

Consultation on the implementation and enforcement of the EC Marketing Standards in fresh fruit and vegetables as revised by Commission Regulation (EC) No. 1221/2008

February 2009

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This document is available on both the Defra and Welsh Assembly Government websites:
<http://www.defra.gov.uk/corporate/consult/fruitandveg/index.htm> and
<http://wales.gov.uk/consultations/environmentandcountryside/?lang=en>

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Chapter 1: Scope of the consultation

<p>Topic of this consultation:</p>	<p>EC Marketing Standards for fresh fruit and vegetables exist for a wide range of produce, although not all. Provision for Marketing Standards for fresh fruit and vegetables is made in Council Regulation (EC) No 1234/2007 which establishes a common organisation of agricultural markets and specific provisions for certain agricultural products, otherwise referred to as the Single CMO Regulation. Part IX of Annex 1 to this Regulation sets out the produce covered (see Annex D to this document for the list). Subject to certain exemptions, the Marketing Standards made under Council Regulation (EC) No 1234/2007 apply to all stages of distribution - import, export, packing, distribution, wholesale, retail. Their objective is to keep products of unsatisfactory quality off the market i.e. fresh products should be sound, fair and of marketable quality before being sold within the EU. They also aim to ensure that produce is accurately labelled, guide production to meet consumer requirements and facilitate trade under fair conditions.</p> <p>Their primary purpose was to facilitate trade although recently they have taken more account of organoleptic qualities (e.g. sweetness of fruit).</p> <p>The consultation seeks views about the implementation of reforms to the Marketing Standards regime, specifically the amendments which have been made to Commission Regulation (EC) No 1580/2007 which gives detailed rules about the Marketing Standards.</p>
<p>Scope of this consultation:</p>	<p>The European Commission has revised the Marketing Standards for fresh fruit and vegetables. The revisions aim to harmonise, consolidate, simplify and bring some deregulation to the Marketing Standards and their application for all fresh fruit and vegetables covered by them. This has been done by introducing Commission Regulation (EC) No 1221/2008, which amends Commission Regulation (EC) No 1580/2007.</p> <p>Whilst there is an element of deregulation the whole market is not being deregulated as 10 Specific Marketing Standards will remain and a new General Marketing Standard is being introduced for all other products covered by the Regulation unless covered by an exemption (see list at Annex D). The reforms apply from 1 July 2009. In the meantime the current standards will remain in place and will be enforced until 30 June 2009.</p> <p>The requirements of the new Regulation are directly applicable in all EU Member States, however there are some areas open to subsidiarity i.e.</p> <ul style="list-style-type: none"> • risk assessment to be used for targeted inspections;

	<ul style="list-style-type: none"> • whether to extend the Approved Trader Scheme to importers and exporters to allow traders to self-certify consignments; and • whether to allow a derogation from the specific Marketing Standards for products presented for retail sale to consumers for their personal use and specifically labelled as intended for processing. <p>Please note that this consultation does not cover Marketing Standards for bananas as these standards are covered under separate EU arrangements and are not being reformed (such standards apply to green unripened bananas at the import stage only and do <u>not</u> apply at retail point).</p> <p>We are seeking views on:</p> <ul style="list-style-type: none"> • our risk-based assessment systems; • whether to extend the Approved Trader Scheme; • the costs and benefits section of the partial Impact Assessment, particularly in relation to the Approved Trader Scheme and the additional level of interest among traders of availing of the option that enables the ATS to be extended wider; • our intention to exercise the retail sale exemption to the Specific Marketing Standards for products sold to the consumer for their personal use and labelled as ‘intended for processing’; and • any other aspects of the consultation.
Geographical scope:	This consultation covers England and Wales. The Scottish Government will be responsible for implementing the Regulation in Scotland and the Department for Agriculture and Rural Development in Northern Ireland.
Impact Assessment:	Partial Impact Assessments for England and Wales can be located at Annex B & C.

Basic Information

To:	We welcome responses from all areas of the fresh fruit and vegetable industry and consumer interests. We particularly welcome comments on the questions asked through the document (listed at Annex A) and the Impact Assessment at Annex B (particularly the costs and benefits section). Any other comments are also welcome. When responding it would be useful if you could state the nature of your business or organisation and the capacity in which you are responding.
Body/bodies responsible	This is a joint consultation between the Department for Environment, Food and Rural Affairs and the Welsh Assembly Government.

