

**2011 No. 325**

**HORTICULTURE**

**The Bananas (Enforcement of Quality Standards) (Scotland)  
Regulations 2011**

*Made* - - - - - *7th September 2011*  
*Laid before the Scottish Parliament* *9th September 2011*  
*Coming into force* - - - *10th October 2011*

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(e) and 17(2) of the Food Safety Act 1990(a) (“the 1990 Act”), section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(b), and all other powers enabling them to do so.

Insofar as these Regulations are made in exercise of powers under the 1990 Act, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency as required by section 48(4A) of the 1990 Act(c).

The Scottish Ministers have carried out consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(d).

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- (a) 1990 c.16. Section 16(1) was amended by the Food Standards Act 1999 (c.28), (“the 1999 Act”), section 40(1) and Schedule 5, paragraph 8; section 17(2) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12 and by S.I. 2011/1043, article 6(1)(e); amendments made by Schedule 5 to the 1999 Act are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46), (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Insofar as not transferred, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).
  - (b) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule, Part 1. Section 2(2) is relevant to the modifications made by regulation 21.
  - (c) Section 48(4A) was inserted by Schedule 5, paragraph 21 of the Food Standards Act 1999 (c.28).
  - (d) O.J. L 31, 1.2.2002, p.1, to which there are no relevant amendments.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to EU instruments to be construed as references to those instruments as amended from time to time.

## PART 1

### Introduction

#### Citation, commencement and extent

1.—(1) These Regulations may be cited as the Bananas (Enforcement of Quality Standards) (Scotland) Regulations 2011 and come into force on 10th October 2011.

(2) These Regulations extend to Scotland only.

#### Interpretation

2.—(1) In these Regulations—

“authorised officer” means any person (whether or not an officer of the Scottish Ministers) appointed by the Scottish Ministers in accordance with regulation 3(3);

“bananas” means bananas, intended for supply fresh to the consumer after preparation and packaging, which fall within—

(a) CN code 0803 00 19(a) as provided for in Part XI of Annex I to Council Regulation 1234/2007; and

(b) the description in Article 1 of, and Point I of Annex I to, Commission Regulation 2257/94;

“Commission Regulation 2257/94” means Commission Regulation (EC) No 2257/94 laying down quality standards for bananas(b), as amended from time to time;

“Commission Regulation 2898/95” means Commission Regulation (EC) No 2898/95 concerning verification of compliance with quality standards for bananas(c), as amended from time to time;

“container” includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

“controlled”, in relation to bananas, means that the power conferred by regulation 12(1) (stop notice) has been exercised in relation to those bananas and that the consent to their movement has been given under regulation 14(1) when the circumstances in regulation 14(2) or (3) apply;

“Council Regulation 1234/2007” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(d), as amended from time to time;

“EU banana quality standards” means the quality standards for bananas laid down in Commission Regulation 2257/94, and includes the rules relating to those standards contained in Article 113(3) of Council Regulation 1234/2007 and in Commission Regulation 2898/95;

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(a) Both Commission Regulation 2257/94 and Commission Regulation 2898/95 refer to bananas falling within CN code ex 0803. Council Regulation (EC) No. 2587/2001 (O.J. No. L 345, 29.12.2001, p.13) amended Council Regulation (EEC) No. 404/93 (O.J. No. L 47, 25.2.1993, p.1) among other things to revise the CN codes for products covered by the common organization of the market for the banana sector, including CN code 0803 00 19 for fresh bananas, excluding plantains. Council Regulation 1234/2007 repealed Council Regulation (EEC) No. 404/93. Part XI of Annex I to Council Regulation 1234/2007 includes CN code 0803 00 19.

(b) O.J. L 245, 20.9.1994, p.6, as last amended by Commission Regulation (EC) No. 228/2006 (O.J. L 39, 10.2.2006, p.7).

(c) O.J. L 304, 16.12.1995, p.17, as last amended by Commission Regulation (EC) No. 386/97 (O.J. L 60, 1.3.1997, p.53).

(d) O.J. L 299, 16.11.2007, p.1, as last amended by Regulation (EU) No. 1234/2010 (O.J. L 346, 30.12.2010, p.11).

