
STATUTORY INSTRUMENTS

2017 No. 595

**The Marketing of Fruit Plant and Propagating
Material (England) Regulations 2017**

PART 1

Introduction

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 and come into force on 1st June 2017.

(2) They extend to England and Wales but only apply to England.

Interpretation: general

2. In these Regulations—

“basic material” means propagating material intended for the production of certified material, which has been—

- (a) in relation to propagating material produced in England, certified as basic material in accordance with regulation 9;
- (b) in relation to propagating material produced outside England, certified as basic material by a responsible authority in accordance with [F1—
 - (i) in the case of material and plants produced in the United Kingdom, the relevant fruit marketing regulations;
 - (ii) in the case of material and plants produced in a Crown Dependency or a country granted equivalence, legislation recognised by the Secretary of State as having equivalent effect to Schedule 1;]

“basic mother plant” means a mother plant intended for the production of basic material;

“CAC material” means—

- (a) in relation to propagating material and fruit plants produced in England, material and plants that meet the requirements for CAC material in Schedule 1;
- (b) in relation to propagating material and fruit plants produced outside England, material and plants that meet the requirements for CAC material in [F2—
 - (i) in the case of material and plants produced in the United Kingdom, the relevant fruit marketing regulations;
 - (ii) in the case of material and plants produced in a Crown Dependency or a country granted equivalence, legislation recognised by the Secretary of State as having equivalent effect to Schedule 1;]

“certification” means the certification of plant material in accordance with regulation 9 and “certified” is to be construed accordingly;

“certified material” means any propagating material or fruit plants intended for the production of fruit plants, which has been—

- (a) in relation to propagating material and fruit plants produced in England, certified as certified material in accordance with regulation 9;
- (b) in relation to propagating material and fruit plants produced outside England, certified as certified material by a responsible authority in accordance with ^[F3]—
 - (i) in the case of material and plants produced in the United Kingdom, the relevant fruit marketing regulations;
 - (ii) in the case of material and plants produced in a Crown Dependency or a country granted equivalence, legislation recognised by the Secretary of State as having equivalent effect to regulation 9(1) and (2);]

“certified mother plant” means a mother plant intended for the production of certified material;

“certified plant material” means plant material that is certified (as the case may be) as pre-basic material, basic material or certified material;

^[F4]“country granted equivalence” means a country that has been assessed under regulation 5(3) and the Secretary of State is satisfied that the plant material from the country is produced under conditions equivalent to the requirements in these Regulations for plant material;]

^[F4]“Crown Dependency” means the Isle of Man or any of the Channel Islands;]

“cryopreservation” means the maintenance of plant material by cooling to ultra-low temperatures in order to retain the viability of the material;

“defects” include injuries, discoloration, scar tissues or desiccation that affect the quality and usefulness of a mother plant or plant material as propagating material;

^[F5]“the fruit marketing regulations” means—

- (a) as regards Wales, the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017;
- (b) as regards Scotland, the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017;
- (c) as regards Northern Ireland, the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017;]

^[F5]“the relevant fruit marketing regulations”, in relation to any constituent part of the United Kingdom, means the fruit marketing regulations applicable in relation to that part;]

“fruit plant” means a plant intended to be planted or replanted, after marketing;

“inspector” means a person appointed under regulation 16;

“lot” means a number of units of a single commodity, identifiable by its homogeneity of composition and origin;

“micropropagation” means the multiplication of plant material in order to produce a large number of plants, using in vitro culture of differentiated vegetative buds or differentiated vegetative meristems taken from a plant;

“mother plant” means an identified plant intended for propagation;

“official description” means the description of a variety provided for—

- (a) registration as a variety; or
- (b) the grant of plant variety rights;

“official examination” means an examination or inspection conducted by an inspector, including one conducted by way of sample;

“official label” means—

- (a) for certified plant material produced in England, a label issued or approved in accordance with regulation 10(2);
- (b) for certified plant material produced outside England, a label issued or approved by the responsible authority in the country or territory where the plant material was produced and which meets, as appropriate to the plant material to which the label relates, the requirements of [^{F6}—
 - (i) in the case of material produced in the United Kingdom, the relevant fruit marketing regulations;
 - (ii) in the case of plant material produced in a Crown Dependency or a country granted equivalence, legislation recognised by the Secretary of State as having equivalent effect to Part 1 of Schedule 2;]

“officially recognised description” means a description of key morphological features that enable the variety to be identified;

