

1973. No. 19

[C]

**Grading of Horticultural Produce (Amendment) Regulations  
(Northern Ireland) 1973**

REGULATIONS, DATED 1ST FEBRUARY 1973, MADE BY THE MINISTRY OF AGRICULTURE UNDER SECTION 1 OF THE HORTICULTURE ACT (NORTHERN IRELAND) 1966 AS AMENDED BY ARTICLE 3 AND SCHEDULE 1 OF THE EUROPEAN COMMUNITIES (AGRICULTURE) ORDER (NORTHERN IRELAND) 1972 AND BY THE EUROPEAN COMMUNITIES (AGRICULTURE) (AMENDMENT) ORDER (NORTHERN IRELAND) 1973.

The Ministry of Agriculture on behalf of the Secretary of State and in exercise of the powers conferred on it by section 1 of the Horticulture Act (Northern Ireland) 1966(a) as amended by Article 3 and the First Schedule of the European Communities (Agriculture) Order (Northern Ireland) 1972(b) and by the European Communities (Agriculture) (Amendment) Order (Northern Ireland) 1973(c) and of every other power enabling it in that behalf and after consultation with such organisations as appear to be representative of those interests affected by these Regulations hereby makes the following Regulations:

*Citation and commencement*

1. These Regulations may be cited as the Grading of Horticultural Produce (Amendment) Regulations (Northern Ireland) 1973 and will come into operation on the 1st day of February 1973.

*Revocation*

2. The Regulations specified in Schedule 2 shall be revoked on the 1st February 1973.

*Interpretation*

3. In these Regulations—

“the Act” means the Horticulture Act (Northern Ireland) 1966;

“Community grading rules” means any directly applicable Community provisions establishing standards of quality for fresh horticultural produce.

*Application and amendment of the Act*

4. Parts I and IV of the Act as modified by the subsequent provisions of these Regulations shall apply as if produce of any description for the time being subject to Community grading rules were regulated fresh produce and as if the standards of quality established by those rules were prescribed grades: and those sections of the Act which are so modified are set out in their modified form in the First Schedule.

*Amendment of section 3*

5. Section 3 shall be amended by adding after sub-section (4) thereof the following sub-sections:—

(a) 1966. c. 15 (N.I.).

(b) S.R. & O. (N.I.) 1972, No. 351.

(c) S.R. & O. (N.I.) 1973, No. 17.

“(5) A person shall be guilty of an offence if he sells, offers for sale, delivers, or markets in any other manner any regulated fresh produce in contravention of Community grading rules or with intent to sell, offer for sale, deliver, or market in circumstances that the sale, offer for sale, delivery or marketing would contravene those rules, he—

- (a) offers or exposes the produce for sale; or
- (b) not being the producer thereof, has the produce in his possession for sale; or
- (c) being the producer thereof consigns the produce for sale.

(6) A person shall be guilty of an offence if, on behalf of the owner of any regulated fresh produce—

- (a) he sells, offers for sale, delivers or markets regulated fresh produce in circumstances such that the sale, offer for sale, delivery or marketing contravenes Community grading rules; or
- (b) with intent to sell, offer for sale, deliver or market regulated fresh produce in such circumstances he offers or exposes it for sale or has it in his possession for sale.

(7) A person shall be guilty of an offence if having given an undertaking or having been responsible for the giving of an undertaking on his behalf by another person as to any resorting, regrading or relabelling of regulated fresh produce found not to conform to Community grading rules he fails to comply with the undertaking.

(8) A person shall be guilty of an offence if he offers regulated fresh produce of a description included in Chapter 6 of the Common Customs Tariff of the European Communities, as amended or replaced from time to time, for which there is a prescribed grade and in relation to which a price has been quoted in any advertisement, catalogue or price list without giving particulars required by Community grading rules relating thereto.

(9) A person shall be guilty of an offence if he despatches any consignment of regulated fresh produce weighing 4 metric tons or more from one despatching area as specified from time to time in Community grading rules, to another such despatching area or exports any consignment of regulated fresh produce to any place outside the European Economic Community without any certificate accompanying the produce as required by Community grading rules.