for the consultation:	
Duration:	The consultation will run from 27 February 2009 with the deadline for responses being 24 April 2009. This is an 8 week consultation, which will combine a written exercise with industry and consumer focused workshops.
Enquiries:	Enquiries in relation to this consultation should go to Amanda Scarfe on 020 7238 6780 or by email at fruitandveg.reform@defra.gsi.gov.uk
How to respond:	Responses should be sent by post or by email to: Amanda Scarfe Horticulture and Potatoes Team Defra Area 8C, 9 Millbank c/o Nobel House 17 Smith Square London SW1P 3JR Email: fruitandveg.reform@defra.gsi.gov.uk
Additional ways to become involved:	This is a largely technical issue with specialist interests. The consultation combines this written exercise with industry and consumer focused workshops. We plan to hold these workshops in early March and in more than one location depending on demand. We are very keen to engage with those affected and help them understand the changes, seek their views and also deal with their concerns. We believe the face to face interaction provided by workshops will be very beneficial. They will include practical demonstrations of the new requirements from the grading of fresh produce to the process of attaining customs clearance. As this is a public consultation the workshops will also be open to others if they have an interest but places will be allocated on a first come first served basis. Expressions of interest should be emailed to Hmi-tdc@rpa.gsi.gov.uk by 13 March 2009.
After the consultation:	Following the consultation Defra and the Welsh Assembly Government will fully consider the responses and take them into account in deciding how to apply the Regulation in particular those areas open to subsidiarity. A summary of responses will be published on both the Defra and Welsh Assembly Government websites at the following links within 12 weeks of the consultation closing date http://www.defra.gov.uk/corporate/consult/fruitandveg/index.htm http://wales.gov.uk/consultations/environmentandcountryside/?lang=en
Compliance with the Code of	This consultation complies with the Government's Code of Practice on Consultation.

Practice on Consultation:	
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Background

Getting to this stage:	This Regulation was formulated during discussions over a number of Single Common Market Organisation Management Committee meetings in Brussels. Background to the current regime is contained in Chapter 2.
Previous engagement:	Industry has been engaged through an article placed in the trade press about consumer trade via the Fresh Produce Journal in the summer of 2008 and a presentation at a seminar at the international Fresh Produce Show at the Excel Centre in London on 9 October 2008. Informal consultation over the autumn of 2008 has also taken place with the Fresh Produce Consortium, the NFU, the Horticulture Development Company, Devolved Administrations as well as information sent to Defra's Consumer Representatives Group.

Chapter 2: Summary of the current Marketing Standards regime for fresh fruit and vegetables

Background

2.1 Council Regulation (EC) No 1234/2007 established a common organisation of agricultural markets which includes specific provision as regards the fruit and vegetable sector, including Marketing Standards. Commission Regulation (EC) No 1580/2007 lays down the implementing rules in the fruit and vegetable sector, which again covers Marketing Standards.

2.2 EC Marketing Standards for fresh fruit and vegetables exist for a wide range of produce, although not all - there are currently 36 separate standards. Subject to certain exemptions (see RPAI website for further details at <http://www.rpa.gov.uk>) they apply to all stages of distribution - import, export, packing, distribution, wholesale, retail. Their objective is to keep products of unsatisfactory quality off the market. They also aim to ensure that produce is accurately labelled, guide production to meet consumer requirements and facilitate trade under fair conditions.

2.3 Their primary purpose was to facilitate trade although recently they have taken more account of organoleptic qualities (e.g. sweetness of fruit). They also enable traders to talk the same international language, compare like with like and specify quality and other requirements with a supplier having the confidence that they know what will turn up. For example, a buyer in England could talk to a supplier of apples in New Zealand and both parties would have a clear idea of what was being discussed. However, the market has been subject to rapid change over recent years and supermarket retailers in particular often have their own more exacting standards.

2.4 The Marketing Standards provisions currently include:

- 36 separate standards for products such as carrots, plums, cauliflowers, peas, beans, apricots, apples, pears, cherries, citrus fruit etc. The standards include criteria of quality, size, labelling, packaging and presentation. They provide for three quality classes: Extra Class (being better than Class I but rarely used), Class I and Class II although some products only have two classes (e.g. sweet peppers, lettuces). For Class II the variations in shape, size and colouring are more generous and there is more scope for variation in weight and size in consignments. It also allows for up to 10% of produce to be outside Class II, providing it is not rotten.
- Exemptions from the standards e.g. products sent for processing
- Information particulars required
- Rules on sales packages
- Rules on conformity checks by enforcement bodies
- Trader database rules
- Approved Trader Scheme
- Rules in relation to approval of checking operations by Third Countries

History

2.5 Statutory grading rules for fresh fruit and vegetables, applicable in the UK, were established well before we joined the European Union. A common misconception is that such Marketing Standards have only come about because of the UK's Membership of the EU. However, the present standards have been developed in close co-operation with our partners in the EU and all sectors of the food chain. In turn the EU standards generally reflect developments on the wider international trading stage, such as the United Nations Economic Commission for Europe (UNECE). Standards are a well established, important and accepted part of international trade.