“outside England” means any part of the United Kingdom other than England [^{F7}, any Crown Dependency or country granted equivalence];

“plant material” means the plants and materials described in regulation 4;

“plant variety rights” means rights granted under—

- (a) Part 1 of the Plant Varieties Act 1997 ^{M1}; [^{F8}or]
- (b) ^{F9} ...
- (c) domestic legislation in countries or territories, other than those forming part of the United Kingdom, that affords plant variety protection in accordance with UPOV;

“practically free from defects” means that defects likely to impair the quality and usefulness of the propagating material or fruit plants, are present at a level equal to, or lower than, the level expected to result from good cultivating and handling practices, and that level is consistent with good cultivating and handling practices;

“pre-basic material” means propagating material intended for the production of basic or certified material, which has been—

- (a) in relation to propagating material produced in England, certified as pre-basic material in accordance with regulation 9;
- (b) in relation to propagating material produced outside England, certified as pre-basic material by a responsible authority in accordance with [^{F10}—
 - (i) in the case of material produced in the United Kingdom, the relevant fruit marketing regulations;
 - (ii) in the case of material produced in a Crown Dependency or a country granted equivalence, legislation recognised by the Secretary of State as having equivalent effect to regulation 9(1) and (2);]

“pre-basic mother plant” means a mother plant intended for the production of pre-basic material;

“propagating material” means seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;

[^{F11}“RNQP” means a [^{F12}GB] regulated non-quarantine pest within the meaning given by Article 36 of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants;]

“responsible authority” means the authority responsible for the quality of plant material in the country or territory where the plant material was produced;

“supplier” means any person involved professionally in the reproduction, production, preserving, treating, importing or marketing of plant material;

“supplier's document” means a document accompanying CAC material and which meets the requirements in Part 2 of Schedule 2;

“UPOV” means the International Union for the Protection of New Varieties of Plants ^{M2};

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which can be—

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as an entity in view of its ability to be propagated unchanged;

“visual inspection” means the examination of plants or parts of plants in facilities, fields and lots, by an inspector or, where appropriate, the supplier, using the unaided eye, lens, stereoscope or microscope.

Textual Amendments

- F1** Words in reg. 2 substituted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(a)** (as amended by S.I. 2020/1388, regs. 1(2)(a), **29(6)(a)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F2** Words in reg. 2 substituted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(b)** (as amended by S.I. 2020/1388, regs. 1(2)(a), **29(6)(a)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F3** Words in reg. 2 substituted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(c)** (as amended by S.I. 2020/1388, regs. 1(2)(a), **29(6)(a)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F4** Words in reg. 2 inserted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(d)** (as amended by S.I. 2020/1388, regs. 1(2)(a), **29(6)(a)(ii)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F5** Words in reg. 2 inserted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(e)** (as amended by S.I. 2019/809, regs. 1(a), **8(3)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F6** Words in reg. 2 substituted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(f)** (as amended by S.I. 2020/1388, regs. 1(2)(a), **29(6)(a)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F7** Words in reg. 2 substituted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(g)** (as amended by S.I. 2020/1388, regs. 1(2)(a), **29(6)(a)(iii)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F8** Word in reg. 2 inserted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(h)(i)**; 2020 c. 1, **Sch. 5 para. 1(1)**
- F9** Words in reg. 2 omitted (31.12.2020) by virtue of The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(h)(ii)**; 2020 c. 1, **Sch. 5 para. 1(1)**
- F10** Words in reg. 2 substituted (31.12.2020) by The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131), regs. 1, **8(2)(i)** (as amended by S.I. 2020/1388, regs. 1(2)(a), **29(6)(a)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**

- F11** Words in reg. 2 inserted (24.7.2020) by [The Marketing of Seed, Plant and Propagating Material \(England\) Regulations 2020 \(S.I. 2020/682\)](#), regs. 1(1), **6(2)**
- F12** Word in reg. 2 substituted (16.11.2022) by [The Animals, Food, Plant Health, Plant Propagating Material and Seeds \(Miscellaneous Amendments etc.\) Regulations 2022 \(S.I. 2022/1090\)](#), regs. 1(1), **3(2)**

Marginal Citations

- M1** 1997 c. 66. Part I was amended by [S.I. 2000/311](#), 2005/2726 and 2011/1043.
- M2** The International Union for the Protection of New Varieties of Plants (UPOV) was established by the International Convention for the Protection of New Varieties of Plants (“UPOV Convention”). The UPOV Convention was adopted on 2nd December 1961 by a Diplomatic Conference held in Paris, revised in 1972 and 1991 and ratified by the United Kingdom on 3rd December 1998.

