

Statutory Instrument 2003 No. 2821

The Organic Products (Imports from Third Countries) Regulations 2003

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STATUTORY INSTRUMENTS

2003 No. 2821

AGRICULTURE

**The Organic Products (Imports from Third Countries) Regulations
2003**

Made

5th November 2003

Laid before Parliament

6th November 2003

Coming into force

1st December 2003

The Secretary of State, being a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to the common agricultural policy of the European Community, in exercise of the powers conferred upon her by the said section 2(2), hereby makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the Organic Products (Imports from Third Countries) Regulations 2003 and shall come into force on 1st December 2003.

Interpretation

2. - (1) In these Regulations -

"authorised officer" means any person who is authorised by a local authority in writing, either generally or specially, to act in matters arising under these Regulations;

"Commission Regulation" means Commission Regulation (EC) No 1788/2001^[3] laying down detailed rules for implementing the provisions concerning the certificate of inspection for imports from third countries under Article 11 of the Council Regulation, as last amended by Commission Regulation (EC) No 1918/2002^[4];

"controlled consignment" means any consignment the movement of which is, for the time being, prohibited pursuant to regulation 5(1);

"Council Regulation" means Council Regulation (EEC) No 2092/91^[5] on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, as last amended by Council Regulation (EC) No 806/2003^[6];

"importer" means any person who imports from a third country any products referred to in Article 1 of the Council Regulation with a view to the subsequent marketing of such products;

"local authority" means -

(a) in relation to England -

(i) where there is a Port Health Authority, that authority;

(ii) where there is not a Port Health Authority,

(aa) as respects each district or London borough, the council of that district or London borough;

(bb) as respects the City of London, the Common Council;
and

(cc) as respects the Isles of Scilly, the Council of the Isles of Scilly;

(b) in relation to Scotland -

(i) where there is a port local authority or joint port local authority,

that port local authority or joint port local authority, and

(ii) where there is not a port local authority or joint port local authority, as respects each local authority area, the council for that area constituted under section 2 of the Local Government etc. (Scotland) Act 1994^[7];

(c) in relation to Wales -

(i) where there is a Port Health Authority, that authority, and

(ii) where there is not a Port Health Authority, as respects each county or county borough, the council of that county or county borough; and

(d) in relation to Northern Ireland, each district council, and for this purpose, "district council" shall have the meaning given to it in section 44 of the Interpretation Act (Northern Ireland) 1954^[8];

"place of import", in relation to a consignment, means the place at which the consignment first arrives in the United Kingdom.

(2) Other expressions used in these Regulations have the same meaning as in the Council Regulation or the Commission Regulation.

Enforcement

3. - (1) These Regulations and the Commission Regulation shall be executed and enforced by the local authority for the place of import.

(2) The Secretary of State may give directions in writing to a local authority concerning the execution and enforcement of these Regulations, and such directions may also be given -

(a) in relation to Scotland, by the Scottish Ministers,

(b) in relation to Wales, by the National Assembly for Wales, and

(c) in relation to Northern Ireland, by the Department of Agriculture and Rural Development.

Advance notification

4. - (1) A person seeking the release for free circulation in the Community of a consignment shall, during the normal office hours of the local authority at the place of import, give to an authorised officer advance notice in writing of the arrival of the consignment at that place of import.

(2) Any such notice shall be given at least six hours in advance in relation to a consignment arriving by air, and at least twenty four hours in advance in relation to a consignment arriving by any other means.

Control on movement

5. - (1) An authorised officer may prohibit the movement of a consignment

from the place of import if he has reason to believe that there has been a failure to comply with any relevant provision contained in the Council Regulation or the Commission Regulation.

(2) An officer who exercises the power conferred by paragraph (1) shall, as soon as possible, give to the importer or person who appears to him to be in charge of the consignment, a notice in writing -

- (a) specifying the consignment in relation to which the power has been exercised;
- (b) stating that the consignment may not be moved without the written consent of an authorised officer;
- (c) specifying the relevant provision or provisions of the Council Regulation or the Commission Regulation in respect of which he has reason to believe that there has been a failure to comply; and
- (d) specifying what steps, if any, might be taken to show that there has been compliance with the relevant provisions.

(3) Where -

- (a) no steps are specified for the purposes of paragraph (2)(d); or
- (b) there has been a failure to take such steps as are specified,

an authorised officer may order that, under his supervision or the supervision of another authorised officer, the controlled consignment be destroyed or otherwise disposed of.

(4) If the person to whom the authorised officer gives the notice does not appear to the officer to be the importer or an agent, contractor or employee of the importer, the officer shall use his best endeavours to bring the contents of the notice to the attention of such a person as soon as possible.

(5) An authorised officer may affix to any controlled consignment, or to any container in which the controlled consignment is packed, labels warning of the prohibition on movement imposed pursuant to paragraph (1).

(6) An authorised officer who is satisfied that the steps specified in the notice under paragraph (2)(d) have been taken shall remove the prohibition on movement imposed pursuant to paragraph (1).

Consent to movement

6. - (1) An authorised officer may, at any time, give written consent to the movement of a controlled consignment.

(2) An authorised officer shall, upon request, give written consent to the movement of a controlled consignment if he, or another authorised officer, has been given a written undertaking by the importer to the effect that the controlled consignment will -

(a) be moved to a place specified by an authorised officer; and

(b) not be moved from that place without the written consent of an authorised officer.

(3) A consent given by an authorised officer under this regulation shall -

(a) specify the controlled consignment to which it relates;

(b) specify the place to which the controlled consignment is to be moved; and

(c) state that the controlled consignment continues to be controlled.

(4) Where such a consent has been given and the consignment has been moved to the place in question, the prohibition on movement under regulation 5(1) shall apply to it at the place in question as it applied at the place of import.