Benefits to the consumer

2.6 As previously mentioned, the standards are mainly designed to facilitate trade. Nevertheless, the standards do also provide a degree of consumer protection in a sector where most products are highly perishable and serious defects in the product can develop extremely rapidly. However, recent developments in the standards are of more direct benefit to the consumer, for example objective tests (brix/sugar content) have been included to ensure satisfactory ripeness and better taste.

2.7 Often the full impact of the standards goes largely unseen by the consumer and their benefits are taken for granted – defects such as maggots in apples and lettuce full of grit are rarities these days due to the requirements of the standards and the way that they are enforced. In addition, they help determine whether produce is of the right maturity and ensure that produce is not marketed too early. In addition, consumers benefit from labelling requirements at the retail stage where labelling or shelf displays must give details of nature of produce: quality class (Extra Class, Class I or II); country of origin and variety.

Enforcement of the standards

2.8 The standards are directly applicable in all EU Member States. In England and Wales, the standards are currently implemented by and enforced under the following legislation:

- Agriculture & Horticulture Act 1964
- The Grading of Horticultural Produce (Amendment) Regulations 1973
- Grading of Horticultural Produce (Forms of Labels) Regulations 1982
- The Grading of Horticultural Produce (Amendment) Regulations 1983
- Horticulture Produce Act 1986

There will instead be a new set of Regulations made under s.2(2) of the European Communities Act 1972.

2.9 The standards are enforced in England and Wales by the Horticultural Marketing Inspection Branch of the Rural Payments Agency Inspectorate (RPAI) service. Separate arrangements apply in Scotland and Northern Ireland.

2.10 The RPAI has invested heavily in risk based assessment in both assessing frequency of inspections as well as in targeting those that need to be guided in changing behaviours. The Hampton and Macrory Reviews have been central to the risk based approach. However, failure to comply with the legislation may give rise to a criminal offence. The Inspectorate endeavours to assist traders to comply with the law, although in some cases where traders blatantly or persistently fail to meet their obligations prosecution may be considered as a last resort.

2.11 These current standards are fully valid and enforceable until midnight on 30 June 2009.

Chapter 3: The new EC Regulation revising the Marketing Standards regime for fresh fruit and vegetables

Background

3.1 Revisions to the Marketing Standards for fresh fruit and vegetables have been introduced by Commission Regulation (EC) No 1221/2008, which amends Commission Regulation (EC) No 1580/2007. The latter Regulation effectively lays down the implementing rules of Council Regulation (EC) No 1234/2007. (Provisions of earlier instruments, namely Council Regulations (EC) No. 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 have now been incorporated into Council Regulation (EC) No 1234/2007). The aim of the amendments to Commission Regulation (EC) No 1580/2007 are to harmonise, consolidate, simplify and deregulate the EC Marketing Standards and their application for all fresh fruit and vegetables, while also ensuring that produce traded is sound, fair and of marketable quality. The Regulation has been driven by the Commission's reform of the sector in 2007.

3.2 The Regulation's implementation date is 1 July 2009. Any further references to Regulation 1221/2008 in this document should be understood to mean as amending Commission Regulation (EC) No 1580/2007. Similarly, further references to Commission Regulation (EC) No 1580/2007 should be understood to mean that Regulation as amended by Commission Regulation (EC) No 1221/2008.

3.3 The key features of the new Regulation are:

- There should be a strengthening of the role of risk assessment in selecting products for checks.
- A reduction from 36 to 10 Specific Marketing Standards (SMS) which are to be enforced as at present at all stages of the marketing chain (i.e. import, grower, wholesale, distribution and retail).
- A General Marketing Standard (GMS) which will apply to all fresh produce not covered by a Specific Marketing Standard. See Annex D for a list of products. This will be legally binding on all traders in these products. Member States may opt to adjust the frequency of selective checks on low risk products based on risk assessment.
- The database of traders needs to be maintained (RPAI will update and extend to cover all products).
- Data on the conformity of all products is required to ensure conformity checks can be carried out with appropriate frequency based on risk.
- Allows for mixed packages of a net weight of 5kgs or less providing the products are of uniform quality and comply with the relevant Specific Marketing Standard or where none applies then the General Marketing Standard. In addition if the fruit and vegetables in a mix originate in more than one Member State or third country, the full names of the countries of origin may be replaced with one of several phrases e.g. 'mix of EC fruit and vegetables'.
- Approved Inspection Services (AIS) for selected approved Third Countries to remain.

- Approved Trader Scheme (ATS) may be extended to allow traders to self certify consignments at import.
- Removal of requirement to notify and certify consignments for processing.
- Extension of regulatory powers to distance selling, such as via the internet for example on-line shopping and other internet trading.
- Option for derogation from the Specific Marketing Standards for products presented for retail sale to consumers for their personal use and labelled as 'intended for processing' (or similar wording). To be able to use this derogation the produce would still have to meet the General Marketing Standard.

