

EXECUTIVE NOTE TO
THE BANANAS (ENFORCEMENT OF QUALITY STANDARDS) (SCOTLAND)
REGULATIONS 2011

SSI 2011/325

Introduction

1. The above instrument was made in exercise of powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and sections 16(1)(e), and 17(2) of the Food Safety Act 1990. The instrument is subject to negative resolution procedure.

Policy Objective

2. The purpose of this instrument is to re-establish a statutory framework for the enforcement of the EU marketing rules for bananas, specifically unripened green bananas, as provided for in Part XI of Annex I to Council Regulation 1234/2007/EC, Commission Regulation 2257/94/EC and Commission Regulation 2898/95/EC (which provides for verification of compliance with the standards). The standards have not changed since 2006. Green bananas were previously inspected and any enforcement taken using powers contained in the Agriculture and Horticulture Act 1964 (as amended by the Horticultural Produce Act 1986), as modified to apply to produce covered by EU marketing standards by the Grading of Horticultural Produce (Amendment) Regulations 1973 (SI 1973/22).

3. The Marketing of Horticultural Produce (Scotland) Regulations 2009 (SSI 2009/225) (“the 2009 Regulations”), which provide for the enforcement of the revised marketing standards for fresh fruit and vegetables (excluding bananas) revoked the 1973 Regulations in Scotland. As a result the powers under the 1964 Act no longer apply to produce subject to EU marketing standards and hence there are no powers to inspect and enforce the relevant banana standards. This was an error at the time of making the 2009 Regulations. A new SSI is required for the enforcement of the standards for green bananas and to fulfil the statutory EU obligations. The current instrument is based to a large extent on the 2009 Regulations, given the close connection between the relevant EU rules, subject to adaptation to those requirements which are specific to the banana sector. The same issue has arisen in Northern Ireland, England and Wales and those Administrations are making similar provisions there.

4. The Regulations designate Scottish Ministers as the competent national authority and inspection body for Scotland. They create various offences for non compliance with the EU banana quality standards and provide authorised officers appointed by Ministers with enforcement powers, including powers to serve non compliance notices and, via stop notices, powers to control the movement of bananas subject to a right of review by an authorised person. Given the perishable nature of bananas, it was considered that a time limited right of review afforded a practical, proportionate remedy to the trade in the circumstances.

Consultation

5. There is no trade in Scotland in relation to unripened bananas. Green bananas will arrive at a port of entry outwith Scotland, ripened at purpose built premises and then moved onto the Scottish market. There is trade in the product elsewhere in the UK. Defra undertook a targeted eight week informal consultation which ran from 20 September until 14 November 2010. This consultation paper was sent to specific English and Welsh stakeholders and also appeared on their websites. Three responses were received. The Scottish Government has consulted by inserting a link on its website to Defra's consultation paper. The Food Standards Agency Scotland have been advised. Anyone importing unripened bananas into the UK will be aware of the position with the enforcement provisions for the EU Regulations and the reasons for the re-introduction of the statutory provisions.

Timing

6. Provision for the enforcement of the relevant EU marketing rules should be made as soon as possible.

Financial effects

7. These Regulations will not place additional financial burdens on businesses so no Regulatory Impact Assessment has been prepared.

Rural and Environment Directorate – Agriculture and Rural Affairs Division
Plants, Horticulture and Potatoes
D Spur
Saughton House
August 2011