Assistance

7. An importer, or an agent, contractor or employee of the importer, shall provide an authorised officer with such assistance, information and facilities as he may reasonably require for the purposes of carrying out his functions under these Regulations.

Charges

8. - (1) A local authority shall, subject to paragraphs (2) and (3), charge an importer of a consignment a fee in respect of any expenses reasonably incurred by it -

(a) in carrying out its functions under regulation 5 in respect of that consignment; and

(b) in carrying out a verification of the consignment.

(2) A local authority may waive the whole or part of a fee payable under paragraph (1).

(3) In deciding whether to waive the whole or part of such a fee the local authority shall consider the extent to which it would have been reasonable for it not to have taken the action in respect of which any such expenses have been incurred.

(4) The fee payable under paragraph (1) shall be specified in an invoice given to the importer by the authority, and any amount not paid in accordance with the invoice shall be payable on demand.

(5) In any proceedings for recovery of an amount under this regulation a certificate of the local authority stating the amount recoverable shall be evidence of the amount in question.

Offences and penalties

9. - (1) A person is guilty of an offence if he -

(a) intentionally obstructs an authorised officer carrying out his functions under these Regulations;

(b) for the purpose of obtaining the release for free circulation in the Community of a consignment, knowingly or recklessly furnishes information which is false in a material particular;

(c) in relation to the requirements for retention of a certificate of inspection, contravenes Article 11.3(a) of the Council Regulation;

(d) contravenes Article 4.12, 5 or 6 of the Commission Regulation;

(e) contravenes regulation 4 or 7;

(f) knowing a consignment to be a controlled consignment -

(i) moves it; or

(ii) causes it to be moved,

otherwise than in accordance with the written consent of an authorised officer; or

(g) knowing a consignment to be a controlled consignment -

(i) removes from it; or

(ii) causes to be removed from it,

a label which has been affixed under regulation 5(5).

(2) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offences by officers of bodies corporate

10. - (1) Where an offence under these Regulations, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or be attributable to any neglect on the part of a director, manager, secretary or a similar officer of the body corporate, or any person who was purporting to act in any such capacity (or, in the case of a partnership under Scots law, a partner or person who was purporting to act as such), he as well as the body corporate shall be deemed guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Protection of authorised officers acting in good faith

11. - (1) An authorised officer shall not be personally liable in respect of any act done in the execution or purported execution of these Regulations and within the scope of his employment, if, in relation to an act done by him, he did

that act in the honest belief that these Regulations required or empowered him to do it.

(2) Nothing in paragraph (1) shall be construed as relieving a local authority from any liability in respect of the acts of its authorised officers.

(3) Where an action has been brought against an authorised officer in respect of an act done by him in the execution or purported execution of these Regulations and the circumstances are such that he is not legally entitled to require the local authority to indemnify him, the local authority may, nevertheless, indemnify him against the whole or part of any damages and costs, if that authority is satisfied that he honestly believed the act complained of was within the scope of his employment and that his duty under these Regulations required or entitled him to do it.

Ben Bradshaw

Parliamentary Under Secretary of State Department for Environment, Food and Rural Affairs

5th November 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to the United Kingdom, provide for the implementation of Commission Regulation (EC) No 1788/2001 ("the Commission Regulation") in relation to imports of consignments of organic products from third countries under Article 11 of Council Regulation (EEC) No 2092/91 ("the Council Regulation").

The Regulations -

- specify that they are to be enforced by the relevant local authority (a Port Health Authority, port or joint port local authority or district or other council) at the place of import (*regulation 3*);
- require a person seeking the release of the consignment into free circulation in the Community to give advance notice of its arrival (*regulation 4*);
- enable an authorised officer to prohibit the movement of a consignment (defined as a "controlled consignment") if he has reason to believe that there has been a failure to comply with the Council Regulation or the Commission Regulation (*regulation 5*);
- enable the authorised officer to consent to the movement of a controlled consignment provided certain conditions are satisfied (*regulation 6*);
- requires the importer to give an authorised officer such assistance as he may reasonably require (*regulation 7*);

- require the local authority to charge for verifying the consignment, or for prohibiting the movement of the consignment (*regulation 8*);
- specify offences for contravention of the Council Regulation and Commission Regulation, of regulations 4 and 7 and for the unauthorised movement of a controlled consignment (*regulations 9 and 10*);
- provide protection for authorised officers acting in good faith (*regulation 11*).

A regulatory impact assessment has been produced and a copy placed in the Library of both Houses of Parliament. Copies may be obtained from the Organic Farming Branch, Department for Environment, Food and Rural Affairs, Area 5F, Ergon House, Horseferry Road, London SW1P 2AL (telephone number: 020 7238 5777) or from the Department's website, and from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.

Notes:

[1] The power of the Secretary of State, as a Minister designated by virtue of S.I. 1972/1811 in relation to the common agricultural policy of the European Community, to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (1998 c. 46). The Secretary of State's power, as a Minister so designated, to make regulations which extend to Wales is confirmed by article 3(4) of the European Communities (Designation) (No. 3) Order 1999 (S.I. 1999/2788). The Secretary of State's power, as a Minister so designated, to make regulations which extend to Northern Ireland is confirmed by article 3(2) of the European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812).[back](#)

[2] 1972 c. 68.[back](#)

[3] OJ No L 243, 13.9.2001, p. 3.[back](#)

[4] OJ No L 289, 26.10.2002, p. 15.[back](#)

[5] OJ No L 198, 22.7.91, p. 1.[back](#)

[6] OJ No L 122, 16.5.2003, p. 1.[back](#)

[7] 1994 c. 39.[back](#)

[8] 1954 c. 33 (N.I.).[back](#)

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