Interpretation: Directives

3.—(1) In these Regulations—

^{F13}
...

“Directive [2008/90/EC](#)” means Council Directive [2008/90/EC](#) on the marketing of fruit plant propagating material and fruit plants intended for fruit production ^{M3};

“Directive [2014/96/EU](#)” means Commission Implementing Directive [2014/96/EU](#) on the requirements for the labelling, sealing and packaging of fruit plant propagating material and fruit plants intended for fruit production, falling within the scope of Council Directive [2008/90/EC](#) ^{M4};

“Directive [2014/97/EU](#)” means Commission Implementing Directive [2014/97/EU](#) implementing Council Directive [2008/90/EC](#) as regards the registration of suppliers and of varieties and the common list of varieties ^{M5};

[^{F14}“Directive [2014/98/EU](#)” means Commission Implementing Directive [2014/98/EU](#) implementing Council Directive [2008/90/EC](#) as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections.]

(2) References in these Regulations to Annexes I, II, III, IV or V to Directive [2014/98/EU](#) are references to that Annex as amended from time to time.

Textual Amendments

- F13** Words in reg. 3(1) omitted (14.1.2020) by virtue of [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(England\) Regulations 2019 \(S.I. 2019/1517\)](#), reg. 1, **Sch. 5 para. 6(2)**
- F14** Words in reg. 3(1) substituted (24.7.2020) by [The Marketing of Seed, Plant and Propagating Material \(England\) Regulations 2020 \(S.I. 2020/682\)](#), regs. 1(1), **6(3)**

Marginal Citations

- M3** OJ No L 267, 8.10.2008, p. 8; as last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ No L 189, 27.6.2014, p. 1).
- M4** OJ No L 298, 16.10.2014, p. 12.
- M5** OJ No L 298, 16.10.2014, p. 16.

Plant material to which these Regulations apply

4.—(1) These Regulations apply in relation to fruit plants and propagating material of the genera and species listed in Schedule 3 and their hybrids.

(2) They also apply in relation to parts of plants, including rootstocks, of other genera or species and their hybrids if material from fruit plants listed in Schedule 3 (or any hybrid of such fruit plants) is, or is to be, grafted on to them.

(3) They do not apply in relation to plant material intended for export from England to any country outside the [^{F15}Great Britain] provided the plant material is identified as such and kept sufficiently isolated.

Textual Amendments

F15 Words in [reg. 4\(3\)](#) substituted (31.12.2020) by [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(England and Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/131\)](#), regs. 1, **8(3)** (as amended by [S.I. 2020/1388](#), regs. 1(2)(a), **29(6)(b)**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

PART 2

Marketing of Plant Material

Marketing of plant material

5.—(1) A supplier may only market plant material if—

- (a) the supplier is registered in accordance with regulation 11; and
- (b) the plant material meets the requirements in paragraph (2).

(2) The plant material must be—

- (a) certified plant material or CAC material;
- (b) a variety that may be marketed in accordance with regulation 7;
- (c) marketed with a reference to the variety to which the plant material belongs in accordance with regulation 8;
- (d) in relation to certified plant material, labelled, sealed and packaged in accordance with regulation 10; and
- (e) in relation to CAC material, accompanied by a supplier's document.

[^{F16}(3) The Secretary of State may authorise the marketing of plant material from any country outside the [^{F17}United Kingdom] if satisfied that the plant material has been produced under conditions equivalent to the requirements in these Regulations for plant material.]

Textual Amendments

F16 Reg. 5(3) substituted for reg. 5(3)(4) (26.9.2019) by [The Animal Health, Invasive Alien Species, Plant Breeders Rights and Seeds \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1220\)](#), regs. 1(2)(a), **4**

F17 Words in [reg. 5\(3\)](#) substituted (31.12.2020) by [S.I. 2019/131](#), reg. 8(4) (as substituted by [The Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1388\)](#), regs. 1(2)(a), **29(6)(c)**)

Exceptions

6. Regulation 5(1)(b) does not apply to the marketing of plant material intended for—
- (a) trials or scientific purposes;
 - (b) selection work;
 - (c) measures aimed at the conservation of genetic diversity.