“inspection body” means a body of a Member State responsible for carrying out conformity checks in accordance with Articles 1 and 6 of Commission Regulation 2898/95;

“label” includes any device for conveying information particulars by written characters or other symbols, and any characters or symbols stamped or otherwise placed directly on to any bananas or container, and references to the affixing of a label are construed accordingly;

“non compliance label” means a label indicating that the bananas are not compliant with the EU banana quality standards;

“premises” includes any place, vehicle or trailer, stall, vessel, container, moveable structure, aircraft, or hovercraft; and

“stop notice label” means a label fixed in accordance with regulation 13(1).

(2) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in Commission Regulation 2257/94, Commission Regulation 2898/95 and Council Regulation 1234/2007.

(3) A reference to anything done “in writing” or produced “in written form” includes a reference to an electronic communication, as defined in section 15 (general interpretation) of the Electronic Communications Act 2000(a), which has been recorded in written form and is capable of being reproduced in that form.

### **Designations, provision of information and appointment of authorised officers**

3.—(1) The Scottish Ministers are designated as the competent national authority and inspection body for the purposes of Commission Regulation 2257/94, Commission Regulation 2898/95 and Article 113(3) of Council Regulation 1234/2007 in relation to bananas.

(2) For the purposes of fulfilling the obligations on competent national authorities and inspection bodies contained in the EU banana quality standards and for the enforcement of these Regulations, the Scottish Ministers may, as appropriate or where required to do so, provide information to and request information from—

- (a) the competent national authorities and inspection bodies in other Member States and in England, Northern Ireland and Wales; or
- (b) the European Commission.

(3) The Scottish Ministers may appoint authorised officers for the purposes of the enforcement of these Regulations.

## **PART 2**

### **General offences and exercise of powers on premises**

#### **EU banana quality standards: offences**

4.—(1) A person is guilty of an offence if he or she markets bananas for supply fresh to the consumer in contravention of the EU banana quality standards.

(2) A person is guilty of an offence if he or she fails to comply with any provision of Commission Regulation 2898/95 mentioned in column 1 of Schedule 1 to these Regulations, as read with any provision mentioned in any corresponding entry in column 2 of that Schedule.

(3) Where—

- (a) an authorised officer has inspected bananas and found them not to be compliant with the EU banana quality standards; and
- (b) the person in charge of those bananas has given an undertaking, or has been responsible for the giving of an undertaking, in relation to those bananas,

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(a) 2000 c.7, relevantly amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

it is an offence for that person to act in breach of the undertaking or to cause or permit his or her agent or employee to act in breach of the undertaking.

(4) A person is guilty of an offence if, in purporting to provide the information particulars required by the EU banana quality standards, he or she gives an inaccurate or false description of those bananas on a label affixed to, or in a notice or document accompanying, those bananas.

(5) A person, other than an authorised officer, is guilty of an offence if he or she affixes, or causes or permits to be affixed, a non compliance label to any container of bananas, or to the bananas themselves, or to any notice or document with the information particulars required by the EU banana quality standards to accompany those bananas.

(6) A person, other than an authorised officer, is guilty of an offence if he or she removes, conceals, defaces or alters, or causes or permits to be removed, concealed, defaced or altered—

- (a) any notice or document with the information particulars required by the EU banana quality standards to accompany bananas or any label required by those standards to be affixed to those bananas or to their container;
- (b) a non compliance label which has been affixed by an authorised officer in the execution of these Regulations to the bananas or to their container;
- (c) any demarcation tape or other material used by an authorised officer in accordance with regulation 7(1)(f) to identify bananas or a specific lot of bananas which are found not to be compliant with the EU banana quality standards.

(7) A person is guilty of an offence if he or she exports or imports any consignment of bananas to or from any place outside the European Union without a document, label or notice which is required by the EU banana quality standards to accompany those bananas.

### **Exercise of powers on premises**

5. The powers under Part 3 and Part 4 of these Regulations may not be exercised on premises used wholly as a dwelling house.

## **PART 3**

### **Powers of authorised officers**

#### **Powers of entry**

6.—(1) An authorised officer may enter any premises at any reasonable hour for the purposes of the enforcement of these Regulations.

