



EUROPEAN COMMUNITIES (AGRICULTURAL PRODUCTS AND FOODSTUFFS QUALITY SCHEMES) REGULATIONS 2020

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Statutory Document No. 2020/0095



European Communities (Isle of Man) Act 1973

EUROPEAN COMMUNITIES (AGRICULTURAL PRODUCTS AND FOODSTUFFS QUALITY SCHEMES) REGULATIONS 2020¹

Laid before Tynwald: 17 March 2020

Coming into Operation: in accordance with regulation 2

The Council of Ministers makes the following Regulations under section 2B of the European Communities (Isle of Man) Act 1973.

Editorial Note: This instrument, made under the European Communities (Isle of Man) Act 1973, is continued by virtue of section 6 of the European Union and Trade Act 2019.

PART 1 – INTRODUCTORY

1 Title

These Regulations are the European Communities (Agricultural Products and Foodstuffs Quality Schemes) Regulations 2020.

2 Commencement

These Regulations come into operation on the day after they are made¹.

3 Interpretation

- (1) In these Regulations —
 - (a) terms that are also used in the EU Regulations have the same meaning as they have in the EU Regulations; and
 - (b) any reference to an Article, except where otherwise specified, is a reference to an Article of Regulation 1151/2012.²
- (2) In these Regulations —

¹ Section 2B(9) of the European Communities (Isle of Man) Act 1973 specifies that regulations shall be laid before Tynwald and if Tynwald at the sitting before which the regulations are laid or at the next following sitting resolves that the regulations shall be annulled, the regulations shall thereupon cease to have effect.

- “**appointed enforcement authority**” means an enforcement authority appointed under regulation 7(2);
- “**authorised officer**” means an officer appointed by an enforcement authority for the performance of the duties set out under regulation 7(1) or 7(3);
- “**competent authority**” has the meaning set out in regulation 4;
- “**costs**”, except in regulation 10(3), has the meaning given in regulation 15(7);
- “**delegated body**” means a separate legal person to which the competent authority has delegated certain official control tasks or certain tasks related to other official activities;
- “**Department**” means the Department of Environment, Food and Agriculture;
- “**enforcement authority**” means the Department or an appointed enforcement authority;
- “**enforcement notice**” means —
- (a) a compliance notice served under regulation 13;
 - (b) a non-compliance penalty notice served under regulation 14;
 - (c) an enforcement costs recovery notice served under regulation 15;
- “**the EU Regulations**” means —
- (a) Regulation 1151/2012; and
 - (b) Regulation 668/2014;
- “**PDO**” means a protected designation of origin;
- “**PGI**” means a protected geographical indication;
- “**premises**” includes any establishment, place, vehicle, stall or movable structure and any ship or aircraft;
- “**Regulation 1151/2012**” means Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs²;
- “**Regulation 664/2014**” means Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialties guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional rules³;

² OJ L 343, 14.12.2012, p. 1.

³ OJ L 179, 19.6.2014, p. 17.

“**Regulation 665/2014**” means Commission Delegated Regulation (EU) No 665/2014 of 11 March 2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to conditions of use of the optional quality term ‘mountain product’⁴;

“**Regulation 668/2014**” means Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs⁵;

“**Regulation (EU) 2017/625**” means Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products⁶; and

“**TSG**” means a traditional speciality guaranteed.

PART 2 – COMPETENT AUTHORITY AND CONTROL BODIES

4 The competent authority etc.

- (1) The competent authority is the Department.
- (2) The Department is responsible for exercising the functions of the designated authority for the purposes of Articles 13(3), 24(2) and 34.³

5 Responsibilities of appointed enforcement authority

- (1) An appointed enforcement authority must report to the Department when it exercises a power under these Regulations to –
 - (a) enter premises;
 - (b) issue an enforcement notice.
- (2) The report must cover the result of that exercise and must be submitted to the Department within 28 days of that result.

⁴ OJ L 179, 19.6.2014, p. 23.

⁵ OJ L 179, 19.6.2014, p. 36.

⁶ OJ L 095, 7.4.2017, p. 1.

6 [Revoked]⁴**PART 3 – DUTIES OF EXECUTION AND ENFORCEMENT****7 Enforcement authorities**

- (1) The Department must execute and enforce the provisions of the EU Regulations and these Regulations directly or ensure they are executed and enforced.
- (2) The Department may appoint additional enforcement authorities.
- (3) An appointed enforcement authority must execute and enforce the provisions of the EU Regulations and these Regulations specified in the terms of its appointment.
- (4) For the purposes of these Regulations the Isle of Man Office of Fair Trading is eligible for appointment as an enforcement authority.
- (5) The appointment of an appointed enforcement authority does not preclude the Department from exercising enforcement powers.

