



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1305 of 6th October 2003
LEGISLATION

ORDINANCE 34 OF 2003

AN ORDINANCE
TO PROVIDE FOR THE QUALITY CONTROL OF
AGRICULTURAL PRODUCE 2003.

P. PEARSON
ADMINISTRATOR

29th September 2003.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:-

PART 1
PRELIMINARY

1. This Ordinance may be cited as the Agricultural Produce (Quality Control) Ordinance 2003. Short title.

2. In this Ordinance, unless the context otherwise requires:- Interpretation.

“adulterated agricultural produce” means produce which has been debased, whether intentionally or otherwise, by adulteration;

“adulteration” in relation to any agricultural produce, means debased by:-

- (i) the addition of any foreign, redundant or inferior substance, whether harmful or not, in excess of the prescribed quantities; or
- (ii) the removal of any substance which adversely affects the quality;

“agricultural produce” means any of the produce listed in the Schedule and includes any food or drink prepared or produced entirely or partially from any such produce;

“analysis” means:-

- (a) the analysis carried out for control purposes in order to identify pesticide residues, nitric ions and biocides in fresh agricultural produce;

(b) the analysis carried out for control purposes in order to identify adulterated agricultural produce; or

(c) the control of the germinative capacity of seeds;

“analyst” means any person carrying out any analysis for the purposes of this Ordinance;

“the Committee” means the Committee for the Inspection of Agricultural Produce in the Republic established in accordance with section 6 of the corresponding Republican law;

“competent authority” means the competent authority appointed by the Chief Officer pursuant to section 4(1);

“conformity check” means an inspection carried out to check the conformity of agricultural produce with the prescribed marketing standards and “conformity checked” and other similar expressions shall be construed accordingly;

“control” means an inspection carried out to check whether agricultural produce is adulterated;

“corresponding Republican law” means The Imposition of Quality Control on Agricultural Products Law 2002, Number 129(1)/2002, as amended, and any subordinate legislation made under that Law, as amended;

“exportation” means the dispatch of agricultural produce from the Areas to a third country for the purpose of selling it there and the terms “export” and “exporter” shall be construed accordingly;

“importation” means the dispatch of agricultural produce from a third country to the Areas for the purpose of selling it in the Areas and the terms “import” and “importer” shall be construed accordingly;

“inspection place” means any licensed packing plant, trader’s storage place, exporter’s storage place, customs storage place, place of loading or unloading or any other place specified as such by the Chief Officer by notice;

“inspector” means any person appointed by the Chief Officer pursuant to section 12(1);

“licensed packing plant” means any place in which the collection, grading, processing, packing, labelling and storage of agricultural produce is carried out, in respect of which a licence (hereinafter referred to as an “operation licence”) has been granted under this Ordinance;

“lot” means the quantity of agricultural produce which, at the time conformity checks are carried out, has similar characteristics with regard to:-

(a) the packer or dispatcher;

(b) the country of origin;

(c) the nature of the produce;

(d) the class of the produce;

(e) the size (if the produce is graded according to size);

(f) the variety or the commercial type (according to the relevant provisions of the standard);

(g) the type of packaging and presentation;

“member State” means a member State of the European Union;

“public instrument” means any regulations made under section 18, any order made under section 19 or any notice issued under section 20 of this Ordinance;

“sale” means retail sale or wholesale sale;

“third country” means any country which is not a member State, excluding the Republic and the Areas;

“trade” means the sale of agricultural produce in the Areas or any dispatch of agricultural produce to or from any member State and “trader” shall be construed accordingly;

“undertaking” means any place, building, plot of land, means of transport or any other place where agricultural produce is handled but in relation to which no operation licence has been granted.

3. - (1) Subject to the provisions of subsection (2) and (3) below, this Ordinance shall apply to and in relation to agricultural produce:- Application.

(a) intended for sale in the Areas, (whether produced here or in the Republic, dispatched here from a member State or imported from a third country);

(b) intended for dispatch to a member State;

(c) intended for export to a third country.