(2) An authorised officer must, if requested to do so, produce a duly authenticated authorisation document.

(3) An authorised officer may be accompanied by any other persons and any equipment as the authorised officer considers necessary.

(4) If a sheriff, a stipendiary magistrate or a justice of the peace, on information in writing sworn on oath, is satisfied that there are reasonable grounds for entry into any premises for the purposes of enforcing these Regulations, and—

- (a) admission to an authorised officer has been refused, or a refusal of admission is expected, and (in either case) that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission to the premises, or the giving of such a notice, would defeat the object of the entry; or
- (c) the premises are unoccupied or the occupier is temporarily absent; or
- (d) the case is one of urgency,

the sheriff, stipendiary magistrate or justice of the peace may by a signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(5) A warrant granted under paragraph (4) is valid for a period of one month.

(6) An authorised officer who enters, by virtue of this regulation, any premises which are unoccupied or the occupier of which is temporarily absent, must leave them as effectively secured against unauthorised entry as they were before entry.

(7) It is an offence for a person who has obtained confidential information in the course of acting for the purposes of the enforcement of these Regulations to disclose that information, whether it was obtained on premises entered under or by virtue of these Regulations or otherwise, unless the disclosure is made in the performance of that person's duty or in accordance with section 17(2) of the Anti-terrorism, Crime and Security Act 2001<sup>(a)</sup>.

### **Other powers**

7.—(1) An authorised officer who has lawfully entered premises for the purpose of the enforcement of these Regulations, may for that purpose—

- (a) require any person to provide such assistance, information or facilities as the authorised officer may reasonably require;
- (b) make any enquiries, observe any activity or process, and take photographs;
- (c) inspect and search the premises;
- (d) inspect any machinery or equipment and any other article on the premises;
- (e) inspect and take samples of any bananas found on the premises;
- (f) identify, with demarcation tape or other material, bananas or a specific lot of bananas which are found not to be compliant with the EU banana quality standards;
- (g) inspect, seize and detain any container used in connection with bananas;
- (h) have access to, inspect and copy any label, notice, document or record (in whatever form they are held) and remove them to enable them to be copied or require copies to be made;
- (i) detach, or give permission to be detached, any non compliance label or stop notice label when the reasons for their being affixed no longer apply;
- (j) have access to, inspect and check the data on, and operation of, any computer and any associated apparatus or material that is or has been in use in connection with a label, notice, document or record mentioned in this regulation, including data relating to deleted files and activity logs; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance (including the provision of passwords) as may reasonably be required and, where these items are kept by means of a computer, may require them to be produced in a visible and legible form in which they may be taken away;
- (k) seize any computers and associated equipment for the purpose of copying any data, but only if that authorised officer has a reasonable suspicion that an offence under these Regulations has been committed, and provided they are returned as soon as practicable; and
- (l) seize and detain any items in sub-paragraph (h) if the authorised officer has reason to believe that they may be required as evidence in any court or other proceedings under these Regulations.

(2) An authorised officer must—

- (a) as soon as is reasonably practicable, provide to the person appearing to be responsible for any items that that authorised officer seizes and detains under paragraph (l) a written receipt identifying those items; and

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(a) 2001 c.24.

- (b) as soon as is reasonably practicable after deciding that those items are no longer required, return them, apart from those to be used as evidence in any court or other proceedings under these Regulations.

#### **Power to affix labels – bulk samples**

8. Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, takes a bulk sample of bananas from a specific lot(a) and finds those bananas not to be compliant with the EU banana quality standards, the power to affix—

- (a) a non compliance label under regulation 9 or 10; or
- (b) a stop notice label under regulation 13;

may be exercised in relation to all or any of the bananas or containers of bananas within that lot in the same way as in relation to the bulk sample taken.

#### **Power to affix a non compliance label**

9.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any bananas which—

- (a) have affixed to them a label or are accompanied by a notice or a document required by the EU banana quality standards; or
- (b) are in a container to which such a label is affixed or which is accompanied by such a notice or document,

indicating in either case that one of the situations in paragraph (2) or (3) applies, an authorised officer may amend or cancel the label, notice or document and may affix to the bananas, or, as the case may be, to the notice or container, a non compliance label.