(10) A person shall be guilty of an offence if he knowingly gives in relation to regulated fresh produce whether by affixing an incorrect label or in any other manner a description of the produce which does not comply with the requirements of Community grading rules.

(11) A person shall be guilty of an offence if he fails to make any request for inspection or give any notice or information required by Community grading rules.”

#### *Amendment to section 4*

6. Section 4 thereof shall be amended by deleting “section 3(1)(2) or (3)” and inserting “section 3(1)(2)(3)(5) or (6)”.

*Amendment to section 5*

7. Section 5 shall be amended as follows:—

- (a) Sub-sections (1) thereof shall be amended by deleting “section 3(1) or (2)” and inserting “section 3(1)(2)(5) or (6)”;
- (b) the following sub-section shall be substituted for sub-section (6) thereof—

“(6) For the purposes of this section any grade or standard of quality entered in an invoice or certificate relating to any produce or indicated by a label affixed to the produce or a package or freight container containing the produce shall be deemed to be a written warranty that the produce conforms to the standard of quality so entered or indicated.”

*Amendment to section 7*

8. Section 7 shall be amended by adding the following sub-paragraph to sub-section (3) thereof:—

“(c) the sale or offering for sale of produce subject to Community grading rules.”.

*Amendment to section 26*

9. Section 26 shall be amended by substituting the following paragraphs for paragraphs (a) and (b) and sub-paragraph (i):—

- “(a) which has affixed to it a label or which is accompanied by a certificate which is in the form prescribed for any produce under section 1 or 20, for any grade designated or defined under section 1 or 13(a) as the case may be or is in a container or package or freight container to which such a label is affixed or which is accompanied by a certificate, but
- (b) which he has reasonable cause to believe to be of a quality inferior to the quality required for that grade,

he may—

- (i) in such manner as may be prescribed, cancel that label or certificate and affix to the produce or to the container or package or freight container a label in such form as may be prescribed, indicating what appears to him to be the correct grade or, where it appears to him that the quality of the produce is inferior to that required for the lowest grade defined for produce of that description indicating that fact; or”

*Amendment to section 27*

10. Section 27 shall be amended by substituting the following sub-section for sub-section (3) thereof:—

“(3) A person shall be guilty of an offence if—

- (a) without lawful authority he affixes to a container or package or freight container containing any horticultural produce, or to the produce itself, or to the certificate accompanying the produce a label in the form prescribed for the purposes of section 26 or for the purposes of any corresponding provision of an enactment of the Parliament of the United Kingdom for the time being in force; or

- (b) having been lawfully required, in pursuance of section 26, to affix to any container or package, or freight container or produce or to the produce itself, or to the certificate accompanying the produce such as is described in paragraph (a) any label in the form prescribed for the purposes of section 26, he fails to do so within any reasonable period of time specified to him by the person issuing the requirement, or, having been so required or in like manner authorised to so affix such label, he does so otherwise than in accordance with the terms of the requirement or authorisation; or
- (c) where under section 26 of any such corresponding provision as is mentioned in paragraph (a) a label has been affixed to a container or package or freight container containing any fresh horticultural produce, or to the produce itself or to the certificate accompanying such produce, he with intent to deceive, removes, alters, defaces or conceals the label."

*Amendment to section 35*

11. Section 35 shall be amended by inserting immediately after the definition of "Community grading rules" the following definitions:—

"'certificate' includes any document other than a label which accompanies any produce and which contains information relating to the standard of quality to which it refers;

'standards of quality' means in relation to produce a common standard imposed by Community grading rules relating to quality, size and packaging;

'freight container' means any returnable container especially designed for the carriage of freight in transport."

Sealed with the Official Seal of the Ministry of Agriculture for Northern Ireland this 1st day of February 1973.

(L.S.)

*A. McKelvie,*  
Senior Assistant Secretary.

## SCHEDULE 1

PART I OF THE HORTICULTURE ACT (NORTHERN IRELAND) 1966  
AS APPLIED AND AMENDED

3.—(1) A person shall be guilty of an offence if he sells, offers for sale, delivers or markets any produce in contravention of Community grading rules or with intent to sell, offer for sale, delivery or market in circumstances that the sale, offer for sale, delivery or marketing would contravene those rules he—

- (a) offers or exposes the produce for sale; or
- (b) not being the producer thereof has the produce in his possession for sale; or
- (c) being the producer thereof consigns the produce for sale.

