

## STATUTORY INSTRUMENTS

# 2009 No. 1361

## The Marketing of Fresh Horticultural Produce Regulations 2009

### PART 5

#### Additional enforcement provisions

##### Obstruction

**16.**—(1) A person is guilty of an offence if they—

- (a) without reasonable excuse, proof of which shall lie on that person, obstruct an authorised officer acting for the purposes of the enforcement of these Regulations, or a person accompanying such an authorised officer under regulation 7(3)(a);
- (b) without reasonable excuse, proof of which shall lie on that person, fail to give an authorised officer acting for the purposes of the enforcement of these Regulations any assistance or information or to provide any record or facilities that they may reasonably require;
- (c) without reasonable excuse, proof of which shall lie on that person, fail to make any request for inspection when so required by <sup>F1</sup>... [<sup>F2</sup>marketing rules] or fail to give any notice or information required by <sup>F1</sup>... [<sup>F2</sup>marketing rules].

(2) A person who without reasonable excuse, proof of which shall lie on that person, supplies to an authorised officer acting for the purposes of the enforcement of these Regulations any information knowing it to be false or misleading is guilty of an offence.

**F1** Word in reg. 16(1)(c) omitted (31.12.2020) by virtue of [The Market Measures \(Miscellaneous Provisions\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/824), regs. 1, **5(13)**; 2020 c. 1, Sch. 5 para. 1(1)

**F2** Words in Regulations substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011](#) (S.I. 2011/1043), art. 2, **Sch. 1 para. 13** (with art. 3)

##### Offence due to fault of another person

**17.**—(1) Where the commission by a person (“A”) of an offence under these Regulations was due to an act or default of another person (“B”), B is guilty of an offence.

(2) B may be charged with and convicted of the offence whether or not proceedings are taken against A.

##### Defences

**18.**—(1) It is a defence for a person charged (“A”) with an offence under these Regulations, except for the offences in regulation 16, to prove that their actions were carried out with lawful authority or that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(2) Where A wishes to rely on the defence in paragraph (1), A must serve on the prosecutor a written notice of that fact in accordance with paragraph (4).

(3) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or default of another person, A is not, without leave of the court, entitled to rely on that defence unless A has served on the prosecutor a written notice in accordance with paragraph (4) giving such information identifying or assisting in the identification of that person as was then in A's possession.

(4) The notice must be served—

- (a) at least seven clear days before the hearing, and
- (b) where A has previously appeared before a court in connection with the alleged offence, within one month of A's first such appearance.

### **Offences by bodies corporate etc.**

**19.**—(1) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “officer” in relation to the body corporate, means a director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

(4) If an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of that partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In paragraph (4) “partner” includes a person purporting to act as a partner.

(6) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
- (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) For the purposes of proceedings brought in the name of a partnership or an unincorporated association—

- (a) rules of court relating to the service of documents are to have effect as if the partnership or the unincorporated association were a body corporate;
- (b) section 33 of the Criminal Justice Act 1925 <sup>M1</sup> and Schedule 3 to the Magistrates' Courts Act 1980 <sup>M2</sup> apply in relation to the partnership or unincorporated association as they apply in relation to a body corporate.

(8) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or the unincorporated association.

#### Marginal Citations

- M1** 1925 c. 86. Subsections (1) and (2) of section 33 were repealed by the [Magistrates' Courts Act 1952](#) (c. 55), [section 132](#) and Schedule 6; subsection (3) was amended by the [Courts Act 1971](#) (c. 23), [section 56\(1\)](#) and Schedule 8, part II, paragraph 19; subsection (4) was amended by the [Courts Act 2003](#) (c. 39), [section 109\(1\)](#) and (3), Schedule 8, paragraph 71 and Schedule 10, and by the [Magistrates' Courts Act 1980](#) (c. 43), [section 154](#) and Schedule 7, paragraph 5; subsection (5) was repealed by the [Magistrates' Court Act 1952](#), section 132, Schedule 6.
- M2** 1980 c. 43. Sub-paragraph 2(a) was amended by the [Criminal Procedure and Investigations Act 1996](#) (c. 25), [section 47](#), [Schedule 1](#), paragraph 13, and was repealed by the [Criminal Justice Act 2003](#) (c. 44), [sections 41](#) and 332, Schedule 3, part 2, paragraph 51, sub-paragraphs (1), (13)(a), and Schedule 37, part 4 (with effect from a date to be appointed); paragraph 5 was repealed by the [Criminal Justice Act 1991](#) (c. 53), [sections 25\(2\)](#) and 101(2) and Schedule 13; paragraph 6 was amended by the [Criminal Justice Act 2003](#), section 41, Schedule 3, part 2, paragraph 51, sub-paragraphs (1) and (13)(b) (with effect from a date to be appointed).

#### Penalties

**20.** A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Changes to legislation:**

There are currently no known outstanding effects for the The Marketing of Fresh Horticultural Produce Regulations 2009, PART 5.