(2) Situation 1 is where the label, notice or document indicates—

- (a) that the bananas are of a particular class under the EU banana quality standards; but
- (b) the authorised officer has reasonable cause to believe that the bananas are of an inferior class under those standards.

(3) Situation 2 is where the label, notice or document indicates—

- (a) that the bananas are of a particular class under the EU banana quality standards; but
- (b) the authorised officer has reasonable cause to believe that the bananas do not comply with any class under those standards.

(4) For the purposes of this regulation and regulation 10, a non compliance label must be —

- (a) in the form set out in Part I of Schedule 2; and
- (b) completed in accordance with Part II of that Schedule.

10. Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any bananas, or container holding bananas, which—

- (a) do not have a label required by the EU banana quality standards affixed to them;
- (b) are not accompanied by a notice or document required by the EU banana quality standards;

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(a) The methodology to be applied is set out in Article 17 of, and Annex V to, Commission Implementing Regulation (EU) No. 543/2011 (O.J. No. L 157, 15.06.2011, p.1, as last amended by Commission Regulation (EU) No. 905/2010 (O.J. No. L 268, 12.10.2010, p.19). See also Commission Regulation (EC) No. 2898/95 which in relation to verification of conformity referred to Commission Regulation (EEC) No. 2251/92 (O.J. No. L 219, 4.8.1992, p.9). Commission Regulation (EEC) No. 2251/92 was repealed by Commission Regulation (EC) No. 1148/2001 (O.J. No. L 156, 13.6.2001, p.9) which was then repealed by Commission Regulation (EC) No. 1580/2007 as now repealed by Commission Implementing Regulation (EU) No.543/2011.

- (c) have a label required by the EU banana quality standards affixed to them, but the label appears to the authorised officer to be incorrect (other than in relation to a particular class under the EU banana quality standards), or to have been altered or defaced; or
- (d) are accompanied by a notice or document required by the EU banana quality standards but which appears to the authorised officer to be incorrect (other than in relation to a particular class under the EU banana quality standards), or to have been altered or defaced with the result that it is incorrect,

the authorised officer may, as appropriate, amend or cancel the label, notice or document and may affix to those bananas, or, as the case may be, to the container, a non compliance label.

#### **Requirement to serve a notice in terms of regulation 9 or 10**

**11.**—(1) If an authorised officer deems it appropriate to affix a non compliance label to any bananas or container holding bananas, the officer must, at the same time serve a written notice on the owner of the bananas or an agent or employee of the owner, advising of the reasons for non compliance and clearly indicating—

- (a) in the case where regulation 9 applies, which of the situations contained in paragraph (2) or (3) of that regulation is applicable;
- (b) in the case where regulation 10 applies, which of the circumstances contained in paragraphs (a) to (d) of that regulation is applicable.

(2) Any notice issued by an authorised officer in terms of this regulation must, in addition to the information required in terms of paragraph (1)(a) or (b) (as applicable), also contain the following information—

- (a) the notice shall be named “Notice of non compliance with EU quality standards for bananas”;
- (b) reference to the Bananas (Enforcement of Quality Standards) (Scotland) Regulations 2011;
- (c) a reference number to correspond with the compliance check, to be entered on the non compliance label affixed to the bananas or, as the case may be, to the container;
- (d) the name and address of the trader or importer or exporter responsible for the bananas;
- (e) reasons for the non compliance with the EU banana quality standards;
- (f) a warning that it is an offence in terms of these Regulations to display or offer for sale, deliver or market in any other manner bananas in contravention of or in non compliance with the EU banana quality standards;
- (g) origin of the bananas claimed;
- (h) class of bananas claimed/attained;
- (i) quantity of the consignment;
- (j) signature of the authorised officer;
- (k) date, time and place of the compliance check; and
- (l) an official stamp bearing the number identifying the authorised officer.

## **PART 4**

### **Controlled bananas and related powers and offences**

#### **Powers to control the movement of bananas**

**12.**—(1) An authorised officer may, by written notice (a “stop notice”) in accordance with paragraph (2), prohibit the movement of any bananas if the authorised officer reasonably suspects that an offence under these Regulations is being committed in respect of those bananas.

