

**2010 No. 2079**

**PLANT HEALTH**

**SEEDS**

**The Marketing of Fruit Plant Material Regulations 2010**

*Made* - - - - - *11th August 2010*

*Laid before Parliament* *19th August 2010*

*Coming into force* - - *17th September 2010*

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The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(a)</sup> in relation to the common agricultural policy<sup>(b)</sup> and makes these Regulations in exercise of the powers conferred by that section.

PART 1  
Introduction

**Title and commencement**

1. These Regulations may be cited as the Marketing of Fruit Plant Material Regulations 2010 and come into force on 17th September 2010.

**Interpretation**

2.—(1) In these Regulations—

“the appropriate authority” means—

- (a) in relation to England, the Secretary of State,
- (b) in relation to Wales, the Welsh Ministers,

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(a) 1972 c. 68. The power of the Secretary of State, as a designated Minister, to make Regulations that extend to Scotland and Northern Ireland and apply in Wales remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46), article 3(2) of the European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812) and article 4(4) of the European Communities (Designation) (No. 3) Order 2005 (S.I. 2005/2766) respectively.

(b) S.I. 1972/1811.

- (c) in relation to Scotland, the Scottish Ministers,
- (d) in relation to Northern Ireland, any Northern Ireland Department;
- “Council 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(a);
- “Directive 93/48/EEC” means Commission Directive 93/48/EEC setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Council Directive 92/34/EEC(b);
- “inspector” means a person appointed under regulation 19;
- “plant breeders’ rights” mean rights granted in accordance with Part 1 of the Plant Varieties Act 1997(c) or Council Regulation (EC) No 2100/94 on Community plant variety rights(d);
- “plant material” means the plants and materials described in regulation 3(1) and (2);
- “producer” means any person involved professionally in the production or reproduction of plant material;
- “supplier” means any producer or any person involved professionally in the marketing, preservation or treatment of plant material; and, from 30th September 2012, includes any person involved professionally in the importation of plant material.
- (2) In these Regulations, “supplier’s list” means a written list kept by a supplier containing—
- (a) the name of each variety marketed by the supplier and, where appropriate, its commonly known synonyms;
- (b) the description of those varieties having regard to the characteristics specified in the Annex to Commission Directive 93/79/EEC setting out additional implementing provisions for lists of varieties of fruit plant propagating material and fruit plants, as kept by suppliers under Council Directive 92/34/EEC(e); and
- (c) in the case of a written list kept by a producer—
- (i) indications as to the maintenance of those varieties and the propagation system applied; and
- (ii) any indications as to how those varieties differ from the other varieties that they most closely resemble.
- (3) Any other expressions used in these Regulations that are also used in Council Directive 2008/90/EC have the same meaning in these Regulations as they have in that Directive.

### **Application**

- 3.—**(1) These Regulations apply in relation to fruit plants and propagating material of the genera and species listed in Schedule 1 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 1 (or any hybrid of such fruit plants) is, or is to be, grafted on to them.
- (3) These Regulations do not apply in relation to plant material intended for export to third countries, if that plant material is identified as such and kept sufficiently isolated.
- (4) These Regulations do not apply to small producers all of whose production and sales of plant material is intended for final use by persons on the local market who are not involved professionally in plant production.

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(a) OJ No L 267, 8.10.2008, p.8.

(b) OJ No L 250, 7.10.93, p.1.

(c) 1997 c. 66.

(d) OJ No L 227, 1.9.1994, p1 as last amended by Council Regulation (EC) No 15/2008 (OJ No L 8, 11.1.2008, p2).

(e) OJ No L 256, 14.10.93, p.25.

### **Marketing of plant material for trials etc.**

4.—(1) These Regulations do not apply to the marketing of plant material intended for—

- (a) trials or scientific purposes,
- (b) selection work, or
- (c) measures aimed at the conservation of genetic diversity,

if the plant material is marketed in accordance with an authorisation granted by an inspector.

(2) An authorisation—

- (a) must be in writing;
- (b) may be amended, suspended or revoked by notice; and
- (c) may be subject to such conditions as the inspector considers necessary.

### **Notices**

5. Any notice under these Regulations must be in writing, may be subject to conditions and may be amended, suspended or revoked by notice in writing at any time.