(2) A person shall be guilty of an offence if, on behalf of the owner of any regulated fresh produce—

- (a) he sells, offers for sale, delivers or markets in circumstances such that the sale, offer for sale, delivery or marketing contravene Community grading rules; or
- (b) with intent to sell, offer for sale, deliver or market the produce in such circumstances he offers or exposes it for sale or has it in his possession for sale.

(3) A person shall be guilty of an offence if having given an undertaking such as is mentioned in section 2(2)(c) he fails to comply with the undertaking.

(4) A person shall be guilty of an offence if he represents, whether by affixing an incorrect label to a package containing any fresh produce or in any other manner, that fresh produce the quality of which is inferior to that required for a prescribed grade falls within that grade.

(5) A person shall be guilty of an offence if he sells, offers for sale, delivers or markets in any other manner any regulated fresh produce in contravention of Community grading rules or with intent to sell, offer for sale, deliver, or market in circumstances that the sale, offer for sale, delivery or marketing would contravene those rules he—

- (a) offers or exposes the produce for sale; or
- (b) not being the producer thereof, has the produce in his possession for sale; or
- (c) being the producer thereof consigns the produce for sale.

(6) A person shall be guilty of an offence if on behalf of the owner of any regulated fresh produce—

- (a) he sells, offers for sale, delivers or markets regulated fresh produce in circumstances such that the sale, offer for sale, delivery or marketing contravenes Community grading rules; or
- (b) with intent to sell, offer for sale, deliver or market regulated fresh produce in such circumstances he offers or exposes it for sale or has it in his possession for sale.

(7) A person shall be guilty of an offence if having given an undertaking or having been responsible for the giving of an undertaking on his behalf by another person as to any resorting, regrading or relabelling of regulated fresh produce found not to conform to Community grading rules he fails to comply with the undertaking.

(8) A person shall be guilty of an offence if he offers regulated fresh produce of a description included in Chapter 6 of the Common Customs Tariff of the European Communities, as amended or replaced from time to time, for which there is a prescribed grade and in relation to which a price has been quoted in any advertisement, catalogue or price list without giving particulars required by Community grading rules relating thereto.

(9) A person shall be guilty of an offence if he despatches any consignment of regulated fresh produce weighing 4 metric tons or more from one despatching area as specified from time to time in Community grading rules, to another such despatching area or exports any consignment of regulated fresh produce to any place outside the European Economic Community without any certificate accompanying the produce as required by Community grading rules.

(10) A person shall be guilty of an offence if he knowingly gives in relation to regulated fresh produce whether by affixing an incorrect label or in any other manner a description of the produce which does not comply with the requirements of Community grading rules.

(11) A person shall be guilty of an offence if he fails to make any request for inspection or give any notice or information required by Community grading rules.

4. Where a contravention of a provision of this Part for which a person is liable to be convicted of an offence under section 3(1), (2), (3), (5) or (6) was due to an act or default of another person then whether proceedings are taken against the first-mentioned person or not that other person may be charged with and convicted of the offence and shall on conviction be liable to any punishment (whether by way of fine or imprisonment or both) which does not exceed the maximum punishment to which the first-mentioned person would on conviction be liable.

5.—(1) Subject to the provisions of this section where in proceedings for an offence in relation to any produce under section 3(1), (2), (5) or (6) it would have been a defence for the person charged to prove that the produce conformed to a prescribed grade it shall be a defence for him to prove—

- (a) that he bought or took delivery of the produce as being of a quality falling within that grade and with a written warranty to that effect; and
- (b) that at the time of the commission of the offence he had no reason to believe the statement contained in the warranty to be inaccurate that he then did believe in its accuracy and that he had taken such steps, if any, as were reasonably practicable to check its accuracy; and
- (c) that he took all reasonable steps to ensure that the quality of the produce was the same at the time of the commission of the offence as when it left the possession of the person from whom the warranty was received.

(2) Where the proceedings are in respect of an offence committed by the person charged in the course of his employment, it shall be a defence for him to prove—

- (a) that if his employer had been charged the employer would have had a defence under sub-section (1) in respect of a warranty; and
- (b) that at the time of the commission of the offence the person charged had no reason to believe the statement contained in the warranty to be inaccurate.