(2) The written notice referred to in paragraph (1) must be served on the person appearing to the authorised officer to be in charge of the bananas concerned and must—

- (a) specify the date, place and time of service of the notice;
- (b) contain details of the recipient of the notice;
- (c) specify the bananas in relation to which the power has been exercised;
- (d) state the reason for their detention;
- (e) confirm that options for bringing the bananas into conformity with the EU banana quality standards or for the appropriate disposal of those bananas have been discussed between the authorised officer and the person appearing to be in charge of the bananas;
- (f) state the location of the bananas;
- (g) state that the bananas may not be moved from that location without the written consent of an authorised officer; and
- (h) contain the authorised office's official stamp and number.

(3) When serving the notice, the authorised officer must inform the person on whom the notice is served of the right of review under paragraph (4) and how it may be exercised.

(4) The person on whom the notice has been served, or the owner of the bananas or an agent or employee acting on behalf of the owner ("the relevant person"), may request the Scottish Ministers to arrange a review of the decision to serve the notice.

(5) The relevant person requesting a review of a decision to serve a notice under paragraph (1) must do so in person, by telephone, in writing or by fax to the contact details indicated in the notice and a request in person or by telephone must be confirmed in writing as soon as reasonably practicable thereafter.

(6) The review is to be determined by a person (unconnected with the original decision) appointed by the Scottish Ministers ("the appointed person") under arrangements maintained by them for the purpose of this regulation.

(7) The appointed person conducting the review may cancel the notice or confirm it, with or without modifications.

(8) The appointed person must—

- (a) complete the review as soon as reasonably practicable and in any event within two working days of the request being made under paragraph (4); and
- (b) serve notice on the relevant person of the decision in writing.

(9) The Scottish Ministers may suspend the notice pending determination of the review and must serve a notice forthwith of their decision to do so on the relevant person and the authorised officer.

(10) The appointed person's determination is final.

### **Power to affix a stop notice label**

**13.**—(1) An authorised officer may affix to any controlled bananas, or to any container in which the controlled bananas are packed, a label warning of the exercise of the power in regulation 12(1) (a "stop notice label").

(2) A stop notice label must be—

- (a) in the form set out in Part III of Schedule 2; and
- (b) completed in accordance with Part IV of that Schedule.

### **Consents to the movement of controlled bananas**

**14.**—(1) An authorised officer may, at any time, give written consent to the movement of controlled bananas and must give such consent upon request if the circumstances in paragraph (2) or (3) apply.

- (2) The circumstances in which this paragraph applies are where—
- (a) the authorised officer is satisfied that no offence under these Regulations would be committed in respect of the bananas if they were marketed for supply fresh to the consumer after preparation and packaging; or
  - (b) the authorised officer, or another authorised officer, has been given a written undertaking that the bananas will be marketed or disposed of in a specified manner and the authorised officer is satisfied that if the bananas are marketed or disposed of in that manner no offence under these Regulations would be committed in respect of them and the authorised officer has no reason to doubt that the terms of the undertaking will not be met.
- (3) The circumstances in which this paragraph applies are where—
- (a) the authorised officer, or any other authorised officer, has been given a written undertaking to the effect that—
    - (i) the bananas will be moved to a place approved by an authorised officer;
    - (ii) steps required will be taken to ensure that the bananas may be marketed in compliance with the EU banana quality standards and without an offence under these Regulations being committed in respect of them or will be disposed of in such a manner that no offence under these Regulations would be committed in respect of them; and
    - (iii) the bananas will not be moved from that place without the written consent of an authorised officer; and
  - (b) the authorised officer has no reason to doubt that the terms of the undertaking will not be met.
- (4) A consent given by an authorised officer under this regulation must—
- (a) specify the bananas to which it relates;
  - (b) include the terms of any undertaking given under paragraph (2) or (3); and
  - (c) where the consent is given under paragraph (3), state that the bananas continue to be controlled.