Varieties that may be marketed

7.—(1) Plant material is of a variety that may be marketed if the variety fulfils one or more of the requirements of paragraph (2).

(2) The variety must—

- (a) have been granted plant variety rights;
- (b) be registered as a variety;
- (c) be the subject of an application for—
 - (i) plant variety rights; or
 - (ii) registration as a variety;
- (d) have been marketed prior to 30th September 2012 within the European Union and have an officially recognised description; or
- (e) in relation to varieties with no intrinsic value for commercial crop production being marketed within the United Kingdom—
 - (i) have an officially recognised description; and
 - (ii) is CAC material.

(3) A supplier who markets plant material of a variety described in paragraph (2)(e) must ensure the plant material is accompanied by a supplier's document stating that it is marketed in accordance with [^{F18}that paragraph].

(4) In this regulation, “registered as a variety” (and “registration” is to be construed accordingly) means—

- (a) registration in England as a variety in accordance with Schedule 4; or
- [^{F19}(b) registration as a variety by the responsible authority in any part of the United Kingdom outside England in accordance with—
 - (i) in relation to Wales, Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017;
 - (ii) in relation to Scotland, Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017;
 - (iii) in relation to Northern Ireland, Schedule 3 to the Marketing of Fruit Plant and Propagating Material (Northern Ireland) Regulations 2017.]

Textual Amendments

F18 Words in reg. 7(3) substituted (31.12.2020) by [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(England and Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/131\)](#), regs. 1, **8(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F19 Reg. 7(4)(b) substituted (31.12.2020) by [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(England and Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/131\)](#), regs. 1, **8(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

References to variety of plant material

8. Plant material is marketed with a reference to its variety if it is marketed, in relation to—
- (a) a variety of plant material that is the subject of an application for a grant of plant variety rights, by reference to the breeder's reference or the proposed name of the variety;
 - (b) a registered variety, by reference to its registered name;
 - (c) a variety that is the subject of an application for such registration, by reference to the breeders' reference or the proposed name of the variety;
 - (d) rootstocks that do not belong to a variety, by reference to the appropriate species or interspecific hybrid.

Certification of plant material

9.—(1) If the requirements of paragraph (2) are satisfied, an inspector must—

- (a) certify plant material produced in England as being—
 - (i) pre-basic material;
 - (ii) basic material; or
 - (iii) certified material;
- (b) issue a certificate confirming certification (a crop inspection certificate).

(2) The requirements are that on official examination, the plant material has been found to comply with the requirements for certification set out in the relevant provisions of Schedule 5.

(3) An application for certification of plant material produced in England must be made in writing to the Secretary of State and must be accompanied by such information as the Secretary of State may require.

(4) An official label issued in accordance with these Regulations in relation to certified plant material is sufficient evidence that an inspector has certified the plant material to which the official label relates as being certified plant material.

Labelling, sealing and packaging of certified plant material

10.—(1) Certified plant material, which is marketed, must be labelled, sealed and packaged in accordance with this regulation.

(2) The Secretary of State must issue or approve a label (an official label) if that label meets the requirements in Part 1 of Schedule 2.

(3) But a label used in the retail supply of certified plant material to a non-professional final consumer need only contain appropriate product information, including the name of the responsible authority, the supplier's name or registration number, the botanical name and variety denomination.

(4) An official label must be affixed to the certified plant material.

(5) Where certified plant material forms part of the same lot and is being marketed in a package, bundle or container, an official label must be affixed to that package, bundle or container.

^{F20}(6)

(7) A supplier must not market certified plant material in lots of two or more plants or parts of plants unless those lots are sufficiently homogeneous and are properly packaged.

(8) For the purposes of paragraph (7), “properly packaged” means the plants or parts of plants—

- (a) are in a package or container that is sealed in a way that prevents the package or container from being opened without damaging the closure or rendering the official label invalid; or

- (b) form part of a bundle that is tied in such a way that the plants or parts of plants forming part of the bundle cannot be separated without damaging the tie or ties.

Textual Amendments

- F20** Reg. 10(6) omitted (14.1.2020) by virtue of [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(England\) Regulations 2019 \(S.I. 2019/1517\)](#), reg. 1, [Sch. 5 para. 6\(3\)](#)

PART 3

Suppliers

Registration of suppliers

11.—(1) A supplier must not market plant material unless registered as a supplier by the Secretary of State in accordance with this regulation.

(2) But paragraph (1) does not apply to suppliers who are only marketing plant material to non-professional final consumers.