(3) Where the person charged intends to set up a defence under this section he shall not later than three days before the date of the hearing—

- (a) send to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person by whom it is alleged to have been given; and
- (b) send to the last-mentioned person a notice giving the date and place of the hearing and stating that he intends to rely on the warranty.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and give evidence.

(5) If the person charged in any such proceedings as aforesaid wilfully attributed to any produce a warranty given in relation to any goods not including that produce, he shall be guilty of an offence.

(6) For the purposes of this section any grade or standard of quality entered in an invoice or certificate relating to any produce or indicated by a label affixed to the produce or a package or a freight container containing the produce shall be deemed to be a written warranty that the produce conforms to the standard of quality so entered or indicated.

7.—(1) With a view to reducing the risk of deterioration of or damage to produce while in transit or promoting efficiency in the transport and handling of produce the Ministry may make Regulations imposing a duty on any person consigning fresh horticultural produce in circumstances other than the circumstances mentioned in sub-section (3) to secure that such packages, pallets and other articles as may be prescribed by the Regulations are used for the transport of the produce.

(2) The Ministry may make regulations directing that fresh horticultural produce of any description shall not be—

(a) sold; or

(b) offered or exposed for sale;

in packages, in circumstances other than the circumstances mentioned in sub-section (3) except subject to such conditions as may be prescribed with respect to—

- (i) the types, sizes, capacity and specifications of the packages;
- (ii) the quantity of produce which may be, or is required to be, packed therein;
- (iii) the manner in which the produce is to be packed and the types and specifications of any packing material.

(3) The circumstances referred to in sub-sections (1) and (2) are respectively—

(a) the consigning of the produce for delivery after—

(i) a sale by retail; or

(ii) a sale where the produce is to be used by the buyer in manufacturing or producing any commodity for sale or other disposal by him; and

(b) the sale or the offering or exposing for sale of the produce in such a case as is mentioned in sub-paragraph (i) or (ii) of paragraph (a);

(c) the sale or offering for sale of produce subject to Community grading rules.

(4) If any person contravenes a regulation made under this section he shall be guilty of an offence.

26. Where in or upon any premises, place, vessel, aircraft or vehicle which he has a right to enter under section 24 an authorised officer finds any horticultural produce being produce of a description for which grades of quality are defined under any provision of this Act—

(a) which has affixed to it a label or which is accompanied by a certificate which is in the form prescribed for any produce under sections 1 or 20 for any grade designated or defined under sections 1 or 13(a) as the case may be or is in a container or package or freight container to which such a label is affixed or which is accompanied by a certificate; but

(b) which he has reasonable cause to believe to be of a quality inferior to the quality required for that grade,

he may—

(i) in such manner as may be prescribed cancel that label or certificate and affix to the produce or to the container or package or freight container a label in such form as may be prescribed indicating what appears to him to be the correct grade or where it appears to him that the quality of the produce is inferior to that required for the lowest grade defined for produce of that description indicating that fact; or

(ii) require any person who has custody or possession of the produce or authorise any other person to do in the like manner anything referred to in paragraph (i).

27.—(1) A person shall be guilty of an offence if—

- (a) he wilfully obstructs or impedes an authorised officer or a constable acting under this Act; or
- (b) without reasonable cause he fails to give to any authorised officer or any constable acting as aforesaid any assistance or information which the authorised officer or constable (as the case may be) may reasonably require of him for the purposes of the performance by the authorised officer or constable of his functions under this Act.

(2) A person shall be guilty of an offence if, in giving to an authorised officer or a constable any such information as is mentioned in sub-sections (1), he knowingly or recklessly gives any information which is false in a material particular.

