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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 324**

**HORTICULTURE**

**The Marketing of Horticultural Produce  
(Scotland) Amendment Regulations 2011**

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

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<sup>(1)</sup> (“the 1990 Act”), paragraph 1A of Schedule 2 to the European Communities Act 1972<sup>(2)</sup> and all other powers enabling them to do so.

In accordance with section 48(4A) of the 1990 Act, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency<sup>(3)</sup>.

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<sup>(4)</sup>.

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 Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors<sup>(5)</sup> to be construed as references to that Regulation as amended from time to time.

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- (1) 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).
- (2) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006 (c.51), section 28 and was amended by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.
- (3) Section 48(4A) was inserted by the Food Standards Act 1999 (c.28), Schedule 5, paragraph 21.
- (4) O.J. L 31, 1.2.2002, p.1, to which there are no relevant amendments.
- (5) O.J. L 157, 15.6.2011, p.1.

### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Marketing of Horticultural Produce (Scotland) Amendment Regulations 2011 and come into force on 10th October 2011.

(2) These Regulations extend to Scotland only.

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

2. The Marketing of Horticultural Produce (Scotland) Regulations 2009<sup>(6)</sup> are amended in accordance with regulations 3 to 16.

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) for the definition of “Commission Regulation 1580/2007” substitute—

““Commission Implementing Regulation 543/2011” means Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors<sup>(7)</sup>, as amended from time to time;”;

(ii) for the definition of “EU marketing rules” substitute—

““EU 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 1234/2007, and includes the rules relating to those standards contained in Articles 113 and 113a of that Council Regulation and in Title II of Commission Implementing Regulation 543/2011;”;

(iii) for the definition of “general marketing standard” substitute—

““general marketing standard” means the requirements of Article 113a(1) of Council Regulation 1234/2007 as detailed in Article 3(1) of, and Part A of Annex I to, Commission Implementing Regulation 543/2011”; and

(iv) for the definition of “specific marketing standards” substitute—

““specific marketing standards” means the marketing standards provided for under Article 113(1)(b) of Council Regulation 1234/2007 as detailed in Article 3(2) of, and Part B of Annex I to, Commission Implementing Regulation 543/2011, and “specific marketing standard” means one of those specific marketing standards;”;

(b) in paragraph (3), for “Commission Regulation 1580/2007” substitute “Commission Implementing Regulation 543/2011”.

4. In regulation 3(1) (designations and information disclosure), for “Article 8(1)(b) of Commission Regulation 1580/2007” substitute “Article 9(1)(b) of Commission Implementing Regulation 543/2011”.

5. In regulation 4(4) (authorised officer: powers of entry), for “justice of the peace or a sheriff” and “justice of the peace or the sheriff” substitute “sheriff, stipendiary magistrate or justice of the peace”.

6. For regulation 10(3) (authorised officer: powers to control the movement of horticultural produce) substitute—

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<sup>(6)</sup> S.S.I. 2009/225, as amended by S.I. 2011/1043.

<sup>(7)</sup> O.J. L 157, 15.6.2011, p.1.

“(3) When serving the notice under paragraph (1), the authorised officer must inform the operator of the right of review under regulation 11 and how it may be exercised.”

7. For regulation 11 (appeals) substitute—

**“Right of review**

11.—(1) The person on whom a notice has been served, or owner of the horticultural produce 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 of an authorised officer to serve a notice under regulation 10(1).

(2) The relevant person requesting a review of a decision to serve a notice under regulation 10(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.

(3) 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.

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

(5) 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 (1); and
- (b) serve notice on the relevant person of the decision in writing.

(6) 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.

(7) The appointed person’s determination is final.”

8. For regulation 13(4) (authorised officer: consents to the movement of controlled horticultural produce) substitute—

“(4) A consent given by an authorised officer under this regulation must—

- (a) specify the horticultural produce 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 horticultural produce continues to be controlled.”

9. In regulation 15(2) (EU marketing rules offences), for “Commission Regulation 1580/2007” substitute “Commission Implementing Regulation 543/2011”.