(3) An application for registration must be made in writing to the Secretary of State and must be accompanied by such information as the Secretary of State may require.

(4) The Secretary of State must register a supplier if satisfied that person will comply with these Regulations.

(5) The Secretary of State must inform the supplier—

- (a) of the Secretary of State's decision under paragraph (4) within 28 days of making it; and
(b) where the decision is to register the supplier, of their registration number.

(6) A person who, immediately before the coming into force of these Regulations, was registered as a supplier in accordance with regulation 7 of the Marketing of Fruit Plant Material Regulations 2010^{M6} is registered for the purposes of this regulation.

(7) A person who is registered as a [F21]professional operator for the purposes of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants] is registered for the purposes of this regulation.

(8) The Secretary of State may, by notice—

- (a) modify a supplier's registration; or
(b) revoke or suspend a supplier's registration if satisfied the supplier—
(i) has failed to comply with any provision of these Regulations; or
(ii) is no longer acting as a supplier.

(9) Unless the Secretary of State otherwise directs, a revocation or suspension under paragraph (8) (b) has immediate effect and continues in effect unless the registration is reinstated.

Textual Amendments

- F21** Words in reg. 11(7) substituted (14.1.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(England\) Regulations 2019 \(S.I. 2019/1517\)](#), reg. 1, [Sch. 5 para. 6\(4\)](#)

Marginal Citations

M6 S.I. 2010/2079.

Appeals

12.—(1) A supplier aggrieved by a decision of the Secretary of State not to register them under regulation 11(4) or to modify, revoke or suspend their registration under regulation 11(8) may, within 21 days of being notified of the decision, appeal against it to a person appointed for the purpose by the Secretary of State.

(2) The appointed person must consider the appeal and any representations made by the Secretary of State, and, within a period of 21 days beginning with the day on which they receive the appeal or representations (whichever is the later), report in writing with a recommended course of action to the Secretary of State.

(3) The Secretary of State must then make a final decision and notify the appellant, together with the reasons for that decision.

Register of suppliers

13.—(1) The Secretary of State must maintain a register of registered suppliers.

(2) The register must contain the following information—

- (a) the name, address and contact details of the supplier;
- (b) which of the activities listed in paragraph (3) the supplier is involved in;
- (c) the genera or species concerned;
- (d) the address of the premises where the activity is carried out;
- (e) the supplier's registration number.

(3) For the purposes of paragraph (2)(b), the activities are the reproduction, production, preserving, treating, importing or marketing of plant material.

(4) A supplier must notify the Secretary of State as soon as practicable of any change to the information required under paragraph (2)(a) to (d).

(5) The Secretary of State may publish the register, or any part of it, at the Secretary of State's discretion.

Suppliers: plan to identify and monitor production process

14.—(1) A supplier involved in the production of plant material must have in place a plan to identify and monitor critical points in the production of that plant material.

(2) The plan must include details on—

- (a) the location and number of plants;
- (b) the timing of cultivation;
- (c) propagating operations;
- (d) packaging, storage and transportation operations.

[^{F22}Suppliers: notification requirements

14A.—(1) A supplier must immediately report to an inspector—

- (a) plant material that shows the presence of any RNQP listed in Annex 1 or 2 to [Directive 2014/98/EU](#);

- (b) the presence in the soil of any RNQP listed in Annex 3 to Directive 2014/98;
 - (c) the presence of any RNQP at the production site at a level greater than the tolerance specified for such organism in Annex 4 to Directive 2014/98; or
 - (d) plant material that shows the presence of any pest listed in Annex 2 or 3 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and of the Council, as regards protective measures against pests of plants.
- (2) Where a supplier has reported to an inspector plant material referred to in paragraph (1)(d), the supplier must carry out any measures laid down by the inspector.]

