



Horticulture Act (Northern Ireland) 1966

1966 CHAPTER 15

PART I

FRESH HORTICULTURAL PRODUCE

GRADING OF PRODUCE

1 Power to prescribe grades of produce.

- (1) The Ministry of Agriculture (in this Act referred to as “the Ministry”) 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) may provide that a label recognised under the law of any country outside Northern Ireland as indicating that produce in connection with which it is used is of a quality not inferior to that required for a grade defined under that subsection shall be treated for the purposes of this Part as if it were in the form so prescribed for that grade.
- ^{F1}(3) Regulations under subsection (1) above shall not apply to produce of any description for the time being subject to Community grading rules; but in relation to any such produce the Ministry may by regulations—
 - (a) make additional provision as to the form of any label required for the purpose of those rules or as to the inclusion in any such label of additional particulars (not affecting the grading of the produce);
 - (b) provide for the application, subject to any modification specified in the regulations, of all or any of the following provisions of this Part of this Act as if the produce were regulated fresh produce and as if the standards of quality established by those rules were prescribed grades.]

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2 Duties as to grading.

- (1) Except in such circumstances as are mentioned in subsection (2), 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 1(1) (in this Part referred to as “regulated fresh produce”) unless the produce falls within a defined grade and is packed in a package to which is affixed a label in the form prescribed for that or any lower grade or, if not packed in a package, has affixed to it such a label.
- (2) The circumstances referred to in subsection (1) are as follows:—
 - (a) a sale of the produce in the ordinary course of a retail business, where on any occasion the total quantity of such produce of any description which is the subject of the sale does not exceed (whether by reference to weight or to number or both) such quantity as may be prescribed for produce of that description;
 - (b) 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;
 - (c) a direct sale by the producer of any produce to a person (other than a retailer or a person who buys the produce for use in manufacturing or producing any commodity for sale or other disposal by him) who gives the producer an undertaking in writing—
 - (i) that before any sale by him of any of the produce, not being a sale such as is mentioned in paragraph (b), the produce will be sorted into the defined grades and any produce the quality of which is inferior to that required for the lowest defined grade will be separated from other produce; and
 - (ii) that on any sale by him of any of the produce falling within a defined grade, not being a sale such as is mentioned in paragraph (b), the produce will be packed in a package to which is affixed a label in the form prescribed for that or any lower grade or, if not packed in a package, will have affixed to it such a label.
- (3) The Ministry may by order provide that subsection (2) shall have effect, in relation to such sales as are described in the order, as if paragraph (b) thereof, and any reference to that paragraph in paragraph (c) thereof, were omitted.
- (4) In subsection (2)(c) “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.

3 Offences in connection with grading.

- (1) A person shall be guilty of an offence if he sells any regulated fresh produce in contravention of section 2 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 fresh produce,—
 - (a) he carries out a sale of the produce in circumstances such that the sale contravenes section 2, or

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- (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 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 regulated fresh produce or in any other manner, that regulated fresh produce the quality of which is inferior to that required for a prescribed grade falls within that grade.
- ^{F2}(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.]

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F2 SRO (NI) 1973/19

4 Penalty for act or default leading to commission of offence by another.

Where a contravention of a provision of this Part for which a person is liable to be convicted of an offence under [^{F3} 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.

F3 SRO (NI) 1973/19

5 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 [^{F4} 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 brought 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 subsection (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 attributes to any produce a warranty given in relation to any goods not including that produce, he shall be guilty of an offence.

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^{F4}(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.]

F4 SRO (NI) 1973/19

6 Pleading of mistake, act of third party, etc., as defence.

In proceedings for any offence under section 3 in respect of any produce 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.

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