What is no longer part of the system

3.4 The following are no longer part of the regulatory requirements:

- 26 products will no longer have Specific Marketing Standards relating to classification, size, shape, development, variety and labelling details:
 - Apricots
 - Artichokes
 - Asparagus
 - Aubergines
 - Avocados
 - Beans
 - Brussel sprouts
 - Carrots
 - Cauliflowers
 - Cherries
 - Courgettes
 - Cucumbers
 - Cultivated mushrooms
 - Garlic
 - Hazelnuts in shell
 - Headed cabbages
 - Leeks
 - Melons
 - Onions
 - Peas
 - Plums
 - Ribbed celery
 - Spinach
 - Walnuts in shell
 - Watermelons
 - Witloof chicory
- Notification and certificates for all imported produce for processing (2,250 certificates were issues in 2007)
- References to minimum quality criteria for products intended for industrial processing deleted as this relates to aid schemes abolished in the 2007 reform

What has been retained from the current arrangements

3.5 The following elements are retained in the new Regulation:

- 10 Specific Marketing Standards for
 - apples
 - citrus fruit
 - kiwi fruit
 - lettuces, curled leaved and broad-leaved endives
 - peaches and nectarines
 - pears
 - strawberries
 - sweet peppers
 - table grapes and
 - tomatoes

- Significant core of official controls
- Inspection and enforcement required at all stages of the marketing chain
- Import notification
- Approved Inspection Services (AIS) for selected Third Countries.
- Risk based approach to enforcement
- Removal of rotten/soiled/pest affected produce

3.6 It should be noted that the 10 Specific Marketing Standards were chosen as they are the top 10 traded produce in the EU by value - both imported and intra-EU trade. This represents approximately 50% of UK traded produce by volume and there will be no change here in the regulatory regime.

What is new

3.7 The following are the new requirements brought in by this Regulation:

- A General Marketing Standard for all produce covered by the regime (see Annex D), apart from those covered by the 10 Specific Marketing Standards, legally binding on all traders, to deliver the 'sound, fair and of marketable quality' requirement.
- Country of origin labelling for all products covered by the Marketing Standards for transparency.
- Member States allowed to decide whether to implement a derogation to the 10 Specific Marketing Standards for produce sold to consumers for personal use at retail level if it meets specific labelling criteria i.e. labelled as intended for processing (or similar wording). This produce would still need to meet the General Marketing Standard.
- Allows for mixed packages of a net weight of 5kgs or less providing the products are of uniform quality and comply with the relevant Specific Marketing Standard or where none applies then the General Marketing Standard. In addition if the fruit and vegetables in a mix originate in more than one Member State or third country, the full names of the countries of origin may be replaced with one of several phrases e.g. 'mix of EC fruit and vegetables'.
- Member States allowed to decide whether to extend the Approved Trader Scheme to importers and exporters
- Distance contracts (i.e. via internet, for example on-line shopping and other internet trading) brought into scope of the Regulation i.e. requirements now apply to these sales.
- Definition of 'trader' widened to ensure all in the marketing chain are covered by the Regulation.
- Exemption from the General Marketing Standard for certain products not intact when sold i.e. products having undergone a trimming or cutting making them 'ready to eat' or kitchen ready'.
- Products subject to the General Marketing Standard will be considered as conforming where the holder is able to show they are in conformity with any such applicable United Nations Economic Commission for Europe (UNECE) standards.

3.8 The new Regulation introduces a new consumer focus. For example:

- The General Marketing Standard is a minimum standard below which traders should have no interest in selling fresh produce. Selling products of poorer quality would be to the detriment of the consumer.
- Products not previously covered by Marketing Standards will now be checked for quality as they will be covered by the General Marketing Standard. This will provide added consumer protection as the GMS will introduce a basic level of protection and information for consumers. This will enable the RPAI to consider consumer protection as well as market protection.
- RPAI staff will be able to advise, educate and inform the trade over a broader range of fresh products.
- Requirement for country of origin labelling on all products which allows the purchaser to make an informed choice.
- The introduction of a transparent generic simple minimum standard to protect the consumer.
- Possible opportunity for consumers to buy appropriately labelled and specifically marketed products at retail for home processing, e.g. to make jam, pickles, for juicing, etc.
- Extends consumer protection to internet sales.
- Existing benefits of Marketing Standards to remain:
 - Removal of rotten produce;
 - Ensuring produce is free from pests and disease;
 - Transparency of Marketing Standards; and
 - Facilitation of trade.

