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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 245**

**HORTICULTURE**

**The Horticultural Produce (Community Grading Rules) (Scotland) Revocation Regulations 2004**

<i>Made</i>	- - - -	<i>25th May 2004</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>26th May 2004</i>
<i>Coming into force</i>	- -	<i>18th June 2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 11(3) of the Agriculture and Horticulture Act 1964(1), after consultation with such organisations as appear to them to be representative of interests affected by the Regulations in accordance with section 23(1) of that Act, and section 2(2) of the European Communities Act 1972(2), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Horticultural Produce (Community Grading Rules) (Scotland) Revocation Regulations 2004 and shall come into force on 18th June 2004.

**Revocation of the Horticultural Produce (Community Grading Rules) (Scotland) Regulations 2003**

2. The Horticultural Produce (Community Grading Rules) (Scotland) Regulations 2003(3) are revoked.

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(1) 1964 c. 28; section 11(3) was inserted by the European Communities Act 1972 (c. 68), section 4(1) and Schedule 4, paragraph 4(1)(a). Section 26(2) contains the 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 the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272), article 4(2) and Schedule 2. Section 26(2) was amended by article 11(2) of, and paragraph 1 of Schedule 5 to, that Order. The functions of the Ministers, so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998, section 125(1) and Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(3) S.S.I. 2003/502.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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St Andrew's House, Edinburgh  
25th May 2004

*ROSS FINNIE*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke, with effect from 18th June 2004, the Horticultural Produce (Community Grading Rules) (Scotland) Regulations 2003 (“the 2003 Regulations”), which 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 III of the 1964 Act as applied with modifications by the 1973 Regulations, expressly include the provisions of the Community Regulations specified in the Schedule to those Regulations.

The House of Lords confirmed in *Defra v ASDA Stores Limited and another* [2003] UKHL 71 that the references to “Community grading rules” in section 11(3) of the 1964 Act and in the 1973 Regulations are to those Community grading rules in force at the time of acts said to constitute contraventions of the 1964 Act, as modified and applied by the 1973 Regulations, irrespective of when the Community grading rules in question were made.

Accordingly, section 14 of the 1964 Act, as modified by the 1973 Regulations, criminalising breaches of Community grading rules, applies to all Community grading rules in force at the time of the acts said to constitute contraventions of the 1964 Act and the Scottish Ministers need not exercise the powers under section 11(3) of the 1964 Act and section 2(2) of the European Communities Act 1972 to criminalise breaches whenever new Community grading rules are made. The 2003 Regulations are therefore otiose.

These Regulations are made under the power contained in—

- (a) section 2(2) of the European Communities Act 1972 in respect of revocation of the 2003 Regulations in so far as they apply to the references to “Community grading rules” in sections 11(3) and 22(3) of the 1964 Act; and
- (b) section 11(3) of the 1964 Act in respect of revocation of the 2003 Regulations in so far as they apply to references to “Community Grading Rules” in the 1973 Regulations and the provisions of Part III of the 1964 Act as applied with modifications by the 1973 Regulations.

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