## **PART 2**

### **Accreditation and registration**

#### **Accreditation of producers**

6.—(1) A producer must not market plant material unless accredited by the appropriate authority to do so.

(2) The appropriate authority must accredit a producer if satisfied that the producer will comply with the requirements of regulations 17 and 18.

(3) A producer is accredited for the purposes of this regulation if, immediately before the coming into force of these Regulations, that producer was accredited under—

- (a) regulation 11 of the Marketing of Fruit Plant Material Regulations 1995(a); or
- (b) regulation 11 of the Marketing of Fruit Plant Material Regulations (Northern Ireland) 1995(b).

(4) This regulation ceases to have effect on 30th September 2012.

#### **Registration**

7.—(1) From 30th September 2012, a person must not be involved professionally in the importation, marketing, production or reproduction of plant material unless registered by the appropriate authority.

(2) The appropriate authority must register a person involved professionally in the importation, marketing, production or reproduction of plant material if satisfied that the person will comply with the provisions of these Regulations.

(3) A producer who, immediately before 30th September 2012, is accredited by the appropriate authority under regulation 6 is registered for the purposes of this regulation.

(4) This regulation does not apply to persons involved only in the marketing of plant material to non-professional final consumers.

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(a) S.I. 1995/2653 as amended in relation to England by S.I. 2004/2603, in relation to Wales by S.I. 2005/1155 and in relation to Scotland by S.S.I. 2004/471.

(b) S.R. (N.I.) 1995 No. 416 as amended by S.R. (N.I.) 2004 No. 430.

### **Revocation etc.**

8.—(1) The appropriate authority may, by notice, revoke or suspend an accreditation under regulation 6 or a registration under regulation 7 if satisfied that the producer or registered person has failed to comply with any provision of these Regulations.

(2) Unless the appropriate authority otherwise directs, a revocation or suspension under this regulation has immediate effect and continues in effect unless the accreditation or registration is reinstated.

### **Appeals**

9.—(1) A person aggrieved by a decision of the appropriate authority under regulation 6(2), 7(2) or 8 may appeal against the decision to a person appointed for the purpose by the appropriate authority in accordance with this regulation.

(2) The appointed person must consider the appeal and any representations made by the appropriate authority and report in writing, with a recommended course of action, to the appropriate authority.

(3) The appropriate authority must then reach a decision and notify the appellant, together with the reasons for it.

### **Registration of varieties**

10. Schedule 2 makes provision for the registration of varieties of fruit plant.

## **PART 3**

### **Marketing of plant material**

#### **Varieties that may be marketed**

11.—(1) From 30th September 2012, a supplier must not market any plant material unless it is of a variety that is—

- (a) subject to a grant of plant breeders' rights in any member State or is the subject of an application for such rights;
- (b) registered in accordance with Schedule 2 or is the subject of an application for such registration;
- (c) registered in any other member State in accordance with Article 7(2)(c) of Council Directive 2008/90/EC or is the subject of an application for such registration; or
- (d) included in the supplier's list and—
  - (i) has no intrinsic value for commercial crop production; or
  - (ii) is marketed by the supplier prior to 30th September 2012.

(2) A supplier who markets plant material in accordance with paragraph (1)(d)(i) must ensure that it is accompanied by a document stating that it is marketed in accordance with the second paragraph of Article 7(2) of Council Directive 2008/90/EC, or it is labelled to that effect.

#### **Quality requirements for plant material**

12. A supplier must not market any plant material unless—

- (a) it is substantially free on visual inspection from any organism or disease listed in the Annex to Directive 93/48/EEC and any other organism or disease that impairs its quality or reduces its usefulness as plant material;
- (b) it is substantially free from any defects likely to impair its usefulness as plant material;

- (c) it has adequate identity and purity relative to its genus or its species and (if it has one) its variety; and
- (d) it is in lots of sufficiently homogeneous composition and origin.

### **References to plant material**

**13.**—(1) A supplier must not—

- (a) market a variety of plant material that is the subject of an application for a grant of plant breeders' rights other than by reference to the breeder's reference or proposed name of the variety;
- (b) from 30th September 2012—
  - (i) market a variety that is registered in accordance with Schedule 2, or registered in another member State in accordance with Article 7(2)(c) of Council Directive 2008/90/EC, other than by reference to its registered name;
  - (ii) market a variety that is the subject of an application for such registration other than by reference to the breeders' reference or the proposed name of the variety; or
- (c) market any other variety of plant material other than by reference to the information contained in the supplier's list.

