



# Agriculture and Horticulture Act 1964

## 1964 CHAPTER 28

### PART III

#### GRADING AND TRANSPORT OF FRESH HORTICULTURAL PRODUCE

##### *Grading of produce*

#### **11 Power to prescribe grades**

- (1) The Ministers may in relation to any description of fresh horticultural produce by regulations designate and define grades of quality, and prescribe for each grade the form of a label for indicating that produce in connection with which the label is used falls within that grade.
- (2) Regulations under subsection (1) above may provide that a label recognised under the law of any country outside Great Britain as indicating that produce in connection with which it is used is of a quality not inferior to that required for a grade prescribed under that subsection shall be treated for the purposes of this Part of this Act as if it were in the form so prescribed for that grade.

#### **12 Duties as to grading of produce**

- (1) Except in such circumstances as are mentioned in subsection (2) below, a person shall not sell any fresh horticultural produce of a description in relation to which grades of quality are designated and defined under section 11(1) above (in this Part of this Act referred to as "regulated produce") unless the produce falls within a prescribed grade and is packed in a container to which is affixed a label in the form prescribed for that or any lower grade or, if not packed in a container, has affixed to it such a label.
- (2) The circumstances referred to in subsection (1) above are as follows:—
  - (a) a sale of the produce by retail;
  - (b) a sale where the produce is to be (transported to a country outside the United Kingdom by, or to the order of, the buyer;

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- (c) 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 ;
  - (d) a direct sale by the producer of any produce to a person who undertakes—
    - (i) that before any sale by him of any of the produce, not being a sale such as is mentioned in paragraph (b) or (c) above, the produce will be sorted into the prescribed grades and produce the quality of which is inferior to that required for the lowest prescribed grade will be separated from other produce, and
    - (ii) that on any sale by him of any of the produce falling within a prescribed grade, not being a sale such as is mentioned in paragraph (b) or (c) above, the produce will be packed in a container to which is affixed a label in the form prescribed for that or any lower grade or, if not packed in a container, will have affixed to it such a label; or
  - (e) a direct sale by the producer of any produce where the produce is, or is to be, delivered at premises, or at any stall or vehicle, from which it is to be sold by retail.
- (3) The Ministers may if they think fit by order provide that subsection (2) above shall have effect, in relation to such sales as are described in the order, as if paragraph (e) were omitted ; and an order made under this subsection may be varied or revoked by a subsequent order made by the Ministers.
- (4) In this section " direct sale " means a sale where negotiations on behalf of the vendor are not conducted by any agent other than a person employed by him under a contract of service.

### **13 Powers as to entry of premises and regrading of produce**

- (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 intended for sale otherwise than by retail 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 label (together with any container to which the 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 in the form prescribed for any prescribed grade or is in a container to which such a label is affixed, but
  - (b) which he has reasonable cause to believe to be of a quality inferior to the quality required for that grade,

he may, in such manner as may be prescribed by regulations made by the Ministers, cancel that label and affix to the produce or, as the case may be, the container a label, in such form as may be so 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 prescribed grade, indicating that fact.

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- (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 a stall or vehicle as they apply in relation to premises, but nothing in this section shall authorise a person to stop any vehicle on a highway.

#### **14 Offences in connection with grading**

- (1) A person shall be guilty of an offence if he sells any regulated produce in contravention of section 12 above or, with intent to sell any such produce in circumstances such that the sale would contravene that section, 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 produce,—
- (a) he carries out a sale of the produce in circumstances such that the sale contravenes section 12 above, or
  - (b) with intent to carry out a sale of 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 12(2)(d) of this Act, he fails to comply with the undertaking.
- (4) A person shall be guilty of an offence if—

- (a) he wilfully represents, whether by affixing an incorrect label to the container of any regulated produce or in any other manner, that regulated produce the quality of which is inferior to that required for a prescribed grade falls within that grade, or
- (b) without lawful authority he affixes to the container of any regulated produce, or to the produce itself, 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, he, with intent to deceive, removes, alters, defaces or conceals the label.

## **15 Obstruction**

- (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
  - (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.
- (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 Penalty for act or default leading to commission of offence by another,**

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 occurring in Great Britain, 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 Pleading of warranty as defence**

- (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 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

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- (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 a grade designation entered in an invoice relating to any produce or indicated by a label affixed to the produce or the container thereof shall be deemed to be a written warranty that the produce conforms to the grade indicated by that designation.

