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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 169**

**EXITING THE EUROPEAN UNION  
HORTICULTURE**

**The Marketing of Horticultural Produce and Bananas  
(EU Exit) (Scotland) (Amendment) Regulations 2019**

*Made* - - - - 15th May 2019  
*Laid before the Scottish  
Parliament* - - - - 17th May 2019  
*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup>, paragraph 1(1) and (3) of schedule 2, and paragraph 21(b) of schedule 7, of the European Union (Withdrawal) Act 2018<sup>(2)</sup> and all other powers enabling them to do so.

**PART 1**

**INTRODUCTION**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019 and come into force—

- (a) as regards this Part and Part 2, on 1 July 2019,
- (b) as regards Part 3, on exit day.

(2) These Regulations extend to Scotland only.

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(1) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act 1998 (c.46) (“the 1998 Act”) (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 Part 1 of the schedule of the European Union (Amendment) Act 2008 (c.7). The functions conferred upon the Minister of the Crown under section 2(2), insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. The European Communities Act 1972 is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) from exit day (see section 20 of that Act).

(2) 2018 c.16.

## PART 2

### AMENDMENT OF REFERENCES IN SECONDARY LEGISLATION

#### **Amendment of the Marketing of Bananas (Scotland) Regulations 2012**

2. In regulation 2(1) (interpretation) of the Marketing of Bananas (Scotland) Regulations 2012<sup>(3)</sup>, in the definition of “Council Regulation 2013”, for “the Regulation of the European Parliament and of the Council adopted on 16 December 2013” substitute “Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013”.

## PART 3

### AMENDMENT OF SECONDARY LEGISLATION RELATING TO WITHDRAWAL FROM THE EUROPEAN UNION

#### **Amendment of the Marketing of Horticultural Produce (Scotland) Regulations 2009**

3.—(1) The Marketing of Horticultural Produce (Scotland) Regulations 2009<sup>(4)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) omit the definition of “EU marketing rules”,
- (b) in the definition of “horticultural produce” omit “EU”,
- (c) after the definition of “label” insert—

““marketing rules” means the general marketing standard and the specific marketing standards covering fresh fruit and vegetables listed in Part IX of Annex I to Council Regulation 2013 and includes the rules relating to those standards contained in Articles 74, 75 and 76 of that Council Regulation and in Title II of Commission Implementing Regulation 543/2011;”,

(d) in the definition of “non compliance label” omit “EU”.

(3) In regulation 3(2) (designations and information disclosure)—

- (a) omit “EU”,
- (b) for “Secretary of State,” substitute “Secretary of State or”,
- (c) omit “or the European Commission”.

(4) In regulation 5(1)(h) (authorised officer: other powers) omit “EU”.

(5) In regulation 6(1) (authorised officer: power to affix a non compliance label) omit “EU”.

(6) In regulation 7 (authorised officer: power to affix a non compliance label)—

- (a) in paragraph (1) omit “EU”,
- (b) in paragraph (3)(b) omit “EU”,
- (c) in paragraph (4)(b) omit “EU”.

(7) In regulation 8(1) (authorised officer: power to affix a non compliance label) omit “EU” in each place it occurs.

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(3) S.S.I. 2012/349, amended by S.I. 2013/3235.

(4) S.S.I. 2009/225, amended by S.S.I. 2011/324, S.I. 2011/1043, S.I. 2013/3235 and S.S.I. 2018/391.

(8) In regulation 9(2) (authorised officer: requirement to serve a notice in terms of regulations 6, 7 and 8) omit “EU” in each place it occurs.

(9) In regulation 10(2)(e) (authorised officer: powers to control the movement of horticultural produce) omit “EU”.

(10) In regulation 13 (authorised officer: consents to the movement of controlled horticultural produce)—

- (a) in paragraph (2)(a) omit “EU”,
- (b) in paragraph (3)(a)(ii) omit “EU”.