Chapter 4: Implementation of the revised Marketing Standards regime in England and Wales

4.1 The provisions of Commission Regulation (EC) No. 1221/2008 are directly applicable in UK law. Our current domestic regulations, which define the offences and penalties to ensure we are able to enforce the EC Marketing Standards, need to be replaced to ensure we can fully enforce the new requirements. The new domestic Regulations will provide some additional powers to enforcement officers, contain the offences and penalties relating to the revised Marketing Standards and exercise the derogation from Specific Marketing Standards for products presented for retail sale to consumers for their personal use and labelled as intended for processing. For further information on how we plan to do this please refer to section 4.19 below.

4.2 Whilst we are legally obliged to implement this new Regulation there are some areas for subsidiarity where we do have choices to make. We are therefore seeking your views on:

- our risk-based assessment systems;
- whether to extend the Approved Trader Scheme;
- the costs and benefits section of the partial Impact Assessment, particularly in relation to the Approved Trader Scheme and the additional level of interest among traders of availing of the option that enables the ATS to be extended wider;
- the retail sale exemption to the Specific Marketing Standards for products sold to the consumer for their personal use and labelled as 'intended for processing'; and
- any other aspects of the consultation.

The paragraphs below describe how we propose to implement these areas as well as including some specific questions on which we would welcome your views to help us decide on the way forward.

Specific Marketing Standards (SMS)

4.3 The 10 remaining standards are for produce that has been identified as being the most traded within the EU by value, and currently representing approximately 50% of UK trade in fresh produce by volume. Checks must be made on these at all stages (i.e. at import, wholesale, distribution and retail) of the marketing chain. We believe the existing mature risk based process embedded in the PEACH¹ system and import procedures meets the aspiration of the new Regulation to ensure risk is at the heart of official controls. Notification of imports for all products from third countries subject to a SMS will continue to be required via the PEACH system.

¹ PEACH is a web based system allowing importers to notify RPA Inspectorate of consignments of fruit and vegetables being imported into the UK – the system has built in criteria for making a risk assessment and allows Inspectors to determine which consignments to physically check. See paragraph 4.7 for further information.

Summary	Benefits
<p>10 SMS to be enforced at all stages (including to internet and other distance sales) based on existing risk criteria at import and on the domestic market.</p> <p>Possible impact if Approved Trader Scheme is extended to import (see section on ATS below).</p>	<p>Trade: Significant reduction in burden to trade in only having 10 SMS and removing the necessity to classify and fully label the other 26 as at present.</p> <p>Consumer: Existing benefits of Marketing Standards to remain</p> <p>Extends consumer protection to internet sales/on-line shopping/other internet trading.</p> <p>Defra/Welsh Assembly Government/RPAI: Deregulatory as reduction in the need for classification for 26 crops and simplified labelling.</p>

General Marketing Standard (GMS)

4.4 This will apply to all fresh produce not covered by a Specific Marketing Standard (see Annex D) and is legally binding on the trade. Checks need to be carried out based on the identified risk of non-compliance. We envisage that as this is a new standard an initial transition period of advisory inspections will be applied on these products before notices are issued and sanctions taken. The General Marketing Standard is a deregulatory measure that simplifies the burden of responsibility for traders handling the 26 products losing their Specific Marketing Standard, whilst retaining a basic level of protection and information for customers.

4.5 We will require import notification via PEACH for **all** produce subject to the GMS. Whilst we are considering focusing enforcement at import point for those products covered by Specific Marketing Standards, we will have to carry out some checks on other GMS produce in order to have an effective and credible risk based system. We will therefore need notification of all crops covered by the GMS and SMS via the PEACH import notification system.

4.6 We will be enforcing the GMS at all levels of the supply chain.

What are your views on our planned approach to require import notification of all produce and of enforcing the General Marketing Standard at point of import?

Summary	Benefits
<p>Apply GMS to all products not covered by Specific Marketing Standards at all stages (including to internet and other distance sales). Data from Inspections feeds into risk assessment system.</p>	<p>Trade: Significant reduction in classification requirements, as need to meet minimum requirements only.</p> <p>Reduction in labelling requirement to origin only.</p> <p>Greater level of guidance supplied by RPAI to trade.</p> <p>Greater transparency across products not previously covered by any Marketing Standard.</p> <p>Application at import is the most cost effective way of controlling quality and labelling for the consumer.</p> <p>Consumer: Products not previously covered by Marketing Standards will now be checked for quality.</p> <p>Wider availability of produce which will provide a greater choice for consumers</p> <p>Added consumer protection as the GMS will introduce a basic level of protection and information for consumers</p> <p>RPAI can now consider consumer protection as well as market protection.</p> <p>Requirement for country of origin labelling to inform consumer choice</p> <p>Extends consumer protection to internet sales/on-line shopping/other internet trading.</p> <p>Existing benefits of Marketing Standards to remain</p> <p>Defra/Welsh Assembly Government/RPAI: Significant benefits in consumer information and protection. i.e. in removing unacceptable product and informing of country of origin.</p> <p>Regulation would be transparent in that traders and consumers should have no interest in selling product below the minimum requirements of the</p>

	<p>GMS.</p> <p>Helps to underpin the SMS and helps to meet Defra's commitment to a light touch enforcement process.</p> <p>RPAI able to collect data for necessary database, and risk based system and hence compliance with regulation.</p>
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It should be noted that while the requirements of grading between Class I and Class II will be removed for GMS products, all growers will still have to meet the grading requirements of their supermarket and other customers.

