Horticulture Act (Northern Ireland) 1966 [F1]

1966 CHAPTER 15

An Act to make provision with respect to the grading, packing, transporting and processing of horticultural produce; to regulate and control the sending of horticultural produce out of Northern Ireland; and for purposes connected with those matters. [24th May 1966]

F1 1968 c.29

Modifications etc. (not altering text)

C1 Act excluded (25.6.2010) by Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010 (S.R. 2010/198), **reg. 24(1)**

C2 Act excluded (29.3.2019) by The Marketing of Bananas Regulations (Northern Ireland) 2019 (S.R. 2019/66), regs. 1, 22(1)

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.

[F2](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.]

F2 SRO (NI) 1972/351

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
  (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.

[F3](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

Changes to legislation: *There are currently no known outstanding effects for the Horticulture Act (Northern Ireland) 1966. (See end of Document for details)*

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.]

F3 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 [**F4** 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.

F4 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 [**F5** 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.

[F5](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.]

F5 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.

PACKING AND TRANSPORT OF PRODUCE

7 Power to require use of prescribed packages, 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 Ministry may make regulations imposing a duty on any person consigning fresh horticultural produce in circumstances other than the circumstances mentioned in subsection (3) to secure that such packages, pallets and other articles as may be prescribed by the regulations are used for the transport of the produce.

(2) The Ministry may make regulations directing that fresh horticultural produce of any description shall not be—

(a) sold; or

(b) offered or exposed for sale;

in packages, in circumstances other than the circumstances mentioned in subsection (3), except subject to such conditions as may be prescribed with respect to—

(i) the types, sizes, capacity and specifications of the packages;

(ii) the quantity of produce which may be, or is required to be, packed therein;

(iii) the manner in which the produce is to be packed, and the types and specifications of any packing material.

(3) The circumstances referred to in subsections (1) and (2) are, respectively,—

(a) the consigning of the produce for delivery after—

(i) a sale by retail; or

(ii) 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; and

(b) the sale or the offering or exposing for sale of the produce in such a case as is mentioned in sub-paragraph (i) or (ii) of paragraph (*a*).

[F6](c) the sale or offering for sale of produce subject to Community grading rules.]

(4) If any person contravenes a regulation made under this section he shall be guilty of an offence.

F6 SRO (NI) 1973/19

8 Provisions as to sale of produce in packages.

(1) All fresh horticultural produce sold or offered or exposed for sale, by wholesale or retail, in a package shall be packed in such a manner that any of the produce which is exposed to view, or which would be exposed to view if the package were opened in the ordinary manner, fairly represents in size, maturity, condition and variety the entire contents of the package.

(2) Any person who, in such a manner as to contravene this section, either sells any fresh horticultural produce or offers or exposes any such produce for sale shall be guilty of an offence.

INTERPRETATION

9 Interpretation of Part I.

In this Part—

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

"fresh horticultural produce" means—

(a) fruit, vegetables, herbs, nuts and edible fungi, whether freshly-gathered or stored or taken from store, but not including potatoes or hops or any dried, frozen, bottled, canned or preserved produce;
(b) cut flowers and decorative foliage;
(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;

"regulated fresh produce" has the meaning assigned to it by section 2(1).

PART II

HORTICULTURAL PRODUCE PROCESSED IN NORTHERN IRELAND

10 Produce to which Part II applies.

This Part applies to the following horticultural produce, that is to say, fruit, vegetables and edible fungi, whether freshly-gathered or stored or taken from store or dried, frozen, bottled, canned or preserved.

Ss. 11#14 rep. by 1996 NI 11

15 Power of Ministry to undertake research, and to provide advice, etc.

(1) The subjects with respect to which the Ministry may, under section 5(4) of the Agriculture Act (Northern Ireland) 1949 [M1], either itself undertake research or make advances to a person or body undertaking research, shall include matters relating to the processing of horticultural produce.