(2) This Ordinance shall not apply to or in relation to agricultural produce where:-

(a) the net weight does not exceed ten kilogrammes; or

(b) it is transported by the owner or by post and it is not intended for sale.

(3) The provisions of Part 3 shall not apply to agricultural produce:-

(a) displayed or offered for sale, sold, delivered or marketed in any other manner by any producer in the Areas on wholesale markets in the Areas;

(b) transported from the wholesale markets referred to in paragraph (a) above to preparation and packaging stations and storage facilities in the Areas;

(c) transferred by any producer in the Areas to the consumer, for personal use and such transfer takes place on the producer’s premises;

(d) sold or delivered by any producer in the Areas to preparation and packaging stations or storage facilities in the Areas or transported from the producer’s premises to such stations; or

(e) transported from storage facilities in the Areas to preparation and packaging stations in the Areas.

PART 2
APPOINTMENT AND DUTIES OF COMPETENT
AUTHORITY

Appointment and duties of competent authority.

4. - (1) For the purposes of this Ordinance, the Chief Officer shall appoint a competent authority.

(2) The competent authority:-

- (a) shall administer a regime for carrying out conformity checks at all stages of marketing and at the point of import and export;
- (b) shall establish the rules of operation of licensed packing plants;
- (c) shall examine applications for operation licences, may issue such licences, taking into account the recommendations of the Committee, and monitor the operation of licensed packing plants;
- (d) may amend, suspend or revoke any operation licence;
- (e) shall control agricultural produce during its trading, importation and exportation;
- (f) may impose administrative sanctions or fines in accordance with the provisions of section 13, where contraventions are established;
- (g) shall establish and maintain a register containing details of the traders, importers and exporters of agricultural produce which, following inspection, have been found to comply with this Ordinance and all relevant public instruments;
- (h) shall examine any alleged contravention of this Ordinance reported by any member of the public and take appropriate measures;
- (i) shall represent the Areas in any international and European Organisation concerned with matters relating to the quality of agricultural produce.

PART 3
CONFORMITY CHECKS ON AGRICULTURAL PRODUCE

Prohibitions on importation and exportation of agricultural produce, unless conformity checked, and notification requirements.

5. - (1) No person, whether directly or indirectly, shall import or export any agricultural produce or allow or facilitate the importation or exportation thereof unless the produce has been conformity checked.

(2) Subject to subsection (3) below, any person intending to import or export any agricultural produce must submit a notification to the competent authority at least two weeks beforehand, the contents of which notification must comply with the relevant order.

(3) Where the inspector is satisfied that it is not possible to comply with the period of notice specified in subsection (2) above, he may accept a shorter period of notice.

Prohibition on dispatch of agricultural produce to member States, unless conformity checked, and notification requirements.

6. - (1) No person, whether directly or indirectly, shall dispatch or allow or facilitate the dispatch of any agricultural produce to a member State unless the produce has been conformity checked.

(2) Subject to subsection (3) below, any person who intends to dispatch agricultural produce to a member State must submit a notification to the competent authority at least two days beforehand, the contents of which notification must comply with the relevant order.

(3) Where the inspector is satisfied that it is not possible to comply with the period of notice specified in subsection (2) above, he may accept a shorter period of notice.

7. - (1) An inspector may carry out conformity checks at any inspection place on any agricultural produce which is intended for:-

- (a) dispatch to any member State;
- (b) importation; or
- (c) exportation,

and where the produce does not conform to the prescribed standards, prohibit such dispatch, importation or exportation, as the case may be.

(2) Where an inspector prohibits the dispatch, importation or exportation of any agricultural produce pursuant to subsection (1) above, he shall immediately notify the party concerned or his representative, giving reasons.

(3) Upon receipt of the notification referred to in subsection (2) above, the party concerned or his representative, as the case may be, shall:-

- (a) remove the agricultural produce from the inspection place within the prescribed period; and
- (b) pay any storage expenses incurred prior to such removal.