Risk assessment, PEACH and ICRAS systems

4.7 The RPAI already holds an extensive database of fresh fruit and vegetable traders and has comprehensive risk assessment systems in place. These are an In-country Risk Assessment System (ICRAS) and PEACH for imports. These will need to be extended under the GMS to cover traders in all products covered by it.

4.8 PEACH and the underpinning risk criteria were developed with full consultation with industry during 2002 and applications through PEACH were required from April 2003. PEACH assesses the risk of each application using a set of defined risk factors and the past inspection history of similar consignments. After risk assessment each consignment is given a risk category i.e. red (high risk), amber (medium risk) or green (low risk). Red risk consignments will be inspected wherever possible, amber consignments need an inspector's decision whether they will be inspected and green consignments automatically have a certificate available for printing by the applicant or their agent.

4.9 There are 10 risk criteria within PEACH, these are:

- Automated Certificate return
 - Emergency contingency built into system to allow consignments to be turned green where a problem occurred which would mean inspectors were unable to carry out inspections at entry point for some reason.
- Approved inspections
 - Applies to consignments arriving from a third country which has Approved Inspection Status (AIS) without a certificate; meaning it will be raised to a higher level of risk.
 - Random sample percentage - A certain number of consignments from AIS countries with certificates are required to be randomly selected in order to check conformity levels of the country producing the certificates.
- Consignment weight

- Very small consignments or samples generally confer a low risk and are resource intensive from an inspector's point of view. Therefore there is a minimum number of boxes in a consignment, or a minimum weight of the total consignment below which an automatic return will be made to the applicant supplying them with a certificate. The minimum weight and number is kept confidential to the RPAI. The minimum is different for each commodity and each transport method.
- Inspection history
 - This is the main part of the assessment and is updated every evening based on previous inspections.
- Seasonality
 - The Fresh Produce Journal table indicating the time of year, length of season for each product and in some cases variety from each country of origin is used.
- Mode of transport
- Random sampling
 - A significant proportion of consignments will be cleared on the low risk criteria in the automated system. Part of the Risk Assessment process is to randomly check consignments which would otherwise go through the automatically certificated channel to check the effectiveness of the risk assessment system. Such inspections are chosen randomly according to a recognised random number generator.
- Automatic release
 - This is a default setting which will enable consignments to be automatically released with a conformity certificate if no action takes place on the consignment concerned within a certain period of time.
- Flagged profile
 - This criterion is used to alter the number of consignments for a particular product from a particular origin or importer that are subject to inspection e.g. where an importer might attempt to circumvent the PEACH system or where inspection history highlights problems with origin or product.
- Certificate validity period
 - Each certificate carries a period of validity. The period of validity present on the certificate is sufficient to allow customs clearance but also does not give so long a period that the product may in fact fail a physical inspection due to deterioration. The period will be set as a separate value for each commodity e.g. a highly perishable crop may receive a period of 24 hours while a less perishable crop may receive a period of 10 days.

We realise there have been some recent issues with the PEACH system which are being addressed. However, it would be useful if you could consider the following question in light of a fully functioning system.

As we are retaining PEACH for import notifications are there any issues with the current system you would like to highlight or areas that could be improved?

Do you agree with the risk based criteria currently used by PEACH to apportion risk status to consignments?

4.10 For produce on the domestic market the ICRAS system identifies traders at greater risk of having consignments not in conformity with the Marketing Standards. We believe this meets the requirements of the new Regulation and intend to continue to use this as the basis for deciding inspection activity.

4.11 The system is a list of traders and allocates points to all traders based on breaches of the regulations found at an inspection visit or for produce despatched by the trader when found at any point within the marketing chain. A visit where no breaches are found reduces the points total. Points also build up on a weekly basis if an enforcement visit is not made acting as a prompt for future visits as the points total increases and moves the trader up the table. Those traders with good records of compliance receive less frequent visits while those with poor records of compliance will receive increased attention in an attempt to reverse the trend.

As we are retaining the ICRAS system for domestic trade are there any issues with the current system you would like to highlight or areas that could be improved?

