

## **POLICY NOTE**

### **THE MARKETING OF HORTICULTURAL PRODUCE AND BANANAS (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019**

**SSI 2019/169**

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (“the 1972 Act”) and paragraph 1(1) and (3) of schedule 2, and paragraph 21(b) of schedule 7, of the European Union (Withdrawal) Act 2018 (“the 2018 Act”). The instrument is subject to negative procedure.

#### **Purpose of the instrument**

To amend the Marketing of Horticultural Produce (Scotland) Regulations 2009 and the Marketing of Bananas (Scotland) Regulations 2012 to ensure that they continue to operate effectively following the UK’s Exit from the EU in a no deal scenario.

#### **Policy Objectives**

Where practical and appropriate, European legislation is being retained in UK law on the UK’s exit from the EU. This includes legislation in relation to Common Market Organisation (CMO). The marketing standards element of the CMO is designed to ensure the market is supplied with goods of a standardised and satisfactory quality and enforcement of the recognised standards prevents the market from being flooded by cheaper substandard goods.

Upon exit day a number of technical corrections are required to regulations which set out enforcement provisions for the marketing standards of fresh fruit and vegetables (including bananas, which are dealt with through a separate regulatory regime) in Scotland. This instrument aims to make the legislation appropriate to the domestic context of the UK in the event of a no deal EU Exit.

In addition to relying on powers in the 2018 Act to fix deficiencies which arise as a result of EU exit (Part 3 - Amendment of secondary legislation relating to withdrawal from the European Union), a technical change is being made using the power in section 2(2) of the 1972 Act (Part 2 - Amendment of references in secondary legislation) to make technical changes to to update a reference to an EU Regulation referred to in domestic legislation. A number of further minor amendments are made to rectify omissions or errors in domestic legislation.

#### **Explanation of the law being amended by the regulations**

The Marketing of Horticultural Produce (Scotland) Regulations 2009 (SSI 2009/225 - “the 2009 Regulations”) contain provision to enforce in Scotland Regulation (EU) No. 1308/2013 and Commission Implementing Regulation (EU) No 543/2011 (“Regulation 543/2011”) laying down detailed rules in respect of the fruit and vegetables and processed fruit and vegetables sectors.

European legislation underpins marketing standards for fresh fruit and vegetables. Produce which is intended to be sold fresh to the consumer may only be marketed if it is of sound, fair and marketable quality and if the country of origin is indicated. As it stands Regulation 543/2011 provides marketing standards to harmonise the implementation of the common market across Member States in the fresh fruit and vegetables sector.

The 2009 Regulations as they stand make provision for enforcement of Regulation 543/2011. They designate Scottish ministers as the inspection body for Scotland and create offences and penalties for non-compliance with EU marketing standards. They confer powers to Scottish Government inspectors to issue compliance notices and stop notices to control the movement of horticultural produce that does not comply. The 2009 Regulations also give powers to inspectors to enter, inspect buildings, equipment and records and to obtain samples of horticultural produce.

The Marketing of Bananas (Scotland) Regulations 2012 (SSI 2012/349 – “the 2012 Regulations”) enforce the provisions of Regulation (EU) No. 1308/2013 and Commission Implementing Regulation (EU) No 1333/2011 (“Regulation 1333/2011”) laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector.

The purpose of Regulation 1333/2011 is to provide marketing standards for bananas, specifically unripened green bananas. The 2012 Regulations designate Scottish Ministers as the competent authority and inspection body for Scotland and make failure to comply with EU marketing standards for bananas an offence. The 2012 Regulations also detail the powers given to inspectors to ensure compliance with EU marketing requirements including the power to enter and inspect premises as well as inspect machinery, containers, documents and bananas. Where non-compliance is evident, the 2012 Regulations contain provisions to empower inspectors to affix compliance labels that may restrict the movement of produce.

### **Reasons for and effect of the proposed change**

This instrument corrects the 2009 Regulations and the 2012 Regulations in light of changes to directly applicable EU instruments becoming UK law, including in particular Regulation 543/2011 and Regulation 1333/2011 amended by UK Statutory Instruments: the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/822) and the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/828). The amendments conferred by this instrument are in line with amendments made to equivalent Regulations for England (the Marketing of Fresh Horticultural Produce Regulations 2009 (S.I. 2009/1361) and the Quality Standards for Green bananas (England and Wales) Regulations 2012 (S.I. 2012/947) amended by the Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/824).