(4) Where any agricultural produce has not been removed in accordance with subsection (3) above the inspector may (at the expense of the party concerned or his representative, as the case may be) authorise its destruction or its disposal in any other manner deemed appropriate by the Committee.

(5) The Administration shall bear no responsibility for the losses incurred by any person arising from an inspector's decision to prohibit the dispatch, importation or exportation of any agricultural produce pursuant to subsection (1) above.

8. Without prejudice to his powers under section 7(1), an inspector may at any reasonable time carry out conformity checks on agricultural produce marketed in the Areas.

9. - (1) Agricultural produce dispatched from a member State for sale in the Areas shall not be subject to conformity checks or controls at the point of entry into the Areas provided it is accompanied by a suitability certificate issued by the competent authority of that member State.

(2) Any trader who intends to sell agricultural produce which has been dispatched from a member State must submit a notification to the competent authority at least two days beforehand.

PART 4

CONTROL OF ADULTERATED AGRICULTURAL PRODUCE

10. - (1) No person shall:-

- (a) adulterate or allow or facilitate the adulteration of any agricultural produce;
- (b) sell, display or offer for sale or market in any other manner or allow or facilitate the selling, displaying or offering for sale or marketing in any other manner any adulterated produce;

Powers of inspectors in relation to conformity checking of agricultural produce for dispatch to member States, importation or exportation.

Powers of inspectors in relation to conformity checking of agricultural produce marketed in the Areas.

Restrictions in relation to agricultural produce dispatched from member States to the Areas.

Prohibitions on adulteration of agricultural produce and trading, importation and exportation of adulterated produce.

- (c) knowingly export or have in his possession for the purpose of exportation or allow or facilitate the exportation of any adulterated agricultural produce;
- (d) knowingly import, or allow or facilitate the importation of any adulterated agricultural produce.

(2) Whenever agricultural produce is traded, imported, exported or an agreement to sell agricultural produce is made, the trader, importer or exporter, as the case may be, is deemed to guarantee that the produce concerned is not adulterated.

11. - (1) An inspector may carry out controls on any agricultural produce intended to be marketed in the Areas, dispatched to any member State, imported or exported, where he reasonably suspects that the agricultural produce has been adulterated.

(2) Where, following any controls carried out pursuant to subsection (1) above, the inspector is satisfied that the agricultural produce has been adulterated, he may ask the owner or other person responsible for the produce to remove therefrom any foreign, redundant or inferior substance and may place the produce under the custody of the Customs Authorities or any other authority specified by the competent authority.

(3) Where the owner or other person responsible for the agricultural produce referred to in subsection (2) above refuses or fails to remove the foreign, redundant or inferior substance when asked to do so, the inspector may take a sample from the agricultural produce for testing.

(4) No agricultural produce from which a sample has been taken for testing pursuant to subsection (3) above may be traded, imported or exported without the permission of the Chief Officer.

(5) The Administration shall not be liable to pay compensation for any losses incurred by any person arising out of any decision taken by any inspector or by the Chief Officer under this section.

(6) Any decision or action taken by the Chief Officer or any inspector under this section shall be without prejudice to any prosecution which may be brought under section 16.

PART 5 ENFORCEMENT

12. - (1) The Chief Officer may appoint such numbers of suitably qualified and experienced persons as inspectors as he deems necessary for the purposes of carrying out conformity checks, controls and other duties in accordance with this Ordinance.

(2) An inspector appointed pursuant to subsection (1) above may enter, at any reasonable time, any licensed packing plant or other undertaking, where he has reasonable cause to believe that such place is being used for:-

- (a) the collection, grading, processing, packing, labelling or storage of agricultural produce; or
- (b) the sale, display for sale, offer for sale, delivery or marketing in any other manner of agricultural produce,

for any of the purposes specified in subsection (3) below.

Powers of inspectors in relation to adulterated agricultural produce for trade, importation or exportation.