### **Offences relating to movement of controlled bananas**

**15.—**(1) A person is guilty of an offence if he or she moves controlled bananas or a container with controlled bananas in it, or causes or permits them to be moved—

- (a) without the written consent; or
- (b) other than in accordance with the written consent,

of an authorised officer given under regulation 14(1).

(2) A person, other than an authorised officer, is guilty of an offence if he or she removes or causes or permits to be removed from those controlled bananas or their container, a stop notice label affixed by an authorised officer under regulation 13(1).

## **PART 5**

### **Additional enforcement provisions**

#### **Obstruction**

**16.** A person is guilty of an offence if he or she—

- (a) obstructs an authorised officer acting for the purpose of the enforcement of these Regulations, or a person accompanying such an authorised officer under regulation 6(3);

- (b) fails without reasonable excuse to give an authorised officer acting for the purpose of the enforcement of these Regulations any assistance or information or to provide any record or facilities that the authorised officer may reasonably require; or
- (c) supplies to an authorised officer acting for the purpose of the enforcement of these Regulations, any information knowing it to be false or misleading.

### **Offence due to fault of another person**

17.—(1) Where the commission by a person (“A”) of an offence under these Regulations is due to an act or default of another person (“B”), B is guilty of the offence.

(2) Proceedings may be taken against B whether or not proceedings are taken against A.

### **Defences**

18.—(1) Except in respect of the offences in regulation 16, it is a defence for a person charged with an offence under these Regulations (“C”) to prove that his or her actions were carried out with lawful authority or that he or she took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(2) Where C wishes to rely on the defence in paragraph (1), C must serve on the prosecutor a written notice of that fact in accordance with paragraph (4).

(3) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or default of another person, C is not, without leave of the court, entitled to rely on that defence unless C has served on the prosecutor a written notice in accordance with paragraph (4) giving such information identifying or assisting in the identification of that person as was then in C’s possession.

(4) The notice must be served—

- (a) where an intermediate diet is held, at or before that diet; or
- (b) where such a diet is not to be held, no later than 10 clear days before the trial diet.

### **Offences by bodies corporate**

19.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association;
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body;
  - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

## Penalties

20. A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART 6 Disapplication

### Disapplication

21. In so far as they apply to Scotland, the following Acts do not apply to bananas—
- (a) the Agriculture and Horticulture Act 1964<sup>(a)</sup> and the Horticultural Produce Act 1986<sup>(b)</sup>, which modifies it;
  - (b) the Agricultural Produce (Grading and Marking) Acts 1928<sup>(c)</sup> and 1931<sup>(d)</sup>; and
  - (c) the Agricultural Marketing Act 1958<sup>(e)</sup>.

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

St Andrew's House,  
Edinburgh  
7th September 2011

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(a) 1964 c.28.  
(b) 1986 c.20.  
(c) 1928 c.19.  
(d) 1931 c.40. This Act amended the Agricultural Produce (Grading and Marking) Act 1928 and the two Acts may be cited together as the Agricultural Produce (Grading and Marking) Acts 1928 and 1931.  
(e) 1958 c.47.

## SCHEDULE 1

Regulation 4(2)

### Provisions under Commission Regulation 2898/95

<i>Column 1</i> <b>Relevant provision of Commission Regulation 2898/95</b>	<i>Column 2</i> <b>Provision of Commission Regulation 2898/95 to be read with the provision in column 1</b>	<i>Column 3</i> <b>Subject matter</b>
Article 4(6)	Art. 1, Art. 2, Art. 3, remaining provisions of Art. 4, Art. 6, Art. 7, Art. 8.	Requirement for traders to provide all the facilities required by the inspection body for carrying out conformity checks
Article 5	Article 7	Requirement for traders not qualifying for the exemption provided for in Article 7 to provide specified information
Article 7(3)	Art. 1, Art. 2, Art. 3, Art. 4, Art. 6, remaining provisions of Art. 7, Art. 8.	Requirement for exempted traders to provide all the facilities required by the inspection body for carrying out conformity checks

## SCHEDULE 2

Regulations 9(4) and 13(2)

### Form and completion of labels

#### PART I

##### Form of non compliance label

 <b>The Scottish Government</b>	
NOT COMPLIANT WITH EU QUALITY STANDARDS FOR BANANAS	
It is an offence to remove, conceal, deface or alter this label without prior authorisation	
(a)	(b)

#### PART II

##### Completion of non compliance label

1. The reference number assigned to the label shall be inserted at (a).
2. The personal number assigned to the authorised officer shall be inserted at (b).