(2) The Ministry may—
(a) generally, provide for persons carrying on or proposing to carry on a business involving the processing of horticultural produce, or the packing or transporting of processed horticultural produce, advice in relation to any of those matters; and
(b) in particular, in relation to any of the matters referred to in paragraph (*a*), with the approval of the Ministry of Finance,—
(i) arrange lectures, classes and displays (including demonstrations of working exhibits and instructional apparatus); and
(ii) make schemes providing for the payment by the Ministry of sums by way of scholarships for the purposes of enabling or assisting persons to secure instruction or to undertake research in any subject or course of subjects specified in the schemes.

Marginal Citations
M1 1949 c. 2

Changes to legislation: *There are currently no known outstanding effects for the Horticulture Act (Northern Ireland) 1966. (See end of Document for details)*

16 Meaning of "processing" in relation to horticultural produce.

For the purposes of this Part "processing" in relation to horticultural produce means subjecting such produce to any, or any combination, of the following processes—

(a) a process of peeling, trimming, washing or other preparation for canning, bottling, drying or freezing;

(b) a process of filling into containers or closing containers, being, in either case, a process used in association with any process such as is referred to in paragraph (*c*), (*d*) or (*e*);

(c) a process of treatment by heat, chemicals, irradiation or any other means of cooking or sterilising, whether before, during or after filling into containers;

(d) a process of drying;

(e) a process of freezing;

but does not include any such process conducted by a person carrying on the business of manufacturing jam, marmalade or jelly preserves in so far only as it relates to the purposes of such a business.

Part III (ss. 17—23) rep. by 1996 NI 11

PART IV

SUPPLEMENTAL

AUTHORISED OFFICERS, ETC.

24 [F7] Power to enter premises, etc., and examine horticultural produce.

(1) Any person authorised by the Ministry in writing to exercise functions under this Act (in this Act referred to as an "authorised officer") shall for the purposes of this Act have power (on production, if demanded, of his authority to act as such officer)—

(a) to enter, at any reasonable time, any premises (other than a building used only as a private dwelling-house) or any place which he has reasonable cause to believe to be premises or, as the case may be, a place where horticultural produce is grown for sale, graded, processed or packed, or on which horticultural produce intended for sale is to be found;

(b) to enter, at any reasonable time, the premises of, or used by, any person engaged in the business of carrying goods for reward, any pier, quay, wharf, jetty, dock, dock premises or aerodrome and any ship, boat, aircraft, railway wagon, motor lorry, cart or other vessel or vehicle used for the conveyance of goods, and to open, for the purpose of inspection, any package of horticultural produce which may be found in or upon any premises, place, vessel, vehicle or aircraft which he is entitled to enter under this paragraph;

(c) to inspect and, without payment, take reasonable samples of any horticultural produce found in or upon any such premises, place, vessel, aircraft or vehicle and to seize and detain any label, package or container used in connection with such produce.

(2) An authorised officer entering any premises, place, vessel, aircraft or vehicle by virtue of this section may take with him such other persons and such equipment as may appear to him necessary.

(3) If any authorised offiicer or other person who enters any premises by virtue of this section discloses to any person any information obtained by him in the premises 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.

F7 SI 1972/971

25 Power to give directions as to horticultural produce in transit.

(1) Where an inspection of horticultural produce of any description is made under this Act whilst the produce is in transit and an authorised officer is satisfied that the produce does not conform to any standard of quality prescribed under this Act for produce of that description, or is not graded, packed and labelled in the manner so prescribed, the Ministry or the authorised officer may direct that the produce shall be returned to the consignor at the place from which it was consigned or, if the Ministry or the authorised officer approves, at such other place within Northern Ireland as the consignor may elect, and thereupon the carrier or the consignor, as the case may require, shall, at the expense of the consignor, proceed to execute such direction with all reasonable speed.

(2) Nothing in this section shall be construed as authorising anything to be done to the prejudice of any powers of a carrier to secure payment of freight charges in respect of any consignment carried by him.

26 [F8] Power of authorised officer to regrade produce.

Where, in or upon any premises, place, vessel, aircraft or vehicle which he has a right to enter under section 24, an authorised officer finds any horticultural produce, being produce of a description for which grades of quality are defined under any provision of this Act,—

[F9](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[F10]. . . , for any grade designated or defined under section 1[F10]. . . 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]

(ii) require any person who has custody or possession of the produce, or authorise any other person, to do in the like manner anything referred to in paragraph (i).