Do you agree with the risk based criteria currently used by ICRAS to apportion risk status to traders?

Summary	Benefits
<p>Risk based systems to be extended to cover additional traders and GMS products.</p>	<p>Trade: Effective data input will ensure only products and traders at risk are targeted for checks.</p> <p>Retaining ICRAS and PEACH will ensure that trade can be facilitated in a seamless transition and industry has a system which they are familiar with and have confidence in.</p> <p>Consumer: Ensures that inspections are targeted to products and traders in the highest risk category</p> <p>Defra/Welsh Assembly Government/RPAI: An effective input of all data into an extended e-HMI database will help effectively target at-risk traders and products to comply with regulation.</p> <p>Retaining PEACH and ICRAS will be a saving on time and resources in developing an alternative.</p>

Approved Trader Scheme

4.12 This scheme is administered by the Rural Payments Agency Inspectorate and allows traders guaranteeing a uniform and high conformity rate of the fruit and vegetables subject to Marketing Standards to use specific labelling on each package. To take part the trader must be approved by the RPAI and meet set criteria.

4.13 This Scheme is to remain for Specific Marketing Standards and to be extended to the General Marketing Standard. In addition Member States have the option to extend the Scheme to cover importers and exporters. Traders under this scheme would need to be regularly audited and meet the requirements of Article 11 of Commission Regulation (EC) No 1580/2007 i.e. traders in the ATS will need:

- inspection staff who have received training approved by the Rural Payments Agency Inspectorate;
- have suitable equipment for preparing and packing produce;
- commit themselves to carry out a conformity check on the goods they dispatch; and
- have a register recording all the checks carried out.

This also does not preclude any HMRC procedures or changes in procedures.

Summary	Benefits
Current Approved Trader Scheme to be retained and extended.	<p>Trade: To exporters of all products allowing them to issue conformity certificates.</p> <p>To a limited number of importers who can comply with requirements of Article 11, likely to be those registered with HMRC as having CFSP premises.</p> <p>Defra/Welsh Assembly Government/RPAI: Reduction in direct inspections</p>

4.14 Approval under this Scheme will involve costs to the trader but it will be the trader’s decision as to whether seeking approval would be worth the financial investment. It has not been possible for us to quantify the potential costs and benefits to a trader from gaining approval under the ATS in our partial impact assessment and so we particularly seek comments and evidence from those which currently have approval to help us estimate what these may be. If responding in relation to this point it would be useful if you could provide details of your type of business so we can assess the range of costs and benefits by types of business or areas of the industry.

If you have been approved under the ATS are you able to supply any information on the costs and benefits to your organisation experienced as a result of operating under this Scheme?

Should the Approved Trader Scheme be extended to applications from exporters and importers and if so do you think there would be much demand for participation in the Scheme?

The Third Country Approved Importer Scheme

4.15 This Scheme remains unchanged.

Home processing derogation - *exemption from the Specific Marketing Standards for products sold at retail to consumers for their personal use which are labelled as 'product intended for processing' (or similar wording)*

4.16 Member States may provide for a derogation from the Specific Marketing Standards for products sold at retail to consumers for personal use and labelled as 'intended for processing' (or similar wording). However, the products would still need to meet the General Marketing Standard. This derogation would allow new opportunities for consumers to buy appropriately labelled and specifically marketed produce at retail for home processing, e.g. to make jam, pickles, for juicing, etc.

4.17 We envisage that this will be enforced through routine inspections and any produce subject to a Specific Marketing Standard which is outgraded by a RPAI inspector but meets the General Marketing Standard could still be sold using this derogation, provided it is labelled as 'product intended for processing' (or similar wording)

Summary	Benefits
Exemption from the Specific Marketing Standards for products sold at retail to consumers for their personal use which are labelled as 'product intended for processing'	<p>Trade: Able to sell produce that otherwise could not be sold to the consumer</p> <p>Consumer: Greater choice in product availability</p> <p>Possibility of some cheaper produce being available</p> <p>Promotes activities such as home jam and preserve making etc.</p> <p>Defra/Welsh Assembly Government/RPAI: Inspectors can offer this derogation where produce is outgraded from a Specific Marketing Standard but is still compliant with the General Marketing Standard</p>

We are intending to allow the exemption from the Specific Marketing Standards for products sold at retail to consumers for their personal use which are labelled 'product intended for processing' – do you have any comments?