#### PART III

##### Form of stop notice label

 <b>The Scottish Government</b>	
DO NOT MOVE	
This consignment is subject to a stop notice. Unauthorised movement of this consignment from these premises or the unauthorised removal of this label is an offence under the Bananas (Enforcement of Quality Standards) (Scotland) Regulations 2011	
(a)	(b)

## PART IV

### Completion of stop notice label

1. The reference number assigned to the label shall be inserted at (a)
2. The personal number assigned to the authorised officer shall be inserted at (b).

## EXPLANATORY NOTE

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

These Regulations provide for the enforcement of the EU banana quality standards as provided for in Article 113 of Council Regulation (EC) No 1234/2007(a) (O.J. L 299, 16.11.2007, p.1) establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), and contained in Commission Regulation (EC) No. 2257/94 laying down quality standards for bananas (O.J. L 245, 20.9.1994, p.6) as read with Commission Regulation (EC) 2898/95 concerning verification of compliance with quality standards for bananas (O.J. L 304, 16.12.1995, p.17).

These Regulations disapply (see regulation 21) in so far as they apply to Scotland the Agriculture and Horticulture Act 1964, the Horticultural Produce Act 1986 which modifies the 1964 Act, the Agricultural Produce (Grading and Marking) Acts 1928 and 1931 and the Agricultural Marketing Act 1958 from the EU banana quality standards.

They designate the Scottish Ministers as competent national authority and inspection body in Scotland and provide for the Scottish Ministers to provide and request information and to appoint authorised officers (regulation 3).

The Regulations make the failure to comply with the EU banana quality standards an offence. They contain additional offences necessary for the effective enforcement of the EU banana quality standards (regulation 4 and Schedule 1).

The Regulations confer on authorised officer powers of entry (regulation 6) and other powers, including seizure powers (regulation 7) in relation to premises other than dwelling houses (regulation 5). They also contain powers to affix non compliance labels indicating various types of non-conformity with the EU quality standards for bananas (regulations 9, 10 and 11). These labels must contain the information set out in Schedule 2 (Parts I and II).

Regulation 12 confers power on authorised officers to prohibit the movement of bananas and gives a right of review to those served with a written notice informing of the exercise of that power. Regulation 13 confers power to affix a stop notice label warning of the exercise of power in regulation 12, which must contain the information set out in Schedule 2 (Parts III and IV). Regulation 14 makes provision for giving consent by authorised officers to the movement of controlled bananas where certain conditions are met.

Regulations 15, 16, 17 and 19 respectively contain provisions on offences relating to controlled bananas, to the obstruction of an authorised officer, to the commission of an offence due to the fault of another person and to the commission of offences by bodies corporate etc. Regulation 18 provides for defences of acting with lawful authority or exercising due diligence and taking reasonable precautions. Regulation 20 provides that the penalty for offences is on summary conviction a fine not exceeding level 5 on the standard scale.

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business in Scotland.

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(a) Article 201(1) of Council Regulation (EC) No 1234/2007 repealed Council Regulation (EEC) No. 404/93 under which Commission Regulation (EC) No. 2257/94 and Commission Regulation (EEC) No. 2898/95 were made. However, Article 201(3) of Council Regulation (EC) No. 1234/2007 provides that notwithstanding the repeal of Council Regulation (EEC) No. 404/93, Community acts adopted under it remain in force. By virtue of Article 202 of Council Regulation (EC) No. 1234/2007, references to Council Regulation (EEC) No. 404/93 shall be construed as references to Council Regulation (EC) No. 1234/2007 and shall be read in accordance with the correlation tables set out in its Annex XXII.







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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 325**

**HORTICULTURE**

The Bananas (Enforcement of Quality Standards) (Scotland)  
Regulations 2011

£5.75

S5201 09/2011 315201T 19585

ISBN 978-0-11-101458-5



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