8 Authorised officers

An appointed enforcement authority must appoint authorised officers to act for the purpose of the performance of its duty under regulation 7(3).

9 Default powers and authorised officers' powers

- (1) Where the Department considers that the duty of an appointed enforcement authority has not been adequately carried out, the Department may appoint one or more persons to exercise the powers exercisable by an authorised officer and references in these Regulations to an authorised officer include an officer appointed in accordance with this paragraph.
- (2) Any expenses certified by the Department as having been incurred in respect of an appointed enforcement authority mentioned in paragraph (1) must be repaid on demand by that appointed enforcement authority.

10 Protection of officers acting in good faith

- (1) An authorised officer is not personally liable in respect of any act done —
 - (a) in the execution or purported execution of functions under these Regulations or the EU Regulations; and
 - (b) within the scope of the officer's employment,if the officer acted in the honest belief that the duty under these Regulations or the EU Regulations required or entitled the officer to so act.

- (2) Nothing in paragraph (1) is to be construed as relieving any enforcement authority of any liability in respect of the acts of its officers.
- (3) Where an action has been brought against an authorised officer in respect of an act done —
 - (a) in the execution or purported execution of functions under these Regulations or the EU Regulations; but
 - (b) outside the scope of the officer's employment,the enforcement authority may indemnify the officer against the whole or a part of any damages ordered to be paid or any costs awarded if that authority is satisfied that the officer honestly believed that the act complained of was within the scope of the officer's employment.

PART 4 — ENFORCEMENT POWERS AND RELATED PROVISIONS

11 Powers of entry

- (1) An authorised officer may on giving reasonable notice enter any premises except premises used wholly or mainly as a private dwelling-house at any reasonable hour for the purposes of enforcing these Regulations or the EU Regulations.
- (2) The requirement to give notice does not apply —
 - (a) where reasonable efforts to agree an appointment have failed;
 - (b) where an authorised officer reasonably believes that giving notice would defeat the object of the entry;
 - (c) where an authorised officer has a reasonable suspicion of a breach of these Regulations or the EU Regulations.
- (3) An authorised officer must, if requested to do so, produce a duly authenticated authorisation document.
- (4) A justice of the peace may by a signed warrant permit an authorised officer to enter any premises, including dwelling-houses, if necessary by reasonable force, if the justice, on sworn information in writing is satisfied —
 - (a) that there are reasonable grounds to enter those premises for the purpose of enforcing these Regulations or the EU Regulations; and
 - (b) that one or more of the conditions in paragraph (5) are met.
- (5) 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 such a notice, would defeat the object of the entry;
 - (c) entry is required urgently;
 - (d) the premises are unoccupied or the occupier is temporarily absent.
- (6) A warrant is valid for 30 days from the date of signature.
- (7) An authorised officer 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.
- (8) An authorised officer may —
- (a) be accompanied by such other persons as the authorised officer considers necessary;
 - (b) bring on to the premises such equipment as the authorised officer considers necessary.

12 Powers of authorised officers on entry

- (1) An authorised officer who has entered premises under regulation 11 may —
- (a) inspect and search the premises;
 - (b) take photographs;
 - (c) mark any item for identification purposes;
 - (d) require the production of any label, document or record (in whatever form it is held);
 - (e) inspect and take a copy or, or take a copy of an extract from, any label, document or record;
 - (f) inspect and open any container, item or vending machine;
 - (g) inspect any plant, machinery or equipment;
 - (h) have access to, inspect and check the data on, and operation of, any computer and associated apparatus used in connection with a label, document or record to which this regulation relates;
 - (i) where a label, document or record is kept by means of a computer, require the label, document or record to be produced in a form in which it may be taken away;
 - (j) seize and detain any computer equipment for the purpose of copying any data or for further inspection where adequate inspection has not been able to be carried out on the premises, if the authorised officer has reason to believe that a person is in contravention of these Regulations or the EU Regulations and that the potential evidentiary material may be relevant to the contravention;

- (k) seize and detain potential evidentiary material, that is to say, any label, document, record, equipment, container or item if the authorised officer has reason to believe that a person is in contravention of these Regulations or the EU Regulations and that the potential evidentiary material may be relevant to the contravention.
- (2) An authorised officer may require any person to provide the authorised officer with such assistance, information or facilities as the officer may reasonably require for the purposes of the execution or enforcement of these Regulations or the EU Regulations.
- (3) If it is decided that anything seized and detained under paragraph (1) by an authorised officer is no longer needed by an enforcement authority in connection with a possible contravention of these Regulations or the EU Regulations, the authorised officer must return it as soon as reasonably practicable after that decision.

