EXPLANATORY MEMORANDUM TO THE

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

2004 No.2604

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations revoke the Horticultural Produce (Community Grading Rules) (England and Wales) Regulations 2003, which are now redundant.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 These Regulations revoke the Horticultural Produce (Community Grading Rules) (England and Wales) Regulations 2003. The 2003 Regulations were introduced to provide that references to "community grading rules" in the Agriculture and Horticulture Act 1964 and the Grading of Horticultural Produce (Amendment) Regulations 1973 included the provisions of the Community regulations listed in its Schedule. This was in order to restore previous horticultural standards enforcement powers which were deemed to have no legal basis by a magistrates' court decision which was upheld by the High Court (*Defra v Asda Stores Ltd and another* [2002] EWHC 1335 Admin). The decision was overturned by the House of Lords in December 2003 (2003 UKHL 71) which held that the Community regulations listed in the schedule to the 2003 Regulations were impliedly included by the 1964 Act and 1973 Regulations. The 2003 Regulations are therefore redundant.

5. Extent

5.1 Like the 2003 Regulations, this instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 EU Marketing standards for fresh fruit and vegetables exist for a wide range of fresh produce. Their objectives are to keep products of unsatisfactory quality off the

market; ensure that produce is accurately labelled; to guide production to meet consumer requirements and to facilitate fair trade under fair conditions.

7.2 The standards inform consumers about the quality and origin of the produce offered for sale. They require produce to be labelled with the country of origin, variety and class. They also serve to remove poor quality and mis-labelled goods from the market. In England and Wales, the standards are controlled and enforced by Defra's Horticultural Marketing Inspectorate (HMI).

7.3 In 2002, the inspection and enforcement powers of the HMI in respect of produce subject to Community grading rules made after 1973 were deemed by South Hampshire Magistrates Court to have no legal basis, a judgment upheld by the High Court. The judgment was to the effect that the UK had not implemented Community grading rules made after 1973, rather that it had only implemented Community grading rules in force up to the point at which the 1973 Regulations were made. However, at no stage did this mean that the EU standards themselves were not directly applicable on horticultural retailers in the UK. Accordingly, Defra sought leave to appeal to the House of Lords. Once this had been granted, Defra needed to find an interim legal solution (pending the outcome of the appeal) which would restore the powers of the HMI so that the UK could comply with its Community obligation to enforce all Community grading rules. That solution was to expressly list all Community grading rules that the Secretary of State could enforce. In December 2003, the House of Lords allowed Defra's appeal that all Community grading rules, whenever made, have been automatically implemented into domestic law by operation of the 1964 Act and the 1973 Regulations and powers reverted back to the position that existed before the case was heard in the magistrates' court. Thus, the 2003 Regulations no longer serve any purpose. Since there is no need to list all new Community grading rules (or amendments to existing Community grading rules) the Secretary of State will not be doing so. To avoid confusion as to why Community grading rules made between 1973 and 2003 are listed but not those made thereafter, the 2003 rules should be revoked.

7.4 Stakeholders were informed about the 2003 Regulations and these revoking Regulations and invited to make representations. None were received.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact

Steve Gilson at the Department for Environment, Food and Rural Affairs Tel: 020 7238 1044 or e-mail: steve.gilson@defra.gsi.gov.uk can answer any queries regarding the instrument.