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## EXPLANATORY NOTE

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

These Regulations provide a new statutory framework for the enforcement of the European Community marketing rules in the fresh fruit and vegetable sector provided for in Articles 113 and 113a of Council Regulation (EC) No 1234/2007 (OJ No L 299, 16.11.2007, p.1) establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), and contained in Title II of Commission Regulation (EC) No 1580/2007 (OJ No L 350, 31.12.2007, p.1) laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector. In particular, they implement the revisions made to the Community marketing rules introduced by Commission Regulation (EC) No 1221/2008 (OJ No L 336, 13.12.2008, p.1) amending Regulation (EC) No 1580/2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector as regards marketing standards.

These Regulations revoke the Grading of Horticultural Produce (Amendment) Regulations 1973 (S.I. 1973/22), the Grading of Horticultural Produce (Forms of Labels) Regulations 1982 (S.I. 1982/387) and the Grading of Horticultural Produce (Amendment) Regulations 1983 (S.I. 1983/1053).

They disapply the Agriculture and Horticulture Act 1964 (c. 28) and the Horticultural Produce Act 1986 (c. 20) which modifies the 1964 Act from the Community marketing rules in the fresh fruit and vegetable sector. They also disapply the Agricultural Produce (Grading and Marking) Acts 1928 and 1931 (c. 19 and c. 40 respectively) and the Agricultural Marketing Act 1958 (c. 47). They designate the Welsh Ministers as inspection body for Wales under Article 8(1)(b) of Commission Regulation (EC) No 1580/2007, provide that the Welsh Ministers may disclose or where required to do so provide information to the Secretary of State, the Northern Ireland and Scotland inspection bodies or the European Commission and that the Welsh Ministers may appoint authorised officers (regulation 3).

The Regulations make the failure to comply with Article 113a(3) of Council Regulation (EC) No 1234/2007, and the provisions of Commission Regulation (EC) No 1580/2007 mentioned in the Schedule, an offence. They contain additional offences necessary for the effective enforcement of the Community marketing rules (regulation 4 and the Schedule).

They exercise the derogation in Article 3(3) of Commission Regulation (EC) No 1580/2007 (regulation 5). This derogation exempts products presented for retail sale to consumers for their personal use from the specific marketing standards provided they are labelled “product intended for processing”, or with other equivalent wording, and the products are not intended for industrial processing.

Regulation 6 provides that the powers under Parts 3 and 4 of the Regulations may not be exercised on premises, or part of any premises, used wholly as a dwelling-house. The Regulations confer powers of entry (regulation 7) and other powers (regulation 8), including seizure powers which require authorised officers to fulfil certain duties in relation to any items seized. They contain powers to affix labels indicating various types of non-conformity with the Community marketing rules (regulations 9, 10 and 11).

They confer power on authorised officers to control the movement of horticultural produce and give a right of review to those served with a written notice informing of the exercise of that power (regulation 12). They confer power to affix a stop notice label warning of its exercise (regulation 13). There is provision for giving consent to the movement of controlled horticultural produce when certain conditions are met (regulation 14).

**Changes to legislation:** *There are currently no known outstanding effects for the The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009. (See end of Document for details)*

Regulations 15, 16, 17 and 19 contain provisions on offences relating to controlled horticultural produce, to the obstruction of an authorised officer, to the commission of an offence due to the fault of another person and to the commission of offences by bodies corporate etc. Regulation 18 provides for defences of acting with lawful authority or exercising due diligence and taking reasonable precautions. Finally, regulation 20 provides that the penalty for offences is on summary conviction a fine not exceeding level 5 on the standard scale.

A regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

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