13 Compliance notice

- (1) An authorised officer may serve a notice in writing on any person if the authorised officer has grounds for believing that the person —
 - (a) has marketed, or is marketing or intending to market, a product —
 - (i) under a registered PDO or PGI which has not been labelled in a way described in Article 12 of Regulation 1151/2012 as read with Article 16(4) of that Regulation and Article 2 of, and the Annex to, Regulation 664/2014; or⁵
 - (ii) under a registered TSG which has not been labelled in a way described in Article 23 of Regulation 1151/2012 as read with Article 25(4) of that Regulation and Article 2 of, and the Annex to, Regulation 664/2014;⁶
 - (b) has made, or is making or intending to make, any direct or indirect commercial use of a registered PDO or PGI in a way described in Article 13(1)(a);
 - (c) has misused, imitated or evoked, or is misusing, imitating or evoking or intending to misuse, imitate or evoke, a registered PDO or PGI in a way described in Article 13(1)(b);
 - (d) has used, or is using or intending to use, any other false or misleading indication as to the provenance, origin, nature or essential qualities of a product in a way described in Article 13(1)(c);
 - (e) has used, or is intending to use, any other practice that is liable to mislead the consumer as to the true origin of a product in a way described in Article 13(1)(d);

- (f) has misused, imitated or evoked, or is misusing, imitating or evoking or intending to misuse, imitate or evoke, a registered TSG in a way liable to mislead the consumer as described in Article 24(1) or has carried out, or is carrying or intending to carry out any other practice liable to mislead the consumer in a way described there;
 - (g) has used, or is intending to use, a sales description that causes confusion with a registered TSG in a way described in Article 24(2);
 - (h) has marketed, or is marketing, or intending to market, a product described with an optional quality term in contravention of Article 33(1);
 - (i) has used, or is using or intending to use, an indication, abbreviation or symbol in contravention of Article 44(1), as read with Regulation 665/2014;
 - (j) has marketed, or is marketing or intending to market, a product under a registered PDO, PGI or TSG which has not been labelled in a way described in Article 13(1) to (3) of Regulation 668/2014(27) as read with Article 2 of, and the Annex to Regulation 664/2014.⁷
- (2) A notice served under paragraph (1) must contain the following —
- (a) the name and address of the enforcement authority by which the authorised officer is authorised;
 - (b) the name and address of the person on whom the notice is served;
 - (c) the grounds for service of the notice;
 - (d) information on the steps the person must take to comply with the notice;
 - (e) except to the extent that the steps are confined to refraining from doing something believed to be intended, the period within which each step must be completed in order to comply with the notice, which must not expire before the period within which an appeal may be brought under regulation 16;
 - (f) information as to —
 - (i) the rights of appeal;
 - (ii) the scope of suspension of a notice pending appeal;
 - (iii) the consequences of an appeal;
 - (iv) the consequences of a failure to comply with the notice.
- (3) Subject to regulation 16, the person on whom the notice is served must comply with the notice.
- (4) A notice service under this regulation is referred to in these Regulations as a compliance notice.

14 Non-compliance penalty notice

- (1) Where a person —

- (a) fails to comply with a compliance notice;
 - (b) has obstructed an authorised officer acting pursuant to regulations 11 or 12; or
 - (c) has failed to comply with a requirement of an authorised officer acting pursuant to regulation 12(1)(d), 12(1)(i) or 12(2),
- an enforcement authority may, by way of serving a written notice on the person, impose a requirement to pay to that enforcement authority such sum as the authority may specify in respect of that act or omission.
- (2) The enforcement authority may determine —
 - (a) the amount payable, which must not exceed £40,000; and
 - (b) whether any discount is offered in relation to early payment and, if so —
 - (i) the amount of any discount;
 - (ii) the time within which the penalty must be paid to take advantage of the discount.
 - (3) A notice served under paragraph (1) must contain the following —
 - (a) the name and address of the enforcement authority to which the penalty must be paid;
 - (b) the name and address of the person on whom the notice is served;
 - (c) the grounds for serving the notice;
 - (d) the amount of the penalty;
 - (e) the period within which the penalty must be paid, which must not expire before the period within which an appeal may be brought under regulation 16;
 - (f) whether any discount is offered for early payment, and if so —
 - (i) the amount of the discount;
 - (ii) the period within which the penalty must be paid to take advantage of the discount;
 - (g) information as to —
 - (i) the rights of appeal;
 - (ii) the scope of suspension of a notice pending appeal;
 - (iii) the consequences of an appeal;
 - (iv) the consequences of failing to comply with the notice.
 - (4) Subject to regulation 16, the person on whom the notice is served must comply with the notice.
 - (5) If the requirements of the compliance notice are met before the payment period set out in the non-compliance notice expires, liability to pay the non-compliance penalty is discharged.