(2) A supplier who markets rootstocks that do not belong to a variety must do so by reference to the appropriate species or interspecific hybrid.

### **Accompanying documentation**

**14.**—(1) A supplier must not market plant material unless it is accompanied by a document that contains the information in Part 1 of Schedule 3.

(2) Where plant material is accompanied by a plant passport issued in accordance with Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community<sup>(a)</sup>, that plant passport may constitute the document in paragraph (1) if it is accompanied by the information in Part 2 of Schedule 3.

(3) This regulation does not apply to the retail supply of plant material to a non-professional final consumer if that material is accompanied by a document containing appropriate product information.

### **Marketing of citrus plant material**

**15.** A producer must not market any plant material of the genus *Citrus* unless—

- (a) it is derived from initial material which has been checked and found to show no symptoms of the viruses, virus-like organisms and diseases listed in the Annex to Directive 93/48/EEC in respect of *Citrus* and which has been tested individually using appropriate methods and found to be free from such viruses, virus-like organisms and diseases;
- (b) it has been checked and found to be substantially free from such viruses, virus-like organisms and diseases since the beginning of the last cycle of vegetation; and
- (c) in the case of grafting, it has been grafted on to rootstocks other than those susceptible to viroids.

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(a) OJ No L 169, 10.7.2000, p.1 as last amended by Commission Directive 2010/1/EU (OJ No L 7, 12.1.2010, p. 17).

## PART 4

### Additional requirements

#### Measures to be taken by producers

16. A producer must—

- (a) treat or, where appropriate, remove any plant material that shows visible signs or symptoms of any of the organisms or diseases referred to in regulation 12(a); and
- (b) keep plant material in lots of homogeneous composition and origin during growing and lifting or removal from parent material.

#### Monitoring of production process

17. A producer must—

- (a) identify and monitor critical points in the production process that influence the quality of plant material;
- (b) take samples of plant material for analysis in a laboratory, where necessary, to ensure compliance with these Regulations; and
- (c) ensure that lots of propagating material remain separately identifiable during production.

#### Record-keeping

18.—(1) A supplier must, as soon as reasonably practicable, make a record of—

- (a) all sales and purchases of plant material;
- (b) all deliveries of plant material to and from the supplier's premises; and
- (c) the composition and origin of any plant material of different origins mixed by the supplier during packaging, storage or transport or at delivery.

(2) A producer must, as soon as reasonably practicable, make a record of—

- (a) all plant material under production on the producer's premises;
- (b) all occurrences on the producer's premises of any organisms or diseases referred to in regulation 12(a) and on any measures taken in relation to such occurrences; and
- (c) all monitoring undertaken for the purposes of regulation 17(a).

(3) The records referred to in this regulation must be kept for at least 3 years.

(4) Paragraph (1)(a) does not apply to a supplier marketing only to non-professional final consumers.

## PART 5

### Enforcement etc.

#### Inspectors

19.—(1) The appropriate authority must appoint inspectors for the purposes of the enforcement of these Regulations.

(2) An inspector has the powers set out in Schedule 4.

(3) A person must not intentionally obstruct an inspector in the exercise of any powers conferred by these Regulations.

## **Offences and penalties**

**20.**—(1) It is an offence to fail to comply with—

- (a) a notice served under paragraph 2 or 3 of Schedule 4;
- (b) an enforcement notice served under paragraph 4(1)(a) of Schedule 4; or
- (c) a prohibition notice served under paragraph 4(1)(b) of Schedule 4.

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

## **Offences by bodies corporate**

**21.**—(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 the officer's part,

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) "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.

## **Offences by partnerships or unincorporated associations**

**22.**—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association.

(2) For the purposes of such proceedings, rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(3) For the purposes of such proceedings in England and Wales, section 33 of the Criminal Justice Act 1925(a) and Schedule 3 to the Magistrates' Courts Act 1980(b) apply as they apply in relation to a body corporate.

(4) For the purposes of such proceedings in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945(c) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(d) apply as they apply in relation to a body corporate.

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

(6) Where an offence under these Regulations committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

For these purposes, "partner" includes a person purporting to act as a partner.

