

## **EXPLANATORY MEMORANDUM**

### **THE HORTICULTURAL PRODUCE (COMMUNITY GRADING RULES) (ENGLAND AND WALES) REGULATIONS 2003**

#### **Summary**

**The intended effect of this Instrument is to clarify the enforcement powers of inspectors for EU marketing standards regulations.**

**In July 2002 DEFRA sought leave to appeal to the House of Lords over a ruling that offences relating to breaches of certain EU marketing standards legislation are "not known to law". Legal advice is that leave to appeal has been granted and is scheduled for hearing in November.**

**Since the judgement in the Divisional court DEFRA inspectors have gone about their duties without reliance on the formal powers which were called into question by the judgement. Generally the inspectors have been able to uphold the marketing standards successfully but there have been a number of difficulties:**

- **It has not been possible to institute proceedings against persistent offenders;**
- **Without formal powers of entry it has been difficult to secure entry to some premises, especially where port authorities or traders do not usually grant access other than to officials who have such powers.**

**This SI will enable inspectors to:**

- **institute proceedings against persistent offenders;**
- **where necessary, secure entry to some premises especially where port authorities or traders do not usually grant access other than to officials who have such powers.**

**It will have the effect of putting the law back in the position it was thought to be in prior to the court case.**

1. This memorandum is submitted to the Assembly's Business Committee for information in relation to legislated powers in section 2 (2) ECA 1972 and section 11(3) of the Agriculture and Horticulture Act 1964. This means that the order must be made jointly with England.

2. A copy of the Instrument is submitted with this Memorandum.

3. The intended effect of this Instrument is to enable Wales to operate the EC legislation effectively and also provide the advantage of joint timing for the legislation to come into effect in England and Wales.

### **Financial Implications**

4. Financial Planning Division have been consulted and agreed that there are no financial implications for the Assembly, DEFRA inspectors or others arising from this Instrument.

### **Regulatory Appraisal**

5. No requirement. However, as there are no financial or compliance implications in Wales a Regulatory Appraisal would not have been appropriate.

### **Consultation**

#### With Stakeholders

6. DEFRA has undertaken consultation with key stakeholders. These organisations are GB growers and producers who represent Welsh as well as English and Scottish interests. Given the nature of this proposed instrument, wider consultation with existing or potential stakeholders would not have been appropriate. The only people who will be affected are those who have been able to get away with breaches of the technical standards due to the gap in the powers of inspectors.

#### With Subject Committee

7. No requirement. The Order has however been included in the list of forthcoming legislation put to committee but has not been identified for scrutiny.

### **Recommended Procedure**

8. Subject to the views of the Business Committee, I recommend that the Instrument proceeds to Plenary for vote without debate.

### **Compliance/Statutory Cross-Cutting Themes**

9. The powers enabling this instrument to be made are as set out in 3 above, are exercised jointly by the Assembly and the Department of Environment, Food and Rural Affairs. Once approved by the Assembly, it will be signed here and in DEFRA and laid before Parliament.
10. The legislation will (as far as is applicable):
  - have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
  - be compatible with the Assembly's scheme for sustainable development (section 121);
  - be compatible with Community law (Section 106);
  - be compatible with the Assembly's human rights legislation (Section 107);
  - be compatible with any international obligations binding the UK Government and the Assembly (Section 108);
11. The information contained in this memorandum has been cleared with the Office of the Counsel General and the Assembly Compliance Officer.
12. Policy division contact (Tony Moulding, extension 3624).

June 2003 Carwyn Jones AM  
Minister for Environment, Planning and Countryside