F8 SI 1972/971

F9 SRO (NI) 1973/19
F10 1996 NI 11

27 Offences.

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

(a) he wilfully obstructs or impedes an authorised officer or a constable acting under this Act; or

(b) without reasonable cause he fails to give to any authorised officer or any constable acting as aforesaid any assistance or information which the authorised officer or constable (as the case may be) may reasonably require of him for the purposes of the performance by the authorised officer or constable of his functions under this Act.

(2) A person shall be guilty of an offence if, in giving to an authorised officer or a constable any such information as is mentioned in subsection (1), he knowingly or recklessly gives any information which is false in a material particular.

[F11](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 or 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.]

(4) Nothing in this section shall be construed as requiring a person to answer any question or give any information (other than his name and address) if to do so might incriminate him.

F11 SRO (NI) 1973/19

Ss. 28#30 rep. by 1996 NI 11

LEGAL PROCEEDINGS

31 Punishment of offences under this Act.

(1) A person guilty of an offence under[F12]. . . section 27(1)[F13]. . . ,[F12]. . . shall be liable on summary conviction to a fine not exceeding**[**[F13] level 2 on standard scale**]**.

(2) A person guilty of an offence under any of the provisions of this Act, other than the provisions mentioned in subsection (1), shall be liable on summary conviction[F13]. . . , to a fine not exceeding**[**[F13] £1,000**]**, or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

F12 1996 NI 11
F13 1984 NI 3

32 Prosecution of offences.

(1) No proceedings for an offence under any of the provisions of this Act may be instituted except—
  (a) by the Ministry; or
  (b) by, or with the consent of, the Attorney-General.

(2) Subsection (1) shall not operate so as to affect a prosecution for an offence committed by an authorised officer or other officer of the Ministry.

GENERAL

33 Regulations and orders.

(1) All regulations made under this Act, and any orders made under section 2(3), shall be subject to negative resolution.

(2) Before making any regulations under this Act the Ministry shall consult with such organisations as appear to the Ministry to be representative of interests affected by the regulations.

(3) Before making any regulations under this Act, in a case where the regulations relate to matters which may be dealt with by regulations made under the**[**[F14] Food Safety (Northern Ireland) Order 1991**]**, the Ministry shall consult with the Ministry of Health and Social Services.

F14 1991 NI 7

S.34 rep. by SLR 1976

35 Interpretation.

(1) In this Act—
  "authorised officer" has the meaning assigned to it by section 24(1);

[F15 "Community grading rules" means any directly applicable Community provisions establishing standards of quality for fresh horticultural produce;]

[F16 "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.]

"container" means a can, bottle, carton or other vessel or receptacle used in the processing of horticultural produce or in which processed horticultural produce is packed;

"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 a package or container or, as the case may be, the produce, and references to the affixing of a label shall be construed accordingly;

"the Ministry" has the meaning assigned to it by section 1(1);

"package" includes any wrapper, bag, basket, pail, punnet, tray, case, carton, parcel, cask, box, crate or other receptacle;

"premises" includes any stall;

"prescribed" means prescribed by regulations made by the Ministry;

"processed horticultural produce" means horticultural produce to which Part II applies which has been processed (within the meaning of that Part) in Northern Ireland.

(2) In sections**[**F17 24 to 27**]** "horticultural produce" means produce being—

(a) regulated fresh produce within the meaning of Part I;

Paras. (b), (c) rep. by 1996 NI 11

F15 SRO (NI) 1972/351
F16 SRO (NI) 1973/19
F17 1996 NI 11

36 Savings.

Nothing in this Act shall affect the operation of—

(a) the**[**F18 Plant Health Act (Northern Ireland) 1967**]**; or

[F19(b) the F18 Food Safety (Northern Ireland) Order 1991.**]**

F18 1996 NI 11
F19 1991 NI 7

S. 37 rep. by 1996 NI 11

38 Short title and commencement.

(1) This Act may be cited as the Horticulture Act (Northern Ireland) 1966.

(2) *Commencement*

Schedule rep. by 1996 NI 11

Changes to legislation:
There are currently no known outstanding effects for the Horticulture Act (Northern Ireland) 1966.