

1973 No. 22

HORTICULTURE**The Grading of Horticultural Produce (Amendment)****Regulations 1973**

<i>Made</i>	- - -	<i>3rd January 1973</i>
<i>Laid before Parliament</i>		<i>11th January 1973</i>
<i>Coming into Operation</i>		<i>1st February 1973</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly (hereinafter called “the Ministers”) in exercise of the powers conferred upon them by sections 11(3) and 23 of the Agriculture and Horticulture Act 1964(a) as amended by section 4(1) of, and Part C of Schedule 4 to, the European Communities Act 1972(b), and of all other powers enabling them in that behalf, hereby make the following regulations after consultation with such organisations as appear to either of them to be representative of interests affected by the regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Grading of Horticultural Produce (Amendment) Regulations 1973 and shall come into operation on 1st February 1973.

(2) Any reference in these regulations to “the Act” shall be construed as a reference to the Agriculture and Horticulture Act 1964 as amended by section 4(1) of, and Part C of Schedule 4 to, the European Communities Act 1972.

(3) The Interpretation Act 1889(c) shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Application and modification of Part III of the Act

2. In Part III of the Act (which relates to the grading of fresh horticultural produce) sections 13 to 20 and 22 to 24, 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 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 Schedule 1 hereto.

Modification of section 13

3. Section 13 of the Act shall be modified—

(a) by substituting for paragraphs (a) and (b) respectively of subsection (1)

(a) 1964 c. 28.

(b) 1972 c. 68.

(c) 1889 c. 63.

thereof the following paragraphs:—

“(a) to enter, at any reasonable time, any premises (other than a building used only as a private dwelling house) which he has reasonable cause to believe to be premises where regulated produce is grown for sale, graded or packed, or on which regulated produce is displayed or offered for sale, sold, delivered or marketed in any other manner or on which regulated produce intended for sale is to be found, and

(b) to inspect and take samples of any regulated produce found on the premises and to seize and detain any certificate or label (together with any container accompanied by a certificate or to which a label is affixed) used in connection with such produce.”;

(b) by substituting for subsection (2) thereof the following subsection:—

“(2) Where on premises which he has a right to enter under the foregoing subsection, an authorised officer finds any regulated produce—

(a) which has affixed to it a label or which is accompanied by a certificate indicating in either case a standard of quality or is in a container to which such a label is affixed or which is accompanied by such a certificate, but

(b) which he has reasonable cause to believe to be of a quality inferior to the quality required for that standard or which is of a standard not marketable under Community grading rules,

he may amend or cancel that label or certificate and may affix to the regulated produce, or, as the case may be, the container a label in such form as may be prescribed, by regulations made by the Ministers, indicating what appears to the authorised officer to be the correct standard or, where it appears to him that the produce is of a standard not marketable under Community grading rules, indicating that fact.”;

(c) by substituting for subsection (7) thereof the following subsection:—

“(7) The foregoing provisions of this section shall apply in relation to any land, stall, vehicle, vessel, aircraft or hovercraft as they apply in relation to premises.”.

Modification of section 14

4. Section 14 shall be modified—

(a) by substituting for subsection (1) thereof the following subsection:—

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

(a) 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.”;
- (b) in subsection (2), by substituting for paragraphs (a) and (b) thereof respectively the following paragraphs:—
- “(a) he carries out a sale of the regulated produce in circumstances such that the sale contravenes Community grading rules applying thereto, or
- (b) with intent to carry out a sale of the regulated produce in such circumstances, he displays or offers it for sale, delivers or markets it with a view to sale or has it in his possession for sale.”;
- (c) by substituting for subsection (3) thereof the following subsection:—
- “(3) 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 re-sorting, regrading or labelling of regulated produce found not to conform to Community grading rules, he fails to comply with the undertaking.”;
- (d) in subsection (4)—
- (i) by substituting for paragraph (a) thereof the following paragraph:—
- “he knowingly gives in relation to regulated 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, or”
- (ii) by inserting in paragraph (b) thereof immediately after the words “or to the produce itself” the words “or to the certificate accompanying the produce”;
- (iii) by inserting in paragraph (c) thereof immediately after the words “or to the produce itself” the words “or the said produce or container, as the case may be, is accompanied by a certificate,” and immediately after “label” where it last appears the words “or certificate, or”;
- (iv) by adding after paragraph (c) thereof the following paragraphs:—
- “(d) he offers regulated 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, or
- (e) he dispatches any consignment of regulated produce weighing 4 metric tons or more from one dispatching area, as specified from time to time in Community grading rules, to another such dispatching area or exports any consignment of regulated produce to any place outside the European Economic Community without any certificate accompanying the produce as required by Community grading rules.”.

