

To: Business Committee  
From: Carwyn Jones AM,  
Minister for Environment, Planning and Countryside

## **EXPLANATORY MEMORANDUM**

### **THE HORTICULTURAL PRODUCE (COMMUNITY GRADING RULES) (ENGLAND AND WALES) (REVOCATION) REGULATIONS 2004**

#### **Summary**

**This instrument revokes the Horticulture Produce (Community Grading Rules) (England and Wales) Regulations 2003.**

**The 2003 Regulations were made as a consequence of a judgment of the Divisional Court, in the case of DEFRA v ASDA Stores Ltd and another (supporting the decision of local Magistrates Court), to the effect that the term “Community Grading Rules”, in the Agriculture and Horticulture Act 1964, did not automatically encompass all such Community rules made since the enactment of the 1964 legislation. The 2003 Regulations therefore made express provision for this term to include the provisions of Commission Regulations (i.e. subsequent Community grading rules) listed in the Schedule to the 2003 Regulations.**

**However, The House of Lords has now overturned the original decision of the Divisional Court ( Case [2003] UKHL 71), and has confirmed that the reference to “Community Grading Rules” in the 1964 Act is to Community grading rules in force at the time of application of the 1964 Act, irrespective of when the Community grading rules in question were made.**

**The 2003 Regulations are therefore otiose and need to be revoked. The Welsh Assembly Government and DEFRA also wish to erase the 2003 regs from the statute book so as not to confuse those who see that some grading rules are listed but not more recent ones - in this way, no grading rules at all will be specifically listed, the Act being taken to apply to all automatically.**

- 1. This memorandum is submitted to the Assembly’s Business Committee for information in relation to The Horticultural Produce (Community Grading Rules) (England and Wales) (Revocation) Regulations 2004.**
- 2. A copy of the Instrument is submitted with this Memorandum.**

#### **Enabling Power**

- 3. The power to make regulations under section 11(3) of the Agriculture and Horticulture Act 1964 and section 2 (2) of the European Communities Act 1972 have been jointly conferred on the Assembly and the Secretary of State. The functions in and under these Acts are delegated to my portfolio as Minister for Environment, Planning and Countryside.**

## **Effect**

4. 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.

## **Target Implementation**

5. It is intended that the proposed instrument be made on 5 October 2004, and laid before Parliament shortly after in order to come into force on 1 November 2004. If the intended making and coming into force dates are not achieved, it could result in the Industry in Wales not being on a par with England and Scotland. This would lead to confusion in Wales if the previous Regulations are not removed from the statute books.

## **Financial Implications**

6. There are no financial implications for the Assembly or others as a result of the implementation of these regulations. Financial Planning Division has been consulted and are content.

## **Regulatory Appraisal**

7. As these Regulations fall outside the definition of Assembly General subordinate legislation in Section 58 of the Government of Wales Act 1998. I concluded therefore, having regard to Assembly guidance, that a Regulatory Appraisal would not be appropriate in this instance.

## **Consultation**

### With Stakeholders

8. As this SI simply revokes a previous one it is felt that there is no need for consultation. However, we intend to write to the key parties involved in England and Wales to update them on the implications of this SI. 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. We have had no examples of difficulties in Wales as a result of the previous SI.

### With Subject Committee

9. The draft Order has not previously been considered by the Subject Committee nor has it been included in a previous list of forthcoming legislation notified to the EPC committee.

## **Recommended Procedure**

10. Subject to the views of the Business Committee, as the draft Order is very narrow in its intended effect and has no significant financial implications for the Assembly or others, I recommend that the Instrument proceeds to Plenary without debate.

## **Compliance**

11. 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);

12. The information contained in this memorandum has been cleared with the Office of the Counsel General and the Assembly Compliance Officer.

13. Drafting Lawyer: Michael Clarke (Ext 3763).

14. Head of Division: Mike Dunn (Ext 3533).

15. Policy Division Contact: Tony Moulding, (Ext 3624).

**CARWYN JONES AM**

**MINISTER FOR ENVIRONMENT, PLANNING AND COUNTRYSIDE**

**SEPTEMBER 2004**