STATUTORY INSTRUMENTS

2004 No.2604

HORTICULTURE, ENGLAND AND WALES

The Horticultural Produce (Community Grading Rules) (England and Wales) (Revocation) Regulations 2004

Made - - - -	*5th October 2004*
Laid before Parliament	*7th October 2004*
Coming into force - -	*1st November 2004*

The Secretary of State and the National Assembly for Wales acting jointly (the latter acting in relation to Wales only), in exercise of powers conferred on them by section 11(3) of the Agriculture and Horticulture Act 1964(**a**) and section 2(2) of the European Communities Act 1972(**b**), and being designated(**c**) for the purposes of section 2(2) of the 1972 Act in relation to the common agricultural policy of the European Community, and after consultation with organisations representative of interests affected as required by section 23(1) of the 1964 Act, make the following Regulations:

Title and commencement

1. These Regulations may be cited as the Horticultural Produce (Community Grading Rules) (England and Wales) (Revocation) Regulations 2004 and shall come into force on 1st November 2004.

Revocation of the Horticultural Produce (Community Grading Rules) (England and Wales) Regulations 2003

2. The Horticultural Produce (Community Grading Rules) (England and Wales) Regulations 2003(**d**) are revoked.

Whitty
Parliamentary Under Secretary of State

(**a**) 1964 c.28. Section 11(3) was amended by section 4 of and Schedule 4 to the European Communities Act 1972. Section 26 contains a definition of the Ministers. The functions of the Ministers were vested in the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland and the Secretary of State for Wales acting jointly by article 4(2) of and Schedule 2 to the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272). Section 26(2) was amended by article 11 of and paragraph 1 of Schedule 5 to the 1978 Order. The functions of the Secretary of State for Wales, were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the Ministers in relation to Scotland were transferred to the Scottish Ministers by section 53(2)(c) of the Scotland Act 1998. The remaining functions of the Secretaries of State for Scotland and Wales under section 26(2) of the 1964 Act were transferred to the Minister of Agriculture, Fisheries and Food by article 2 of and the Schedule to the Transfer of Functions (Agriculture and Food) Order 1999 (S.I. 1999/3141). The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by virtue of article 2(2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

(**b**) 1972 c.68.

(**c**) S.I. 1972/1811 in the case of the Secretary of State and S.I. 1999/2788 in the case of the National Assembly for Wales.

(**d**) S.I. 2003/1846.

5th October 2004 Department for Environment, Food and Rural Affairs

Signed on behalf of the National Assembly for Wales

D. Elis-Thomas
5th October 2004 Presiding Officer

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke, with effect from 1st November 2004, the Horticultural Produce (Community Grading Rules) (England and Wales) Regulations 2003 ("the 2003 Regulations"). The 2003 Regulations provide that the references to "Community grading rules" in sections 11(3) and 22(3) of the Agriculture and Horticulture Act 1964 ("the 1964 Act") and regulation 2 of the Grading of Horticultural Produce (Amendment) Regulations 1973 (S.I. 1973/22) ("The 1973 Regulations"), and in the provisions of Part 3 of the 1964 Act as modified by the 1973 Regulations, expressly include the provisions of the Commission Regulations listed in the Schedule to the 2003 Regulations. The House of Lords confirmed in *Defra* v *ASDA Stores Ltd and another* [2003] UKHL 71 that the reference to "Community grading rules" in section 11(3) of the 1964 Act is to Community grading rules in force at the time of the application of the 1964 Act, irrespective of when the Community grading rules in question were made. The 2003 Regulations are therefore otiose.

These Regulations are made under the powers contained in section 2(2) of the European Communities Act 1972 and section 11(3) of the 1964 Act.

A full Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business.

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