Modification of section 15

5. The following subsection shall be substituted for subsection (1) of section 15:—

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

- (a) he wilfully obstructs an authorised officer acting in the execution of this Part of this Act or in the execution of Community grading rules, or
- (b) without reasonable cause he fails to give to any authorised officer acting as aforesaid any assistance or information which the authorised officer may reasonably require of him for the purposes of the performance by the authorised officer of his functions under this Part of this Act or under Community grading rules, or
- (c) he fails to make any request for inspection or give any notice or information required by Community grading rules.”.

Modification of Section 16

6. In section 16 of the Act the words “occurring in Great Britain” shall be omitted.

Modification of section 17

7. Section 17 of the Act shall be modified—

- (a) by substituting for the words “prescribed grade” in subsection (1) thereof the following words:—

“a standard of quality permitted to be displayed or offered for sale, sold, delivered or marketed in accordance with Community grading rules”;
- (b) by substituting for the word “grade” in paragraph (a) of subsection (1) thereof the words “standard of quality”;
- (c) by substituting for subsection (6) thereof the following subsection:—

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

Modification of section 20

8. In section 20(1) of the Act for the words “twenty pounds” there shall be substituted “forty pounds”.

Modification of section 24

9. Section 24 of the Act shall be modified—

- (a) by inserting immediately before the definition of “Community grading rules” the following definition:—

“ ‘certificate’ includes any document, other than a label, which accompanies any produce and which contains information relating to the standard of quality of that produce;”;

(b) by omitting therefrom the definitions of “fresh horticultural produce”, “prescribed grade” and “regulated produce”;

(c) by adding at the end thereof the following definition:—

“ ‘standard of quality’ means, in relation to produce, a common standard imposed by Community grading rules relating to quality, size, packaging, presentation and marking.”.

Revocation

10. The regulations specified in Schedule 2 hereto are hereby revoked.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 2nd January 1973.

(L.S.)

Joseph Godber,
Minister of Agriculture, Fisheries and Food.

Gordon Campbell,
Secretary of State for Scotland.

3rd January 1973.

Regulation 2

SCHEDULE 1

SECTIONS 13 TO 17, SECTIONS 20 AND 24 OF PART III OF THE
AGRICULTURE AND HORTICULTURE ACT 1964 AS MODIFIED

13.—(1) A person authorised in that behalf either by the Minister or the Secretary of State (in this Part of this Act referred to as an “authorised officer”), on producing, if so required, a duly authenticated document showing his authority, shall have a right—

- (a) to enter, at any reasonable time, any premises (other than a building used only as a private dwelling house) which he has reasonable cause to believe to be premises where regulated produce is grown for sale, graded or packed, or on which regulated produce is displayed or offered for sale, sold, delivered or marketed in any other manner or on which regulated produce intended for sale is to be found, and
- (b) to inspect and take samples of any regulated produce found on the premises and to seize and detain any certificate or label (together with any container accompanied by a certificate or to which a label is affixed) used in connection with such produce.

(2) Where on premises which he has a right to enter under the foregoing subsection, an authorised officer finds any regulated produce—

- (a) which has affixed to it a label or which is accompanied by a certificate indicating in either case a standard of quality or is in a container to which such a label is affixed or which is accompanied by such a certificate, but

- (b) which he has reasonable cause to believe to be of a quality inferior to the quality required for that standard or which is of a standard not marketable under Community grading rules,

he may amend or cancel that label or certificate and may affix to the regulated produce, or, as the case may be, the container a label in such form as may be prescribed, by regulations made by the Ministers, indicating what appears to the authorised officer to be the correct standard or, where it appears to him that the produce is of a standard not marketable under Community grading rules, indicating that fact.

(3) If a justice of the peace, on sworn information in writing, is satisfied—

- (a) that an authorised officer has been refused admission to any premises which he has a right to enter under subsection (1) above, or that such a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or

- (b) that an application for admission to the premises, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied or the occupier temporarily absent;

the justice may by warrant under his hand, which shall continue in force for a period of one month, give authority to an authorised officer to enter the premises by force if need be.

In the application of this subsection to Scotland, the expression “a justice of the peace” shall be construed as including the sheriff and, in relation to premises in a burgh, a magistrate of the burgh.

(4) An authorised officer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary.

(5) On leaving any premises which he has entered by virtue of this section, being premises which are unoccupied or the occupier of which is temporarily absent, an authorised officer shall leave them as effectively secured against unauthorised entry as he found them.

(6) If any authorised officer or other person who enters any work-place by virtue of this section discloses to any person any information obtained by him in the work-place with regard to any manufacturing process or trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(7) The foregoing provisions of this section shall apply in relation to any land, stall, vehicle, vessel, aircraft or hovercraft as they apply in relation to premises.

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

- (a) 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 produce,—

- (a) he carries out a sale of the regulated produce in circumstances such that the sale contravenes Community grading rules applying thereto, or
- (b) with intent to carry out a sale of the regulated produce in such circumstances, he displays or offers it for sale, delivers or markets it with a view to sale or has it in his possession for sale.

(3) 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 re-sorting, regrading or labelling of regulated produce found not to conform to Community grading rules, he fails to comply with the undertaking.