(7) Where an offence under these Regulations committed by an unincorporated association is proved to have been committed with the consent or connivance of, or to be attributable to any

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(a) 1925 c. 86 (15 & 16 Geo 5); section 33 has been amended by section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55), section 56(1) of, and Schedule 8, Part 2 to, the Courts Act 1971 (c. 23) and section 109(1) and (3) of, and Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 1980 c. 43; Schedule 3 has been amended by section 47 of, and Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c.25) and sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53).

(c) 1945 c. 15 (N.I.).

(d) S.I. 1981/1675 (N.I. 26).



neglect on the part of, an officer of the association, that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

For these purposes, “officer” means an officer of the association or a member of its governing body, or a person purporting to act in such a capacity.

### Transitional provisions

**23.**—(1) This regulation applies where plant material is taken from parent plants existing before 30th September 2012 and meeting the conditions set out in regulation 12.

(2) A supplier may market such plant material, notwithstanding the provisions of these Regulations, provided that it is accompanied by a document stating that it is marketed in accordance with Article 21 of Council Directive 2008/90/EC, or is labelled to that effect.

(3) This regulation applies from 30th September 2012 and ceases to have effect on 31st December 2018.

### Revocations

**24.** The following are revoked—

- (a) the Marketing of Fruit Plant Material Regulations 1995(a);
- (b) the Marketing of Fruit Plant Material Regulations (Northern Ireland) 1995(b);
- (c) the Marketing of Fruit Plant Material (Amendment) (England) Regulations 2004(c);
- (d) the Marketing of Fruit Plant Material (Amendment) (Wales) Regulations 2005(d);
- (e) the Marketing of Fruit Plant Material Amendment (Scotland) Regulations 2004(e);
- (f) the Marketing of Fruit Plant Material (Amendment) Regulations (Northern Ireland) 2004(f).

*Jim Paice*

Minister of State

Department for Environment, Food and Rural Affairs

11th August 2010

## SCHEDULE 1

Regulation 3(1)

### Genera and species to which these Regulations apply

<i>Genera and species</i>	<i>Common name (for guidance only)</i>
<i>Castanea sativa</i> Mill.	Chestnut
<i>Citrus</i> L.	includes Grapefruit, Lemon, Lime, Mandarin and Orange
<i>Corylus avellana</i> L.	Hazel
<i>Cydonia oblonga</i> Mill.	Quince
<i>Ficus carica</i> L.	Common edible fig
<i>Fortunella</i> Swingle	Kumquat
<i>Fragaria</i> L.	all cultivated strawberry species

(a) S.I. 1995/2653 as amended in relation to England by S.I. 2004/2603, in relation to Wales by S.I. 2005/1155 and in relation to Scotland by S.S.I. 2004/471.

(b) S.R. (N.I.) 1995 No. 416 as amended by S.R. (N.I.) 2004 No. 430.

(c) S.I. 2004/2603.

(d) S.I. 2005/1155 (W 72).

(e) S.S.I. 2004/471.

(f) S.R. (N.I.) 2004 No. 430.

<i>Juglans regia</i> L.	Walnut
<i>Malus</i> Mill.	Apple
<i>Olea europaea</i> L.	Olive
<i>Pistacia vera</i> L.	Pistachio
<i>Poncirus</i> Raf.	Trifoliolate orange
<i>Prunus armeniaca</i> L.	Apricot
<i>Prunus avium</i> (L.) L.	Sweet cherry
<i>Prunus cerasus</i> L.	Sour cherry
<i>Prunus domestica</i> L.	Plum
<i>Prunus dulcis</i> (Mill) D A Webb (otherwise known as <i>Prunus amygdalus</i> Batsch)	Almond
<i>Prunus persica</i> (L.) Batsch	Peach
<i>Prunus salicina</i> Lindley	Japanese plum
<i>Pyrus</i> L.	All cultivated edible pears, including perry pears
<i>Ribes</i> L.	Blackcurrant, gooseberry, redcurrant and white currant
<i>Rubus</i> L.	Blackberry, raspberry and hybrid berries
<i>Vaccinium</i> L.	includes Blueberry, cranberry and bilberry

## SCHEDULE 2

Regulation 10

### Registration of varieties of fruit plant

#### Registration

- 1.—(1) The appropriate authority may register a variety of fruit plant if satisfied that—
- it is distinct, uniform and stable (within the meaning of paragraphs 5 to 7); and
  - it has a description conforming to international standards for that variety.
- (2) The appropriate authority may register any other variety if it is included in a supplier's list and marketed in the United Kingdom before 30th September 2012.

