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.