10. After regulation 15 insert—

**“Provision of information – trader database**

15A.—(1) A trader must provide to the Scottish Ministers such information as Ministers consider necessary to set up and update the database established for the purpose of Article 10 of Commission Implementing Regulation 543/2011.

(2) A person is guilty of an offence if he or she fails to provide any information required by the Scottish Ministers in accordance with paragraph (1).

### **Provision of information – conformity checks**

**15B.**—(1) A trader must provide to an authorised officer such information as that officer considers necessary—

- (a) for organising and carrying out a conformity check in accordance with Article 11 of Commission Implementing Regulation 543/2011; or
- (b) for the purposes of Article 17 of Commission Implementing Regulation 543/2011.

(2) A person is guilty of an offence if he or she fails to provide any information required by an authorised officer in accordance with paragraph (1).”.

**11.** In regulation 17 (offences relating to movement of controlled horticultural produce)—

(a) for paragraph (1) substitute—

“(1) A person is guilty of an offence if he or she moves controlled horticultural produce or a container with controlled horticultural produce in it, or causes or permits it 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 13(1).”; and

(b) omit paragraph (3).

**12.** In regulation 18(1) (obstruction)—

(a) in sub-paragraph (a) omit “intentionally”;

(b) for sub-paragraph (b) substitute—

“(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;”; and

(c) in sub-paragraph (d), for “without reasonable excuse, proof of which shall lie on the accused, supply” substitute “supplies”.

**13.** For regulation 19(2) (offence due to fault of another person) substitute—

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

**14.** For regulation 21 (offences by bodies corporate) substitute—

#### **“Offences by bodies corporate**

**21.**—(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.”.

15. In Part III of Schedule 1 (form of stop notice label), for “REMOVE” substitute “MOVE”.

16. For Schedule 2 (provisions under Commission Regulation 1580/2007) substitute—

“SCHEDULE 2

Regulation 15(2)

Provisions of Commission Implementing Regulation 543/2011

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Relevant provision of Commission Implementing Regulation 543/2011</i>	<i>Provision of Commission Implementing Regulation 543/2011 to be read with the provision in column 1</i>	<i>Subject matter</i>
Article 5(1)	Annex I, Art. 4(3), Art. 5(2) to (4), Art. 6, Art. 7	General requirements for information particulars
Article 5(2)	Annex I, Art. 5(1), (3) and (4), Art. 7	Requirements for information particulars in documents accompanying bulk shipments and goods loaded directly onto a means of transport
Article 5(3)	Annex I, Art. 5(1) and (4), Art. 7	Requirement for information particulars in the case of distance contracts to be available before the purchase is concluded
Article 5(4)	Annex I, Art. 5(1) to (3), Art. 7	Requirement for information particulars on invoices and accompanying documents
Article 6	Annex I, Art. 4(3), Art. 7	Requirement for information particulars at the retail stage
Article 7(1)	Annex I, Art. 4(3), Art. 6, Art. 7(2) and (3)	Requirements for sale of mixes of different types of fruit and vegetables”.

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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  
7th September 2011

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

These Regulations implement Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sector (O.J. L 157, 15.6.2011, p.1) (“the EU Regulation”) in Scotland.

The EU Regulation consolidated with amendments Commission Regulation (EC) No 1580/2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (O.J. L 350, 31.12.2007, p.1).

Regulations 3, 4, 9 and 16 amend the Marketing of Horticultural Produce (Scotland) Regulations 2009 (“the principal Regulations”) to update the necessary references to the EU Regulation.

In addition, regulations 6 and 7 amend regulations 10 and 11 of the principal Regulations to provide for a right of review in relation to stop notices controlling the movement of horticultural produce.

Regulation 15 also amends Part III of Schedule 1 to the principal Regulations, to adjust the wording required to be contained in stop notice labels.

Regulations 5, 8 and 10 to 14 update the principal Regulations in line with current drafting practice.

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