#### Additional requirements for genetically modified varieties

2. Before registering a genetically modified variety of fruit plant, the appropriate authority must be satisfied that the genetically modified organism contained in that variety has been authorised pursuant to Directive 2001/18/EC or Regulation (EC) No 1829/2003.

#### Additional requirements for products to be used as genetically modified food or feed

- 3.—(1) This regulation applies to any variety of fruit plant from which products are derived for use as, or in—
- food within the scope of Article 3 of Regulation (EC) No 1829/2003; or
  - feed within the scope of Article 15 of that Regulation.
- (2) Before registering any such variety, the appropriate authority must be satisfied that the food or feed has been authorised pursuant to that Regulation.

#### Removal from the register

- 4.—(1) The appropriate authority must revoke the registration of a variety if—

- (a) the person who applied for registration so requests;
- (b) it is no longer distinct, uniform or stable;
- (c) there is no longer available any material of that variety that is sufficiently uniform or which corresponds to the description of the variety accepted by the appropriate authority at the time of registration;
- (d) false or misleading information material to the acceptance of the variety on to the register was provided to the appropriate authority in connection with the application for registration; or
- (e) in the case of any genetically modified variety, the genetically modified organism contained in that variety ceases to be authorised pursuant to Directive 2001/18/EC or Regulation (EC) No 1829/2003.

(2) But paragraphs (a) and (c) of sub-paragraph (1) do not apply if the appropriate authority is satisfied that the variety should remain on the register in the interests of preserving the genetic diversity of varieties.

### **Distinctness**

5. The variety is distinct if it is clearly distinguishable by one or more characteristics which are capable of a precise description from any other variety whose existence is a matter of common knowledge at the time of the application for registration.

### **Uniformity**

6. The variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in those characteristics which are included in the examination for distinctness.

### **Stability**

7. The variety is stable if those characteristics which are included in the examination for distinctness, as well as any others used for the variety description, remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

### **Interpretation**

8. In this Schedule—

“Directive 2001/18/EC” means Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC(a); and

“Regulation (EC) No 1829/2003” means Regulation (EC) No 1829/2003 on genetically modified food and feed(b).

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(a) OJ No L 106, 17.4.2001, p1 as last amended by Directive 2008/27/EC (OJ No L 81, 20.3.2008, p.45).

(b) OJ No L 268, 18.10.2003, p1 as last amended by Regulation (EC) No 298/2008 (OJ No L 97, 9.4.2008, p.64).

## SCHEDULE 3

Regulation 14

### Accompanying information

#### PART 1

##### Plant material not accompanied by a plant passport

1. The date of issue of the document.
2. The words “EU quality”.
3. The EU member State code.
4. The name of the responsible official body or its distinguishing code.
5. The registration or accreditation number of the supplier.
6. The name of the supplier.
7. The individual serial, week or batch number.
8. The botanical name of the plant material.
9. The denomination of the variety or, in the case of rootstock, denomination of the variety of its designation.
10. The quantity of the plant material.
11. The category of the plant material.
12. In the case of a genetically modified variety—
  - (a) a statement that the variety has been genetically modified; and
  - (b) a list of the genetically modified organisms.

#### PART 2

##### Plant material accompanied by a plant passport

1. The words “EU quality”.
2. The name of the responsible official body or its distinguishing code.
3. The denomination of the variety or, in the case of rootstock, denomination of the variety of its designation.
4. The category of the plant material.
5. In the case of a genetically modified variety—
  - (a) a statement that the variety has been genetically modified; and
  - (b) a list of the genetically modified organisms.

## Powers of inspectors

### **Powers of entry etc.**

1.—(1) An inspector, on producing a duly authenticated authorisation if required, may at any reasonable time enter any premises of a supplier where the inspector reasonably suspects that any activity that is governed by these Regulations is being carried on for the purposes of ascertaining whether there is or has been any contravention of these Regulations.