- (6) A notice served under this regulation is referred to in these Regulations as a non-compliance penalty notice.

15 Enforcement costs recovery notice

- (1) An enforcement authority may, by way of serving a written notice on a person on whom a non-compliance penalty notice has been served, require the person to pay to the authority a sum equal to or less than the costs incurred by the authority in relation to the issuing of a non-compliance notice up to the time of its issue.
- (2) An enforcement authority must provide a detailed breakdown of the costs specified in the notice if requested to do so by the person on whom such a notice is served.
- (3) A request for a detailed breakdown of the costs specified in the notice must be made within 14 days of the date of the notice.
- (4) A notice under paragraph (1) must contain the following —
- (a) the name and address of the enforcement authority to which the sum must be paid;
 - (b) the name and address of the person on whom the notice is served;
 - (c) the period within which the sum must be paid, which must not expire before —
 - (i) the period within which an appeal may be brought under regulation 16;
 - (ii) the enforcement authority has provided a breakdown of the costs, unless —
 - (A) the person in question has indicated to the enforcement authority that they do not require the detailed breakdown in question;
 - (B) the period referred to in paragraph (3) has expired;
 - (d) information as to —
 - (i) the rights of appeal;
 - (ii) the scope of suspension of a notice pending appeal;
 - (iii) the consequences of an appeal;
 - (iv) the consequences of failure to comply with the notice.
- (5) Subject to regulation 16, the person on whom a notice is served must comply with the notice.
- (6) A notice served under this regulation is referred to in these Regulations as an enforcement costs recovery notice.
- (7) In this regulation, “costs” means reasonably and necessarily incurred —
- (a) investigation costs;

- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

16 Appeals against enforcement notices

- (1) A person on whom an enforcement notice has been served may appeal to a court of summary jurisdiction.
- (2) The procedure on an appeal to a court of summary jurisdiction under paragraph (1) is by way of complaint, and the Summary Jurisdiction Act 1989 applies to the proceedings.
- (3) The period within which an appeal may be brought is one month from the date on which the enforcement notice was served on the person wishing to appeal.
- (4) The effect of a compliance notice served under these Regulations is not suspended pending the determination or withdrawal of an appeal unless the court of summary jurisdiction directs otherwise.
- (5) An appeal against a non-compliance penalty or an enforcement costs recovery notice served under these Regulations suspends the effect of the notice appealed against until the appeal is determined or withdrawn.
- (6) On an appeal under this paragraph, the court of summary jurisdiction may either cancel or affirm the enforcement notice and, if the court affirms the notice, may do so either in its original form or with such modifications as the court thinks fit.

17 Grounds of appeal

- (1) The grounds for an appeal against a compliance notice are that the enforcement authority's decision to serve the compliance notice was —
 - (a) based on an error of fact;
 - (b) wrong in law;
 - (c) unreasonable.
- (2) The grounds for an appeal against a non-compliance penalty notice or an enforcement costs recovery notice are that —
 - (a) the enforcement authority's decision to serve the non-compliance penalty notice or the enforcement costs recovery notice was —
 - (i) based on an error of fact;
 - (ii) wrong in law;
 - (iii) unreasonable;
 - (b) the amount specified in the non-compliance penalty notice or the enforcement costs recovery notice is unreasonable.

18 Withdrawal and variation of an enforcement notice

- (1) An authorised officer may serve a notice on a person —
 - (a) withdrawing;
 - (b) varying; or
 - (c) suspending,an enforcement notice served under these Regulations.
- (2) A notice served under paragraph (1)(b) cannot add to the obligations imposed by the enforcement notice it varies.

19 Power to recover payments and penalty receipts

- (1) An enforcement authority may recover any unpaid sum required under regulation 14 or regulation 15, as read with regulation 16 —
 - (a) as a civil debt;
 - (b) on the order of the court, on such terms as the court may order.
- (2) Penalties and enforcement costs paid to an enforcement authority under these Regulations must be paid into the General Revenue account.

MADE13 FEBRUARY 2020

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

² Subpara (b) amended by SD2020/0544 with effect from 31/12/2020 at 23:00.

³ Para (2) substituted by SD2020/0544 with effect from 31/12/2020 at 23:00.

⁴ Reg 6 revoked by SD2023/0284.

⁵ Para (i) amended by SD2023/0284.

⁶ Subpara (a) substituted by SD2020/0544 with effect from 31/12/2020 at 23:00.

⁷ Subpara (j) amended by SD2020/0544 with effect from 31/12/2020 at 23:00.