Appointment, duties and powers of inspectors.

(3) The purposes referred to in subsection (2) above are:-

- (a) inspecting the processes carried on therein;
- (b) inspecting the premises;
- (c) inspecting any books, documents or other records required to be kept by or under this Ordinance and taking copies thereof;
- (d) carrying out conformity checks;
- (e) carrying out controls;
- (f) taking samples of the agricultural produce for analysis;
- (g) issuing notices, certificates or other forms required by or under this Ordinance;
- (h) (subject to the approval of the competent authority), confiscating agricultural produce in relation to which he has reasonable cause to believe there has been a contravention, to ensure that it is available for use as evidence in any proceedings.

(3) If administrative fines or criminal proceedings are not instituted in relation to any contravention within two months from the date of confiscation of any agricultural produce pursuant to subsection (2)(h) above, such agricultural produce shall be returned to the owner, except where it has been destroyed or damaged, in which case reasonable compensation shall be paid to him.

(4) The person concerned may appeal in writing to the Chief Officer against any decision to confiscate agricultural produce under subsection (2)(h) above and the Chief Officer shall examine any such appeal within a reasonable time period and shall notify the appellant of his decision within thirty days of receipt of the appeal.

(5) Any person who obstructs or prevents an inspector from carrying out his duties under this Ordinance shall be guilty of an offence and liable on conviction:-

- (a) in the case of a first offence, to a fine not exceeding one thousand pounds; or
- (b) in the case of a second offence, to a fine not exceeding five thousand pounds or to a term of imprisonment not exceeding six months or to both such penalties.

(6) Any samples taken pursuant to subsection (2)(f) above shall be sent for analysis to the General Laboratory in the Republic or to any other laboratory specified by the competent authority.

(7) Where an inspector takes a sample from agricultural produce which he reasonably suspects has been adulterated, he shall prohibit the transport of the produce from the inspection place, pending completion of the analysis of the sample, and shall notify the owner or the person in possession of the produce from which the sample was taken of the said prohibition.

(8) Where the owner or person in possession of the agricultural produce is dissatisfied with the results of any analyses carried out pursuant to subsection (2)(f) above, he may request that a second analysis of the sample be carried out (in his presence if he so wishes).

(9) In any proceedings for an offence under this Ordinance, the provision of any certificate of analysis issued by the analyst following any analysis carried out under this section shall be sufficient evidence of the facts stated therein, unless the person charged with the offence requests that the analyst be subpoenaed to attend the proceedings as a witness.

Investigation of contraventions and imposition of administrative sanctions by competent authority.

13. - (1) Without prejudice to the powers of the competent authority to revoke or suspend any operation licence issued under this Ordinance, the competent authority shall investigate, (which investigation shall include consideration of any written or oral representations made by the alleged contravener) any alleged or suspected contravention of this Ordinance or any public instrument, following the submission of a complaint or of its own volition.

(2) Where, having investigated the matter pursuant to subsection (1) above, the competent authority is satisfied, that a person has contravened this Ordinance or any public instrument, it may impose upon that person one or more of the following administrative sanctions, having regard to the nature, duration and significance of the contravention:-

- (a) order the contravener to stop contravening the provision within a specified time period and refrain from repeating it in the future, or where he has stopped contravening the provision, to make a record of the specific contravention;
- (b) detain, for as long as he considers necessary, agricultural produce, where it has reasonable cause to believe that it does not comply with any requirement of this Ordinance or any public instrument, and direct that it remains in situ or is transferred to a specific place;
- (c) impose an administrative fine, which fine shall not exceed five hundred pounds, having regard to the nature, duration and significance of the contravention;
- (d) where the person continues to contravene any provision, impose an administrative fine for every day the contravention continues, which fine shall not exceed one hundred pounds, having regard to the nature and significance of the contravention;
- (e) revoke or suspend any operation licence, where a packing plant is being operated in breach of any condition of its licence or any prescribed rule of operation.