(3) A person shall be guilty of an offence if—

- (a) without lawful authority he affixes to a container or package or freight container containing any fresh horticultural produce, or to the produce itself or to the certificate accompanying the produce a label in the form prescribed for the purposes of section 26 or for the purposes of any corresponding provision of an enactment of the Parliament of the United Kingdom for the time being in force; or
- (b) having been lawfully required, in pursuance of section 26, to affix to any container or package or freight container or produce or to the produce itself, or to the certificate accompanying the produce such as is described in paragraph (a) any label in the form prescribed for the purposes of section 26, he fails to do so within any reasonable period of time specified to him by the person issuing the requirement, or, having been so required or in like manner authorised to so affix such label, he does so otherwise than in accordance with the terms of the requirement or authorisation; or
- (c) where under section 26 or any such corresponding provision as is mentioned in paragraph (a) a label has been affixed to a container or package or freight container containing any fresh horticultural produce, or to the produce itself or to the certificate accompanying such produce, he with intent to deceive, removes, alters, defaces or conceals the label.

(4) Nothing in this section shall be construed as requiring a person to answer any question or give any information (other than his name and address) if to do so might incriminate him.

35.—(1) In this Act—

“authorised officer” has the meaning assigned to it by section 24(1);

“Community grading rules” means any directly applicable Community provisions establishing standards of quality for fresh horticultural produce;

“certificate” includes any document other than a label which accompanies any produce and which contains information relating to the standard of quality to which it refers;

“standard of quality” means in relation to produce a common standard imposed by Community grading rules relating to quality, size and packaging;

“freight container” means any returnable container especially designed for the carriage of freight in transport;

“container” means a can, bottle, carton or other vessel or receptacle used in the processing of horticultural produce or in which processed horticultural produce is packed;

“label” includes any device for conveying information by written characters or other symbols and any characters or symbols stamped or otherwise placed directly on to a package or container or as the case may be the produce and references to the affixing of a label shall be construed accordingly;

“the Ministry” has the meaning assigned to it by section 1(1);



“package” includes any wrapper, bag, basket, pail, punnet, tray, case, carton, parcel, cask, box, crate or other receptacle;

“premises” includes any stall;

“prescribed” means prescribed by regulations made by the Ministry;

“processed horticultural produce” means horticultural produce to which Part II applies which has been processed (within the meaning of that Part) in Northern Ireland.

(2) In sections 24 to 30 “horticultural produce” means produce being—

(a) regulated fresh produce within the meaning of Part I;

(b) processed horticultural produce;

(c) horticultural produce of any description to which Part III applies;

(d) produce subject to Community grading rules.

#### SCHEDULE 2

<i>Regulations revoked</i>	<i>References</i>
Apples and Pears (Grading) Regulations (Northern Ireland) 1967 .. .. .	S.R. & O. (N.I.) 1967, No. 147
Cucumber (Grading) Regulations (Northern Ireland) 1968 .. .. .	S.R. & O. (N.I.) 1968, No. 33
Apples and Pears (Grading) (Amendment) Regulations (Northern Ireland) 1968 ..	S.R. & O. (N.I.) 1968, No. 81
Tomato (Grading) Regulations (Northern Ireland) 1968 .. .. .	S.R. & O. (N.I.) 1968, No. 142
Cauliflower (Grading) Regulations (Northern Ireland) 1968 .. .. .	S.R. & O. (N.I.) 1968, No. 143

## EXPLANATORY NOTE

*(This note is not part of the Regulations, but is intended to indicate their general purport.)*

These amending Regulations which are made under section 1 of the Horticulture Act (Northern Ireland) 1966 as amended by section 3 and Schedule 1 of the European Communities (Agriculture) Order (Northern Ireland) 1972 and the European Communities (Agriculture) (Amendment) Order (Northern Ireland) 1973 apply to all horticultural produce marketed under Community grading rules and come into operation on 1st February 1973.

The Regulations provide for the application subject to the modifications specified therein of sections 3, 4, 5 and 7 of Part I and sections 26, 27 and 35 of Part IV of the Horticulture Act (Northern Ireland) 1966 as if produce of any description for the time being subject to Community grading rules were regulated fresh produce and as if the standards of quality established by those rules were prescribed grades. The specific modifications of certain of these sections are set out in detail in Regulations 5 to 11 and all the provisions of these sections which are so modified are fully set out in their modified form in Schedule 1 to the Regulations.

The Regulations also provide for the revocation on 1st February 1973 of the existing Northern Ireland Regulations for grading of apples and pears, cucumbers, tomatoes and cauliflowers.