with powers to enter premises, other than dwellings, and with the power to apply for a warrant to enable entry (including to dwellings). Regulation 7 confers powers on authorised officers to enable inspections and effective enforcement including seizure powers and requires authorised officers to fulfil certain duties in relation to certain items seized. Regulations 8 to 11 confer powers on authorised officers to affix labels indicating various types of non-compliance with respect to the marketing standards. Regulation 12 prescribes certain information to be contained in those labels.

Authorised officers are also given powers to accept written undertakings (regulation 13) and to issue warning notices and movement control notices - the latter to prohibit or restrict the movement of bananas (regulations 14 and 15). Regulations 16 and 17 detail requirements, including procedural requirements, relevant to notices.

Regulation 18 provides a right of review to those served with a notice.

Regulations 19 and 20 contain provisions relating to the commission of an offence due to the fault of another person and to the commission of offences by bodies corporate etc.

Regulation 21 requires the Secretary of State to review the operation and effect of these Regulations and to publish a report within five years after the Regulations come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulation 22 disapplies certain Acts in England and Wales in respect of bananas.

**Status:** *This is the original version (as it was originally made).*

A full impact assessment has not been produced for this instrument because the only impact which is foreseen is an impact on the public sector of not more than £5m and no political or media interest is foreseen.