(2) An inspector entering premises under sub-paragraph (1) may—

(a) be accompanied by—

(i) such other persons as the inspector considers necessary; and

(ii) any representative of the European Commission acting for the purpose of the enforcement of a European Union obligation;

(b) take on to those premises any equipment or materials that the inspector considers necessary for the enforcement of these Regulations;

(c) open any container;

(d) carry out any searches, inspections, measurements and tests;

(e) take samples;

(f) 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;

(g) photograph or copy anything whose production the inspector has power to require under paragraph (f);

(h) photograph anything which the inspector has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations; and

(i) seize any computers and associated equipment for the purpose of copying documents provided that they are returned as soon as practicable.

(3) Any person who accompanies an inspector in accordance with this paragraph may perform any of the inspector's functions but only under the supervision of that inspector.

### **Information notice**

2. 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**

3. An inspector may, by notice served on any person, prohibit that person from moving plant material from any premises if the inspector has reasonable grounds to suspect that the plant material fails to comply with the requirements of regulation 12(a).

### **Enforcement and prohibition notices**

4.—(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”);  
or

(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 enforcement and prohibition notices

5.—(1) Any person who is aggrieved by a decision of an inspector to serve a notice under this Schedule may appeal to a magistrate's court or, in Scotland, to the sheriff.

(2) The procedure on appeal to a magistrate's court is by way of complaint and the Magistrates' Court Act 1980(a) or, in the case of Northern Ireland, the Magistrates' Courts (Northern Ireland) Order 1981(b), applies to the proceedings.

(3) An appeal to the sheriff is by summary application.

(4) 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.

(5) A notice served under this Schedule must state—

- (a) the right of appeal to a magistrates' court or the sheriff; and
- (b) the period in which such an appeal may be brought.

(6) On an appeal under this paragraph, 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; and a reference in this sub-paragraph to a court includes, in relation to Scotland, a reference to the sheriff.

### Compliance with notices

6. A notice served under this Schedule 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.

### EXPLANATORY NOTE

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

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 (OJ No L 157, 10.6.1992, p. 10). They also implement Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ No L 267, 8.10.2008, p 8).

Part 2 provides for the accreditation of producers and registration of suppliers and varieties of fruit plant. Regulation 6 prohibits a producer from marketing fruit plants and propagating material without being accredited by the appropriate authority. Regulation 7 provides for the registration of all persons involved professionally in the marketing, production, reproduction or importation of fruit plant material and prohibits, from 30 September 2012, the marketing of such material without being registered. Schedule 2 makes provision for the registration of varieties of fruit plant that are distinct, uniform and stable and which conform to international standards for the variety. Schedule 2 also makes provision for the registration of other varieties that are marketed in the United Kingdom before 30th September 2012 and provides additional criteria for the registration of genetically modified varieties.

Part 3 sets out the requirements for marketing fruit plants and propagating material. Regulation 11, which applies from 30th September 2012, specifies the varieties that may be marketed from that date. Regulation 12 sets out the quality requirements for fruit plant material, including that it must be substantially free on visual inspection from the specified organisms and diseases and defects likely to impair its usefulness and it must have adequate identity and purity relative to its genus, species or variety. Regulation 14 sets out the information that must accompany fruit plants and propagating material when it is marketed. Regulation 15 sets out additional quality requirements for the marketing of *Citrus*.

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(a) 1980 c.43; sections 51 and 52 have been substituted by section 47 of the Courts Act 2003 (c. 39).

(b) S.I. 1981/1675 (N.I. 26).

Part 4 imposes additional requirements on suppliers including requirements on producers to treat fruit plant material showing signs of any of the specified organism or diseases (regulation 16) and to monitor the production process in accordance with regulation 17. Regulation 18 requires suppliers to keep records.

Part 5 deals with the enforcement of these Regulations. Regulation 19 provides for the appointment of inspectors. Schedule 4 sets out inspectors' powers, including a power to serve a notice on any person to require that person to provide information and a power to prohibit the movement of plant material that is not substantially free from the diseases and organisms referred to in regulation 12(a). An inspector also has a power to serve a notice on any person acting in contravention of these Regulations to require that person to comply with the Regulations or to prohibit that person from acting in breach of them. Under regulation 20(1) a person who fails to comply with any such notice is guilty of an offence. Under regulation 20(2) a person guilty of an offence under the Regulations is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

A transposition note and an impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Food and Environment Research Agency, Whitehouse Lane, Huntingdon Road, Cambridge, CB3 0LF and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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