Packages containing mixes of fruit and vegetables

4.18 Article 6 of Commission Regulation (EC) No 1580/2007 provides for the marketing of mixed packages of fruit and vegetables of a net weight of 5kgs or less providing the products are of uniform quality and comply with the relevant Specific Marketing Standard or where none applies then the General Marketing Standard. In addition if the fruit and vegetables in a mix originate in more than one Member State or third country, the full names of the countries of origin may be replaced with one of several phrases:

- 'mix of EC fruit and vegetables',
- 'mix of non-EC fruit and vegetables, or
- 'mix of EC and non-EC fruit and vegetables'

Summary	Benefits
Mixed packages	<p>Trade: Allows for larger mixed packages to be sold providing produce of uniform quality</p> <p>Simplified the labelling</p> <p>Consumer: More variety in available size of mixed packages such as stew packs etc.</p>

Offences and penalties

4.19 In the past, in order to enforce EC Marketing Standards, we have made joint Statutory Instruments with Wales using the powers contained in the Agriculture and Horticulture Act 1964 as listed in section 2.8 above. However, in order to implement the revised Marketing Standards introduced by Commission Regulation 1221/2008, we propose to use section 2(2) powers contained within the European Communities Act 1972. Under s.2(2) of the European Communities Act 1972, Welsh Ministers can make their own SI in relation to Wales, which they have chosen to do. Drafts of both the English and Welsh SI are available at <http://www.defra.gov.uk/corporate/consult/foodfarming.htm> and <http://wales.gov.uk/consultations/environmentandcountryside/?lang=en>.

The new domestic Regulations (subject to clearance by the Ministry of Justice and Home Office), as currently drafted, will:

- Where relevant and still required carry across the powers and offences in the current legislation, expanding or modifying them as necessary.
- Make provision for exercising the derogation in Article 3(3) of Commission Regulation 1580/2007 which gives an exemption for produce subject to Specific Marketing Standards when presented for retail sale to consumers for their personal use and labelled as 'intended for processing'.
- Contain a definition of 'Community marketing rules' to reflect the revised Marketing Standards and their implementing rules.
- Insert additional powers to allow for effective inspections and enforcement, especially in relation to the new requirements for distance contracts in Article 4(3) of Commission Regulation 1580/2007, and to address any weaknesses in the existing powers. Additional powers include, in particular:
 - Power for authorised officers to be accompanied by representatives of the European Commission;
 - Power to allow authorised officers to have access to a broader range of records and to inspect and check computers and associated equipment and require records to be produced;
 - Power for authorised officers to seize computers where they have a reasonable suspicion that an offence under the Regulations has been committed, provided that a written receipt is given by the authorised officer and they are returned as soon as practicable;
 - Power to affix a 'labelling defect label' for produce which ought to be labelled under Community marketing rules but comes in without any label at all, or has other labelling defects not relating to a particular class under the relevant Specific Marketing Standard applying to that produce, if applicable.
- Expands the scope of the power to control the movement of horticultural produce, by giving written notice, to enable authorised officers to put a stop notice label on horticultural produce if they are satisfied that an offence under the Regulations is being committed, but where it has not been possible for an inspection to have taken place. The notice must give reasons and specify that options for bringing the produce into conformity with the Community marketing rules or for its disposal have been discussed.
- Provide for the content of re-graded, out-graded, labelling defect and stop notice labels.
- Identify (in a Schedule) specific offences relating to Marketing Standards by reference to numbered Articles of Regulation 1580/2007.
- Revise provisions for penalties. There is no longer a term of imprisonment for three months and all offences, including obstruction in order to reflect the

increased occurrence and seriousness of the offence, now have a penalty fine of up to level 5 on the standard scale.

- Expand the offence of obstruction to specifically include obstruction of persons accompanying an authorised officer. At the same time the SI will not include a provision relating to “self-incrimination”. Protections for using such compulsorily acquired incriminating information in evidence are now provided via a trial court’s discretion.
- Not include the requirement for consent of the Attorney General or Minister to institute proceedings. This is an outdated provision which is no longer relevant.
- Include a general defence of acting with lawful authority, or of taking all reasonable precautions and exercising due diligence, together with a procedure for defendants to give notice of exercising this defence. This general defence replaces the specific defences of warranty and pleading of mistake, act of third party etc. The courts now play a greater role in protecting defendants in the case of obvious error/accident.

Please note that certain aspects of the new domestic Regulations are still under discussion. These include:

- the offence at regulation 4(8) relating to exports and imports of consignments of horticultural produce to or from places outside the European Community, in order to ensure that the offence is effective and does not inadvertently overlap with any Customs legislation;
- the need for specific information gateways or other provisions to enable the exchange of information between RPAI and HMRC, Trading Standards, etc. for the purposes of the Regulations and the Community marketing rules.

Advice and education

4.20 We envisage that as the General Marketing Standard is a new standard an initial transition period of advisory inspections will be applied by the RPAI on these products before notices are issued and sanctions taken. In addition the RPAI will ensure that explanatory material will be available to the trade as well as ensuring their website contains the most recent information and guidance.