(3) Where the competent authority decides to impose an administrative sanction pursuant to subsection (2) above, it shall notify the contravener, which notice shall contain the following information:-

- (a) the specific provision contravened;
- (b) the specific sanction imposed;
- (c) the reasons for imposing such sanction; and
- (d) the person's right to lodge an appeal with the Court against the decision, within a period of 75 days of receipt of the notice.

(4) Where the recipient of the notice referred to in subsection (3) above fails to lodge an appeal within the time period specified therein, the competent authority shall take steps to collect the fine imposed.

(5) Where any person refuses or fails to pay any administrative fine imposed under this section, the competent authority may recover the amount due as a civil debt.

14. - (1) Any person who directly or indirectly:-

Offences.

- (a) imports, exports or allows or facilitates the importation or exportation of any agricultural produce in contravention of section 5;
- (b) dispatches or allows or facilitates the dispatch to a member State of any agricultural produce in contravention of section 6; or
- (c) (i) adulterates or allows or facilitates the adulteration,
(ii) dispatches or allows or facilitates the dispatch,
(iii) trades or allows or facilitates the trade,
(iv) exports or has in his possession for the purpose of exportation or allows or facilitates the exportation; or
- (v) imports or allows or facilitates the importation, of any adulterated agricultural produce in contravention of section 10,

shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding one thousand pounds, in the case of a first offence or, in the case of a second or further offence, to a fine not exceeding five thousand pounds or to a term of imprisonment not exceeding six months or to both such penalties.

(2) In addition to imposing a penalty in accordance with subsection (1) above, the Court may order the confiscation of agricultural produce in relation to which the offence has been committed, without prejudice to the power of the competent authority to revoke or cancel the operation licence of a packing plant if the offender is a holder of such a licence.

15. - (1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by bodies corporate and inspectors.

(2) Where an inspector issues a certificate of conformity in relation to any agricultural produce, knowing that such produce does not conform to the prescribed marketing standards, he shall be guilty of an offence and liable to:-

- (a) a fine not exceeding one thousand pounds;
- (b) a term of imprisonment not exceeding six months; or
- (c) both such penalties.

16. No criminal proceedings may be instituted under this Ordinance without the consent of the Attorney General and Legal Adviser.

Institution of criminal proceedings.

17. The issue of an operation licence to a packing plant shall be without prejudice to the civil and criminal liability of the holder of such licence.

Liability of holders of operation licences.

PART 6
MISCELLANEOUS

Power to make regulations.

18. - (1) The Administrator may make regulations for the better application of this Ordinance.

(2) In particular and without prejudice to the generality of subsection (1) above, regulations may provide for all or any of the following matters:-

- (a) the fees payable by any trader, importer or exporter in connection with the carrying out of conformity checks and controls under this Ordinance and the method of payment of such fees;
- (b) the rules of operation of packing plants, the issue of operation licences and the fees payable in connection therewith.
- (c) the timing and manner in which any agricultural produce (the dispatch to member States, importation or exportation of which has been prohibited) must be removed from any inspection place;
- (d) how an inspector may indicate on the packaging that the agricultural produce contained therein has been approved for dispatch to member States, importation or exportation, or not, as the case may be;
- (e) the procedures which must be followed in relation to the collection, transport, handling or loading of agricultural produce, the precautions which must be taken by persons handling the produce and the protection of the produce against damage;
- (f) the form and, where appropriate, the content of notices and certificates required to be issued and any other documents required to be kept by this Ordinance or any public instrument;
- (g) the manner in which inspectors shall carry out controls on agricultural produce intended for trade, importation or exportation;
- (h) the percentage of foreign, redundant or inferior substances (if any) allowed to be present in agricultural produce intended for trade, importation or exportation.

Power to make orders.

19. - (1) The Chief Officer may make orders for the better application of this Ordinance.