(11) In regulation 15 (EU marketing rules offences)—

- (a) in the heading, omit “EU”,
- (b) in paragraph (3)(a) omit “EU”,
- (c) in paragraph (4) omit “EU”,
- (d) in paragraph (5) omit “EU”,
- (e) in paragraph (6)(a) omit “EU” in both places it occurs,
- (f) in paragraph (7)—
  - (i) for “European Union” substitute “United Kingdom”,
  - (ii) omit “EU”.

(12) In regulation 18(1)(c) (obstruction) omit “EU” in both places it occurs.

(13) After regulation 24 (disapplication) insert—

**“Transitional provisions: withdrawal from the EU**

**25.—**(1) An authorised officer must not exercise the powers under regulation 8(1) in relation to a failure to comply with Article 7 of Commission Implementing Regulation 543/2011 if the matter constituting the alleged contravention—

- (a) relates to a product that was placed on the market on or before 31 December 2020, and
- (b) would not have constituted a contravention of that Regulation as it applied immediately before exit day.

(2) Regulation 15 does not apply in relation to a failure to comply with Article 7 of Commission Implementing Regulation 543/2011 if the matter constituting the alleged contravention—

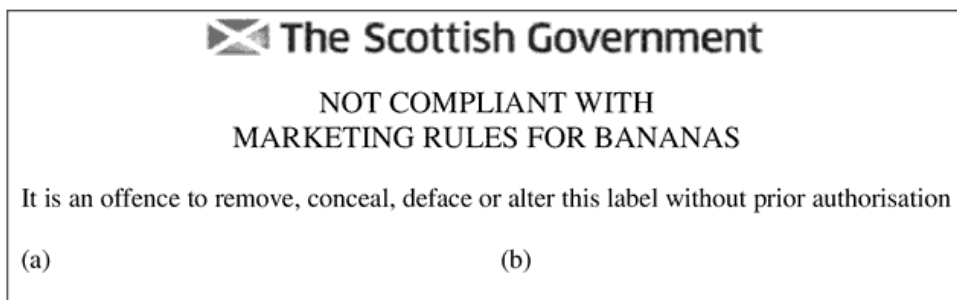
- (a) relates to a product that was placed on the market on or before 31 December 2020, and
- (b) would not have constituted a contravention of that Regulation as it applied immediately before exit day.”.

(14) In schedule 1 (form and completion of labels), for the non compliance label in Part 1 (form of non compliance label), substitute—



- (a) in paragraph (1)(a) omit “EU”;
  - (b) in paragraph (2)(a) omit “EU”;
  - (c) in paragraph (3)(a) omit “EU”.
- (8) In regulation 10 (power to affix a non compliance label) omit “EU” in each place it occurs.
- (9) In regulation 11(2) (requirement to serve a notice in terms of regulation 9 or 10) omit “EU” in each place it occurs.
- (10) In regulation 12(2)(e) (powers to control the movement of bananas) omit “EU”.
- (11) In regulation 14(3)(a)(ii) (consents to the movement of controlled bananas) omit “EU”.
- (12) In schedule 1 (provisions under Commission Regulation 1333/2011), in column 2 of the table omit “Article 4,” in both places it occurs.
- (13) In schedule 2 (form and completion of labels), for the non compliance label in Part I (form of non compliance label) substitute—

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St Andrew’s House,  
Edinburgh  
15th May 2019

*MAIRI GOUGEON*  
Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

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

These Regulations are made principally in exercise of the powers in the European Union (Withdrawal) Act 2018 to address deficiencies in EU-derived domestic legislation in Scotland arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of horticulture.

Part 2 (regulation 2), made in exercise of powers under the European Communities Act 1972, makes a technical amendment to secondary legislation concerning horticulture to give effect to EU law, to update a reference to an EU Regulation.

Part 3 (regulations 3 and 4), made in exercise of powers in the European Union (Withdrawal) Act 2018, makes amendments to secondary legislation concerning horticulture consequential on the United Kingdom's withdrawal from the European Union.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.