Textual Amendments

F22 Reg. 14A inserted (24.7.2020) by [The Marketing of Seed, Plant and Propagating Material \(England\) Regulations 2020 \(S.I. 2020/682\)](#), regs. 1(1), **6(4)**

Suppliers: record keeping

- 15.—(1) A supplier must keep records of —
- (a) any sales or purchases of plant material;
 - (b) all deliveries of plant material to and from the supplier's premises;
 - (c) any monitoring of critical points in the production of that plant material;
 - (d) the composition and origin of any plant material of different origins mixed by the supplier during packaging, storage or transport or at delivery;
 - (e) all plant material under production on their premises;
 - (f) field inspections and sampling and testing undertaken in relation to plant material under their control; and
 - (g) any occurrence on their premises of—
 - (i) any of the organisms or diseases listed in ^{F23}... Annex I, and in Annex II, to Directive 2014/98/EU;
 - ^{F24}(ii)
 - ^{F25}(iii) a plant pest of a description specified in [^{F26}Annex 2 or 3] to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants].
 - ^{F27}(iv) any RNQP listed in Annex 3 to Directive 2014/98, where present in the soil; and
 - (v) any RNQP at a level greater than the tolerance specified for that RNQP in Annex 4 to Directive 2014/98.]
- (2) The records referred to in this regulation must be kept for a minimum of 3 years.

Textual Amendments

F23 Words in reg. 15(1)(g)(i) omitted (24.7.2020) by virtue of [The Marketing of Seed, Plant and Propagating Material \(England\) Regulations 2020 \(S.I. 2020/682\)](#), regs. 1(1), **6(5)(a)**

F24 Reg. 15(1)(g)(ii) omitted (24.7.2020) by virtue of [The Marketing of Seed, Plant and Propagating Material \(England\) Regulations 2020 \(S.I. 2020/682\)](#), regs. 1(1), **6(5)(b)**

- F25** Reg. 15(1)(g)(iii) substituted (14.1.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(England\) Regulations 2019 \(S.I. 2019/1517\)](#), reg. 1, **Sch. 5 para. 6(5)**
- F26** Words in reg. 15(1)(g)(iii) substituted (24.7.2020) by [The Marketing of Seed, Plant and Propagating Material \(England\) Regulations 2020 \(S.I. 2020/682\)](#), regs. 1(1), **6(5)(c)**
- F27** Reg. 15(1)(g)(iv)(v) inserted (24.7.2020) by [The Marketing of Seed, Plant and Propagating Material \(England\) Regulations 2020 \(S.I. 2020/682\)](#), regs. 1(1), **6(5)(d)**

PART 4

Enforcement

Inspectors

- 16.**—(1) The Secretary of State must appoint inspectors for the purposes of these Regulations.
- (2) An inspector has the powers set out in this Part of the Regulations.

Entry and inspection of land and premises

17.—(1) For the purposes of enforcing these Regulations, an inspector has power, on producing a duly authenticated authorisation, to enter any land or premises (except any premises used wholly or mainly as a private dwelling house) at any reasonable hour by giving reasonable notice.

- (2) But the requirement to give notice is not necessary—
- (a) where reasonable efforts to agree an appointment have failed;
 - (b) where an inspector has reasonable suspicion of a failure to comply with these Regulations;
 - (c) in an emergency.
- (3) A justice of the peace may, by signed warrant, permit an inspector to enter any land or premises, if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied that—
- (a) there are reasonable grounds to enter that land or premises for the purpose of enforcing these Regulations; and
 - (b) any of the conditions in paragraph (4) are met.
- (4) The conditions are—
- (a) entry to the premises has been, or is likely to be, refused, 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 notice, would defeat the object of the entry;
 - (c) entry is required urgently;
 - (d) the premises are unoccupied or the occupier is temporarily absent.
- (5) A warrant is valid for three months.
- (6) An inspector entering any land or premises may be accompanied by any person (up to a maximum of 4 persons), equipment, materials or vehicle as the inspector considers necessary for the purposes of this regulation.
- (7) An inspector entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.

Search and examination of items on land and premises

- 18.**—(1) Where an inspector exercises the power conferred by regulation 17, the inspector may—
- (a) open any container;
 - (b) carry out any searches, inspections, measurements and tests;
 - (c) take samples;
 - (d) have access to, and inspect, any books, documents or records (in whatever form they are held) relating to these Regulations and remove them to enable them to be copied;
 - (e) photograph or copy anything whose production the inspector has power to require under paragraph (d);
 - (f) photograph anything which the inspector has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations;
 - (g) seize any computers and associated equipment for the purpose of copying documents provided that they are returned as soon as practicable.
- (2) Any person who accompanies an inspector in accordance with this regulation may perform any of the inspector's functions but only under the supervision of that inspector.

Information notice

19. An inspector may, by notice served on any person, require that person to provide such information as is specified in the notice in such form and within such period following service of the notice or at such time as is so specified.

Prohibition on movement notice

20. An inspector may, by notice served on any person, prohibit that person from moving plant material from any premises where the inspector has reasonable grounds to suspect the plant material fails to comply with the requirements of these Regulations.