## **18 Pleading of mistake, act of third party, etc. as defence**

In proceedings for an offence in respect of any produce under section 14(1), (2) or (3) above it shall be a defence for the person charged to prove—

- (a) that the commission of the offence was due to the act or default of some other person, or to a mistake, or to an accident or some other cause beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence in respect of that produce by himself or any person under his control.

## **19 Offences by corporations**

- (1) Where an offence under any of the foregoing provisions of this Part of this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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- (2) In the foregoing subsection, "director", in relation to any board established under the Agricultural Marketing Act 1958 or any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that board or body corporate.

## **20 Punishment of offences**

- (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 twenty 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.

### *Transport of produce*

## **21 Power to require use of prescribed containers, etc.**

- (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 Ministers may make regulations imposing a duty on any person carrying on a horticultural production business to secure that such containers, pallets and other articles as may be prescribed by the regulations are used for the transport of fresh horticultural produce from premises where that business is carried on to any such market or other premises as may be so prescribed.
- (2) Regulations under this section may confer powers of entry, inspection and sampling, may provide for the punishment of offences against the regulations and may contain such other provisions as the Ministers consider expedient for the purposes of the regulations:
- Provided that—
- (a) the regulations shall not confer power to enter any building used only as a private dwelling-house or to stop any vehicle on a highway, and in relation to any power of entry conferred thereby shall include provisions to the like effect as section 13(5) and (6) of this Act; and
- (b) the penalty for an offence under the regulations shall be limited to a fine not exceeding fifty pounds or, in the case of a second or subsequent offence thereunder, not exceeding one hundred pounds.
- (3) In this section "horticultural production business" has the same meaning as in Part I of the Horticulture Act 1960.

### *Miscellaneous*

## **22 Miscellaneous amendments**

- (1) The Agricultural Produce (Grading and Marking) Acts 1928 and 1931 shall cease to apply to fresh horticultural produce.
- (2) Neither a label in a form prescribed under this Part of this Act, or under corresponding provisions of any enactment of the Parliament of Northern Ireland for the time being in force, nor a grade designation so prescribed shall for the purposes of the Merchandise Marks Acts 1887 to 1953 or any enactment for the time being amending or supplementing those Acts be treated, when applied to any fresh horticultural produce, as a trade description within the meaning of section 2 of the Merchandise Marks Act 1887.
- (3) Notwithstanding anything in section 7 of the Agricultural Marketing Act 1958, a scheme under that Act shall not empower the board administering the scheme—
  - (a) to grade, or regulate the grading or marking of, any produce to which regulations under section 11(1) of this Act apply, or
  - (b) to pack or transport, or regulate the packing or transporting of, any produce to which regulations under section 21 of this Act apply,otherwise than in conformity with the regulations under the said section 11(1) or 21, as the case may be.

In relation to the doing of any act in Northern Ireland, references in the foregoing provisions of this subsection to section 11(1) or 21 of this Act shall be construed as references to the corresponding provisions of any enactment of the Parliament of Northern Ireland for the time being in force.

## **23 Regulations and orders**

- (1) Before the making of any regulations or order under this Part of this Act the Minister or the Secretary of State shall consult with such organisations as appear to either of them to be representative of interests affected by the regulations or order.
- (2) Any power conferred by this Part of this Act to make regulations or orders shall be exercisable by statutory instrument, and a statutory instrument containing regulations or an order so made shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **24 Interpretation of Part III**

In this Part of this Act—

- " authorised officer " has the meaning assigned to it by section 13(1) of this Act;
- " container " includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;
- " fresh horticultural produce " means—
- (a) fruit, vegetables, herbs, nuts and edible fungi, whether freshly-gathered or stored or taken from store, but not including maincrop potatoes or hops or any dried, frozen, bottled, canned or preserved produce;
  - (b) cut flowers and decorative foliage ;

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- (c) pot plants, bedding plants and herbaceous plants; .
- (d) shrubs and flowering trees ;
- (e) fruit trees, fruit bushes and fruit plants; and
- (f) bulbs, corms and tubers;

" 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 ;

" prescribed grade ", in relation to regulated produce of any description, means a grade of quality designated and defined in relation to produce of that description under section 11(1) of this Act;

" regulated produce " has the meaning assigned to it by section 12(1) of this Act.