(2) In particular and without prejudice to the generality of subsection (1) above, Orders made pursuant to subsection (1) above may provide for all or any of the following matters:-

- (a) the further regulation of specific technical matters prescribed by regulations made under this Ordinance;
- (b) the amendment of the Schedule;
- (c) the time, place and manner in which the notice of intention to dispatch to member States, import or export any agricultural produce is to be served;

- (d) the condition of agricultural produce intended for trade, importation or exportation and the way in which the produce must be graded, packed, classified and labelled;
- (e) the size, description, quality and type of any packaging to be used for agricultural produce intended for trade or exportation and the manner in which such packaging must be labelled.

20. The Chief Officer, by notice, may:-

Power to issue notices.

- (a) where he is satisfied that special packaging, grading, handling or labelling of agricultural produce is required for any market outside the Areas, direct that the packaging, grading, handling or labelling of such produce is changed or altered so as to respond to the requirements of that market;
- (b) determine the dates in each calendar year, for the cutting and collection of seasonal agricultural produce;
- (c) determine the dates in each calendar year, prior to which the trade, importation or exportation of seasonal agricultural produce is prohibited;
- (d) prohibit, for a specified time period, the dispatch to member States of fresh agricultural produce, where he considers it necessary;
- (e) determine the method of collection and transport of fresh agricultural produce intended for sale;
- (f) prohibit, for a specified time period, the dispatch to member States or exportation or sale in the Republic of any agricultural produce produced in a specific area or district within the Areas, where he considers it necessary;
- (g) direct that any agricultural produce intended for dispatch to member States or exportation to any specified country must be inspected prior to its collection from the place of production by a person authorised for this purpose by the Chief Officer;
- (h) permit the trade, importation or exportation for a special purpose or under specific circumstances of any agricultural produce which does not comply with this Ordinance, subject to such terms and conditions as he may impose;
- (i) determine the minimum weight, the minimum sizes and the required maturity of any category of agricultural produce;
- (j) determine the inspection places and rules of operation of licensed packing plants.

21. For the purposes of this Ordinance, the Chief Officer:-

Delegation of Chief Officer's duties and powers.

- (a) may delegate, by order to be published in the Gazette, any of the duties imposed upon him or any of the powers conferred upon him by this Ordinance or any public instrument, for all or any purpose specified by him, to any person or authority;
- (b) may make such orders and give such directions as he may consider necessary or desirable to achieve the purposes of this Ordinance.

Repeal of Cap 24.

22. The Adulteration of Agricultural Produce Ordinance is repealed.

Coming into force of this Ordinance.

23. This Ordinance shall come into force sixty days from the date of its publication in the Gazette.

THE SCHEDULE
(Section 2)
AGRICULTURAL PRODUCE

Fresh products:-

- Fresh fruits.
- Fresh vegetables.
- Fresh herbs.
- Fresh cut blossoms.
- Fresh foliage.

Dried products:-

- Raisins and dried fruits.
- Dried herbs and spices.
- Any other dried products.

Seeds:-

- Cereal seeds, but not those intended for animal feeding stuffs.
- Seeds of pulses.

Seeds for planting:-

- Vegetable seeds.
- Blossom seeds and bulbs intended for the production of blossoms.
- Fruit seeds.
- Herbs seeds.
- Seeds of herbal plants.
- Grass and lucerne seeds.

Dried nuts:-

- Almonds.
- Pistachio.
- Walnuts.
- Hazel nuts.
- Other dried nuts.

Viniculture products:-

- Grape juice.
- Raisin juice.

Carobs and their products:-

- Carobs and carob products.

Olives and oil products

Unprocessed hydrogenated oils, edible oils, oil seed oil

Other products:-

Bees honey.

Juices of fruit and vegetable or of other agricultural products.

Unroasted coffee.

Modified agricultural products.

Potato sub-products.

29th September 2003

(128/204)

P. D. Draycott

Chief Officer.

MARGINAL NOTES

(To be inserted alongside the first line of the relevant section except where otherwise indicated)

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