Enforcement and prohibition notice

- 21.**—(1) An inspector may serve a notice on any person who contravenes, or who the inspector has reasonable grounds to suspect may contravene, these Regulations—
- (a) requiring that person to act in accordance with the Regulations (an “enforcement notice”);
 - (b) prohibiting that person from acting in breach of them (a “prohibition notice”).
- (2) The notice must give reasons for serving it and, if appropriate, specify what action must be taken and give time limits.

Appeals against notices

- 22.**—(1) Any person who is aggrieved by a decision of an inspector to serve a notice under this Part may appeal to a magistrate's court.
- (2) The procedure on appeal to a magistrate's court is by way of complaint and the Magistrates' Courts Act 1980^{M7} applies to the proceedings.
- (3) The period within which an appeal must be brought is 28 days from the service of the notice or, in the case of an enforcement notice, the period specified in the notice, whichever ends earlier.
- (4) A notice served under this Part must state—
- (a) the right of appeal to a magistrates' court;
 - (b) the period in which such an appeal may be brought.

(5) On an appeal under this regulation, the court may either cancel or affirm the notice and, if it affirms the notice, it may do so either in its original form or with such modifications as it thinks fit.

Marginal Citations

M7 1980 c 43; sections 51 and 52 have been substituted by section 47 of the [Courts Act 2003 \(c. 39\)](#). Sections 53 and 54 have been amended by section 17(6) of the [Crime and Courts Act 2013 \(c. 22\)](#).

Compliance with notices

23. A notice served under this Part must be complied with at the expense of the person on whom it is served and, if it is not complied with, an inspector may arrange for it to be complied with at the expense of that person.

Offences and penalties

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

(a) fail to comply with a notice served under—

- (i) regulation 19 (information notice);
- (ii) regulation 20 (prohibition on movement notice);
- (iii) regulation 21(1)(a) (enforcement notice);
- (iv) regulation 21(1)(b) (prohibition notice).

(b) fail, without reasonable excuse, to give any assistance that a person may require for the performance of that person's functions under these Regulations.

(c) intentionally obstruct an inspector in the exercise of any powers conferred by these Regulations.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences by bodies corporate

25.—(1) If an offence committed under these Regulations 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 the part of an officer,

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

(2) 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 the member's functions of management as if the member were a director of the body.

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

PART 5

Administration and revocations

Notices and authorisations

26. A notice or authorisation given under these Regulations—
- (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) may be amended, suspended or revoked by notice.

Arrangements for official measures

27.—(1) The Secretary of State may make such arrangements with any person (“A”) as the Secretary of State considers necessary or desirable for the purpose of enabling A to carry out official measures under these Regulations on the Secretary of State's behalf.

(2) But the Secretary of State must not make any arrangement under this regulation unless satisfied that the arrangement makes provision for the purpose of preventing any person from—

- (a) deriving any private gain from any official measures carried out under the arrangement; and
- (b) carrying out any official measures under the arrangement except under official supervision.

(3) The Secretary of State may include in any arrangement such conditions as the Secretary of State considers necessary or desirable for the purposes referred to in paragraphs (1) and (2), including conditions—

- (a) specifying—
 - (i) the official measures that A must carry out;
 - (ii) the methods to be used in connection with the official measures that A carries out;
 - (iii) the fees that A may charge in relation to the official measures that A carries out;
 - (iv) the records that A must keep in connection with the official measures that A carries out;
- (b) prohibiting A from—
 - (i) charging fees in relation to the official measures that A carries out under the arrangement except to the extent that these do not exceed the costs that A incurs in carrying them out;
 - (ii) carrying out the official measures except under official supervision;
- (c) prohibiting A from making any further arrangement with any other person (“B”) for any purpose in connection with the carrying out of the official measures that A has arranged with the Secretary of State to carry out, unless—
 - (i) the Secretary of State has approved all the conditions of the further arrangement and A has received the prior written approval of the Secretary of State to make the further arrangement;
 - (ii) the further arrangement includes a condition prohibiting B from making any subsequent arrangements for any purpose connected with the carrying out of the official measures in respect of which the Secretary of State made the arrangement with A;

- (iii) the further arrangement includes an acknowledgment by A that the Secretary of State may vary, revoke or suspend the further arrangement if it appears to the Secretary of State that B is not complying, or has failed to comply, with any condition of the further arrangement; and
- (iv) the further arrangement includes the conditions specified in sub-paragraphs (a) and (b) of this paragraph and for these purposes references in those sub-paragraphs to A are to be construed as references to B and references to “the arrangement” are to be construed as references to the further arrangement.