The UK Statutory Instruments and the Scottish Statutory Instrument have been brought forward in exercise of powers in the 2018 Act in order to address failures of retained EU law to operate effectively after the withdrawal of the United Kingdom from the European Union. Neither the UK SIs nor the SSI reflect a change in policy. The amendments aim to be as minimal as is practicable in order to prevent wastage and reduce burden on producers but as robust as required to ensure that consumers can be confident that product information is transparent and accurate.

The SSI makes minor amendments to ensure correct functioning of the 2009 Regulations and 2012 Regulations in response to the UK SIs noted above.

- Amendments to 2009 Regulations include:
  - In light of EU exit to change references to “EU marketing rules” to “marketing rules” and to remove other EU references – e.g. the role of the European Commission - as they will not be applicable after EU exit day.
  - Similar to provision being made elsewhere in the UK<sup>1</sup> and together with changes made to article 7 of Regulation 543/2011 becoming retained EU law<sup>2</sup>, transitional provision is made in relation to produce placed on the market on or before 31 December 2020. These transitional provisions will maintain the efficient trade in horticultural produce in a no-deal EU exit and allow the measured and organised conversion of EU produce to third country status.
  
- Amendments to the 2012 Regulations include:
  - In light of EU exit to change references to “EU marketing rules” to “marketing rules” and to remove other EU references – e.g. removing references to functions of a ‘Member State’ - as they will not be applicable after EU exit day.
  - Removing other redundant provisions, for example omitting references to Article 4 of EU Regulation 1333/2011 which is omitted from retained EU law as bananas are not grown in the UK.
  - Using powers under the European Communities Act 1972 section 2(2) to amend an typographical error in the definition of an EU Regulation.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2019/824/contents/made> (see regulation 5(14)).

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2019/822/contents/made> (see regulation 8(15) to (17)).

## **Statements required by European Union (Withdrawal) Act 2018**

### **Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendments) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made only to ensure, following a ‘no deal’ United Kingdom exit from the European Union, continued and effective functioning of the legislation being amended and do not introduce policy change.”.

### **Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued and effective enforcement of marketing standards for fresh fruit and vegetables, including bananas, within Scotland in order to maintain product quality as well as provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

### **Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendments) Regulations 2019 do not amend, repeal or revoke any provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”.

### **Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

## **Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament**

### **Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendments) Regulations 2019 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”.

### **Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendments) Regulations 2019 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence). The instrument is made to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued and effective enforcement of marketing standards for fresh fruit and vegetables, including bananas, within Scotland in order to maintain product quality as well as provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

### **An indication of how the regulations should be categorised in relation to the significance of the change proposed.**

Low – The amendments are technical in nature to allow continuity of law and do not amount to a change in policy.

### **Statement setting out the Scottish Ministers’ reasons for their choice of procedure**

Negative procedure is considered appropriate as these minor and technical amendments do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU. The regulations do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

## **Further information**

### **Consultation**

The Scottish Government is in regular contact with stakeholders regarding the move towards leaving the EU. This instrument does not amount to a change in policy and is being made to avoid deficiencies arising as a result of the UK’s withdrawal from the EU. There has been no formal public consultation regarding this instrument.

The instrument is linked to changes to directly applicable EU instruments becoming retained EU law, including Regulation 543/2011 and Regulation 1333/2011. Scottish Government policy officials engaged with DEFRA as part of a UK-wide consultation with stakeholders on the approach being taken to correct deficiencies in retained CMO legislation, including on marketing standards for fresh fruit and vegetables. The consultation informed stakeholders that the laws and rules that currently exist while we are part of the EU will, as far as possible, continue to apply after exit. It set out that in some cases changes would be required to correct deficiencies arising as a result of EU exit and outlines what those changes would be. One response was received in relation to fresh fruit and vegetables marketing standards with an acceptance that this was a balanced and pragmatic approach in the circumstances.

We have engaged with DEFRA and other UK administrations on the content of both the UK Statutory Instruments and this instrument. Other UK administrations are making similar amendments to equivalent domestic legislation.

### **Impact Assessments**

Full impact assessments have not been prepared for this instrument because it is aimed at preserving the effect of the current regulatory regimes once the United Kingdom leaves the European Union. The current amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

### **Financial Effects**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Agriculture and Rural Economy Directorate