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

- (a) he knowingly gives in relation to regulated 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, or
- (b) without lawful authority he affixes to the container of any regulated produce, or to the produce itself, or to the certificate accompanying the produce, a label in a form prescribed for the purposes of section 13(2) above or for the purposes of any corresponding provision of an enactment of the Parliament of Northern Ireland for the time being in force, or
- (c) where under the said section 13(2) or any such corresponding provision a label has been affixed to the container of any regulated produce, or to the produce itself, or the said produce or container, as the case may be, is accompanied by a certificate, he, with intent to deceive, removes, alters, defaces or conceals the label or certificate, or
- (d) he offers regulated 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, or

- (e) he dispatches any consignment of regulated produce weighing 4 metric tons or more from one dispatching area as specified from time to time in Community grading rules, to another such dispatching area or exports any consignment of regulated produce to any place outside the European Economic Community without any certificate accompanying the produce as required by Community grading rules.

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

- (a) he wilfully obstructs an authorised officer acting in the execution of this Part of this Act or in the execution of Community grading rules, or
- (b) without reasonable cause he fails to give to any authorised officer acting as aforesaid any assistance or information which the authorised officer may reasonably require of him for the purposes of the performance by the authorised officer of his functions under this Part of this Act or under Community grading rules, or
- (c) he fails to make any request for inspection or give any notice or information required by Community grading rules.

(2) A person shall be guilty of an offence if, in giving to an authorised officer any such information as is mentioned in the foregoing subsection, he gives any information which he knows to be false.

(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

16. Where the commission by any person of an offence under section 14(1), (2) or (3) above 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 the same punishment as that to which the first-mentioned person is, on conviction, liable.

17.—(1) Subject to the provisions of this section, where in proceedings for an offence in relation to any produce under section 14(1) or (2) above it would have been a defence for the person charged to prove that the produce conformed to a standard of quality permitted to be displayed or offered for sale, sold, delivered or marketed in accordance with Community grading rules, 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 standard of quality, 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 by whom the warranty was given.

(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 subsection (1) above 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 attributes 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 standard of quality entered in an invoice or certificate relating to any produce or indicated by a label affixed to the produce or to the container thereof shall be deemed to be a written warranty that the produce conforms to the standard of quality so entered or indicated.

20.—(1) A person guilty of an offence under section 15(1) of this Act shall be liable on summary conviction to a fine not exceeding forty pounds.

(2) A person guilty of an offence under any of the foregoing provisions of this Part of this Act other than section 15(1) shall be liable on summary conviction to a fine not exceeding one hundred pounds (or, in the case of a second or any subsequent offence under the same provision, two hundred and fifty pounds), or to imprisonment for a term not exceeding three months, or to both.

(3) Proceedings in England or Wales for an offence under any of the foregoing provisions of this Part of this Act may be instituted only by or with the consent of the Minister or with the consent of the Attorney General.

24. In this Part of this Act—

“authorised officer” has the meaning assigned to it by section 13(1) of this Act;

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

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

“container” includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

“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 any produce or container, and references to the affixing of a label shall be construed accordingly;

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

Regulation 10

SCHEDULE 2

Regulations revoked	References
The Grading of Produce (Pears) Regulations 1967	S.I. 1967/1019 (1967 II, p.3077).
The Grading of Produce (Apples) Regulations 1967	S.I. 1967/1020 (1967 II, p.3083).
The Grading of Produce (Cucumbers) Regulations 1968	S.I. 1968/7 (1968 I, p.3).
The Grading of Produce (Tomatoes) Regulations 1968	S.I. 1968/686 (1968 II, p.1953).
The Grading of Produce (Cauliflowers) Regulations 1968	S.I. 1968/687 (1968 II, p.1960).
The Grading of Produce (Apples) (Amendment) Regulations 1968	S.I. 1968/1040 (1968 II, p.2745).
The Grading of Produce (Pears) (Amendment) Regulations 1968	S.I. 1968/1041 (1968 II, p.2748).
The Grading of Produce (Apples) (Amendment) Regulations 1969	S.I. 1969/936 (1969 II, p.2825).
The Grading of Produce (Pears) (Amendment) Regulations 1969	S.I. 1969/937 (1969 II, p.2827).

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These amending Regulations, which are made under sections 11(3) and 23 of the Agriculture and Horticulture Act 1964, as amended by section 4(1) of, and Part C of Schedule 4 to, the European Communities Act 1972, apply throughout Great Britain and come into operation on 1st February 1973.

The regulations provide for the application, subject to the modifications specified therein, of sections 13 to 20 and 22 to 24 of Part III of the Agriculture and Horticulture Act 1964 as if produce of any description for the time being subject to Community grading rules were regulated produce and as if the standards of quality established by those rules were prescribed grades. The specific modifications of certain of those sections are set out in detail in regulations 3 to 9 and all the provisions of those sections which are so modified are fully set out in their modified form in Schedule 1 to the regulations.

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