(4) The Secretary of State must not approve the making of any further arrangement under this regulation unless satisfied that B will not—

- (a) derive any private gain from any official measures that B is to be authorised to carry out under the further arrangement;
- (b) carry out any official measures under the further arrangement except under official supervision.

(5) The Secretary of State may, by notice to A or B (as the case may be), vary, suspend or revoke an arrangement or further arrangement, or any conditions of an arrangement or further arrangement made under this regulation.

(6) A notice given under paragraph (5) must specify—

- (a) in respect of a variation or revocation, the date from which the variation or revocation takes effect;
- (b) in respect of a suspension, the period during which the suspension has effect.

(7) When a variation, revocation or suspension has effect, the Secretary of State may, for any purposes in relation to these Regulations, continue to have regard to such of the official measures carried out under an arrangement (or further arrangement) which was varied, revoked or suspended as appear to the Secretary of State to be official measures carried out in accordance with the provisions of these Regulations.

(8) In this regulation, “official measures” include official examinations, growing trials, tests and assessments.

Transitional provisions [F28 for plant material from parent plant existing pre-commencement]

28.—(1) This regulation applies where plant material is produced from a parent plant existing before 1st June 2017.

(2) A supplier may market such plant material if—

- (a) the parent plant meets any certification or CAC requirements relevant to it under the Marketing of Fruit Plant Material Regulations 2010; and
- (b) the supplier's document accompanying it, or the official label affixed to it, includes a reference to Article 32 of Directive 2014/98/EU.

(3) In this regulation, “parent plant” means a pre-basic, basic or certified mother plant or CAC material.

(4) This regulation ceases to have effect on 31st December 2022.

Textual Amendments

F28 Words in [reg. 28](#) heading inserted (1.4.2020) by [The Marketing of Fruit Plant and Propagating Material \(England\) \(Amendment\) Regulations 2020 \(S.I. 2020/248\)](#), regs. 1, **2(2)**

[^{F29}Transitional provision for supplier’s documents affixed to CAC material

28ZA.—(1) A supplier may market CAC material to which a supplier’s document which does not comply with paragraph 8A of Schedule 2 is affixed in the form of a label if that document—

- (a) is of a colour of supplier’s document that was in use before 1st April 2020; and
- (b) states that it is marketed in accordance with Article 3 of Commission Implementing Directive (EU) 2019/1813.

(2) This regulation ceases to have effect on 1st July 2021.]

Textual Amendments

F29 Reg. 28ZA inserted (1.4.2020) by [The Marketing of Fruit Plant and Propagating Material \(England\) \(Amendment\) Regulations 2020 \(S.I. 2020/248\)](#), regs. 1, **2(3)**

Consequential amendment

29.—(1) In Part 2 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 ^{M8}, for “Marketing of Fruit Plant Material Regulations 1995”, substitute “Marketing of Fruit Plant and Propagating Material (England) Regulations 2017”.

(2) In Part 3 of the Schedule to the Economic Growth (Regulatory Functions) Order 2017 ^{M9}, for “Marketing of Fruit Plant Material Regulations 2010”, substitute “Marketing of Fruit Plant and Propagating Material (England) Regulations 2017”.

Marginal Citations

M8 [S.I. 2007/3544](#), to which there are amendments not relevant to these Regulations.
M9 [S.I. 2017/267](#).

Revocation

30. The Marketing of Fruit Plant Material Regulations 2010 ^{M10} are revoked in relation to England.

Marginal Citations

M10 [S.I. 2010/2079](#).

Review

31.—(1) The Secretary of State must, from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1st June 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

^{F30}(4)

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
 - (b) assess the extent to which those objectives are achieved;
 - (c) assess whether those objectives remain appropriate; and
 - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (6) In this regulation—

F31
...

“regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Textual Amendments

- F30** Reg. 31(4) omitted (31.12.2020) by virtue of [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(England and Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/131\)](#), regs. 1, **8(9)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in reg. 31(6) omitted (31.12.2020) by virtue of [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(England and Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/131\)](#), regs. 1, **8(9)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Department for Environment, Food and Rural
Affairs

George Eustice
Minister of State

Changes to legislation:

There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017.