

2003 No. 1846

HORTICULTURE, ENGLAND AND WALES

**The Horticultural Produce (Community Grading Rules)
(England and Wales) Regulations 2003**

Made - - - - - *16th July 2003*

Laid before Parliament *17th July 2003*

Coming into force *8th August 2003*

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, extent and commencement

1. These Regulations—
 - (a) may be cited as the Horticultural Produce (Community Grading Rules) (England and Wales) Regulations 2003;
 - (b) extend to England and Wales; and
 - (c) come into force on 8th August.

Application of the Agriculture and Horticulture Act 1964

- 2.—(1) This regulation applies to references to Community grading rules in—
 - (a) sections 11(3) and 22(3) of the Agriculture and Horticulture Act 1964(d) (“the 1964 Act”);

(a) 1964 c.28. Section 11(3) was amended by section 4 of and Schedule 4 to the European Communities Act 1972 (c.68). 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) Section 22(3) was amended by section 4 of and Schedule 4 to the European Communities Act 1972.

(b) regulation 2 of the Grading of Horticultural Produce (Amendment) Regulations 1973^(a) (application of Part 3 of the 1964 Act to produce for the time being subject to Community grading rules) (“the 1973 Regulations”); and

(c) the provisions of Part 3 of the 1964 Act as applied with modifications by the 1973 Regulations.

(2) For the avoidance of doubt (and without prejudice to their generality), those references are to be regarded as including the provisions of the Community Regulations specified in the Schedule to these Regulations.

15th July 2003

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

Signed on behalf of the National Assembly for Wales

16th July 2003

D. Elis Thomas
Presiding Officer

^(a) S.I. 1973/22.

Community Regulations establishing standards of quality for fresh horticultural produce

- (a) Commission Regulation (EEC) No. 1292/81 (OJ No. L129, 15.5.81, p.38), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (b) Commission Regulation (EEC) No. 2213/83 (OJ No. L213, 4.8.83, p.13), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (c) Commission Regulation (EEC) No. 899/87 (OJ No. L88, 31.3.87, p.17), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (d) Commission Regulation (EEC) No. 1591/87 (OJ No. L146, 6.6.87, p.36), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (e) Commission Regulation (EEC) No. 1677/88 (OJ No. L150, 16.6.88, p.21), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (f) Commission Regulation (EEC) No. 410/90 (OJ No. L043, 17.2.90, p.22), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (g) Commission Regulation (EEC) No. 2257/94 (OJ No. L245, 20.9.94, p.6) as read with the rectification of the English version in Commission Regulation (EC) No. 386/97 (OJ No. L60, 1.3.97, p.53).
- (h) Commission Regulation (EC) No. 831/97 (OJ No. L119, 8.5.97, p.13), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (i) Commission Regulation (EC) No. 1093/97 (OJ No. L158, 17.6.97, p.21) as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (j) Commission Regulation (EC) No. 2288/97 (OJ No. L315, 19.11.97, p.3) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (k) Commission Regulation (EC) No. 963/98 (OJ No. L135, 8.5.98, p.18), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (l) Commission Regulation (EC) No. 730/1999 (OJ No. L93, 8.4.99, p.14) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (m) Commission Regulation (EC) No. 1168/1999 (OJ No. L141, 4.6.99, p.5) as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (n) Commission Regulation (EC) No. 1455/1999 (OJ No. L167, 2.7.99, p.22), as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (o) Commission Regulation (EC) No. 2335/1999 (OJ No. L281, 4.11.99, p.11) as last amended by Commission Regulation (EC) No. 582/2003 (OJ No. L83, 1.4.2003, p.37).
- (p) Commission Regulation (EC) No. 2377/1999 (OJ No. L287, 10.11.99, p.6) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).

- (q) Commission Regulation (EC) No. 2561/1999 (OJ No. L310, 4.12.99, p.7) as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (r) Commission Regulation (EC) No. 2789/1999 (OJ No. L336, 29.12.99, p.13) as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (s) Commission Regulation (EC) No. 790/2000 (OJ No. L95, 15.4.2000, p.24) as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (t) Commission Regulation (EC) No. 851/2000 (OJ No. L103, 28.4.00, p.22) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (u) Commission Regulation (EC) No. 175/2001 (OJ No. L26, 27.1.01, p.24) as last amended by Commission Regulation (EC) No. 80/2003 (OJ No. L13, 18.1.2003, p.61).
- (v) Commission Regulation (EC) No. 912/2001 (OJ No. L129, 11.5.01, p.4) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (w) Commission Regulation (EC) No. 1508/2001 (OJ No. L200, 25.7.01, p.14) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (x) Commission Regulation (EC) No. 1543/2001 (OJ No. L203, 28.7.01, p.9) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (y) Commission Regulation (EC) No. 1615/2001 (OJ No. L214, 8.8.01, p.21) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (z) Commission Regulation (EC) No. 1619/2001 (OJ No. L215, 9.8.01, p.3) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (aa) Commission Regulation (EC) No. 1799/2001 (OJ No. L244, 14.9.01, p.12) as last amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (bb) Commission Regulation (EC) No. 2396/2001 (OJ No. L325, 8.12.01, p.11) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (cc) Commission Regulation (EC) No. 843/2002 (OJ No. L134, 22.5.02, p.24) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (dd) Commission Regulation (EC) No. 982/2002 (OJ No. L150, 8.6.02, p.45) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (ee) Commission Regulation (EC) No. 1284/2002 (OJ No. L187, 16.7.02, p.14) as amended by Commission Regulation (EC) No. 46/2003 (OJ No. L7, 11.1.2003, p.61).
- (ff) Commission Regulation (EC) No. 48/2003 (OJ No. L7, 11.1.03, p.65).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are concerned with the application of the Agriculture and Horticulture Act 1964 relating to the grading of horticultural produce, following the decision of the Divisional Court in *Defra v ASDA Stores Ltd* [2002] EWHC Admin 1335. The Divisional Court's decision, which is the subject of an appeal to the House of Lords, has raised doubts about the extent of references to Community grading rules in the 1964 Act and the Grading of Horticultural Produce (Amendment) Regulations 1973 (S.I. 1973/22).

These Regulations provide for the references to "Community grading rules" in sections 11(3) and 22(3) of the 1964 Act and regulation 2 of the 1973 Regulations, and in the provisions of Part 3 of the 1964 Act as modified by the 1973 Regulations, expressly to include the provisions of the Community Regulations listed in the Schedule to these Regulations.

The Regulations are made under the power contained in section 2(2) of the European Communities Act 1972 and also, in relation to the references in the 1973 Regulations and the provisions of Part 3 of the 1964 Act as applied with modifications by the 1973 Regulations, under the power contained in section 11(3) of the 1964 Act.

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