

2009 No. 225

HORTICULTURE

**The Marketing of Horticultural Produce (Scotland)
Regulations 2009**

<i>Made</i> - - - -	<i>3rd June 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>4th June 2009</i>
<i>Coming into force</i> - -	<i>1st July 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(e) and (2)(b) and 17(1) of the Food Safety Act 1990(a) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(b), and all other powers enabling them to do so.

There has been consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Scottish Ministers that it is expedient for the references in the Regulations to Community instruments to be references to those instruments as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Marketing of Horticultural Produce (Scotland) Regulations 2009 and come into force on 1st July 2009.

(2) These Regulations extend to Scotland only.

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- (a) 1990 c.16. Section 16(1) was amended by the Food Standards Act 1999 (c.28), (“the 1999 Act”), section 40(1) and Schedule 5, paragraph 8; sections 17(1) and 17(2) were amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12; amendments made by Schedule 5 to the 1999 Act shall be taken as pre commencement enactments for the purposes of the Scotland Act 1998 (c.46), (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Insofar as not transferred, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).
- (b) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
- (c) O.J. No. L 31, 1.2.2002, p.1, as last amended by Commission Regulation (EC) No. 202/2008 (O.J. No. L 60, 5.3.2008, p.17).

Interpretation

2.—(1) In these Regulations—

“authorised officer” means any person (whether or not an officer of the Scottish Ministers) who is authorised for the purposes of these Regulations by the Scottish Ministers;

“Commission Regulation 1580/2007” means Commission Regulation (EC) No. 1580/2007 laying down implementing rules of Council Regulations (EC) No. 2200/96, (EC) No. 2201/96 and (EC) No. 1182/2007 in the fruit and vegetable sector(a), as amended from time to time;

“Community marketing rules” means the general marketing standard and the specific marketing standards covering fresh fruit and vegetables listed in Part IX of Annex I to Council Regulation 1234/2007, and includes the rules relating to those standards contained in Articles 113 and 113a of that Council Regulation and in Title II of Commission Regulation 1580/2007;

“container” includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

“controlled”, in relation to horticultural produce, means that the power conferred by regulation 10(1) has been exercised in relation to it and that no consent to its movement has been given under regulation 13(1) when the circumstances in regulation 13(2) apply;

“Council Regulation 1234/2007” means Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(b), as amended from time to time;

“general marketing standard” means the requirements of Article 113a(1) of Regulation 1234/2007 as detailed in Article 2a(1) and Part A of Annex I to Commission Regulation 1580/2007;

“horticultural produce” means fruit and vegetables listed in Part IX of Annex I to Council Regulation 1234/2007 to which Community marketing rules apply;

“justice of the peace” means a justice of the peace appointed under section 67(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(c);

“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 horticultural produce or container, and references to the affixing of a label are construed accordingly;

“non compliance label” means a label indicating that produce is not compliant with Community marketing rules.;

“premises” includes any place, vehicle or trailer, stall, vessel, container, moveable structure, aircraft or hovercraft;

“specific marketing standards” means the marketing standards provided for under Article 113(1)(b) of Council Regulation 1234/2007 as detailed in Article 2a(2) and Part B of Annex I to Commission Regulation 1580/2007(d), and “specific marketing standard” means one of those specific marketing standards; and

“stop notice label” has the meaning given in regulation 12.

(2) A reference in these Regulations to anything done “in writing” or produced “in written form” includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(e) which has been recorded in written form and is capable of being reproduced in that form.

(a) O.J. No. L 350, 31.12.2007, p.1, as last amended by Commission Regulation (EC) No. 313/2009 (O.J. No. L 98, 17.4.2009, p.24).

(b) O.J. No. L 299, 16.11.2007, p.1, as last amended by Council Regulation (EC) No. 183/2009 (O.J. No. L 63, 7.3.2009, p.9).

(c) 2007 asp 6.

(d) Part B of Annex I to Commission Regulation 1580/2007 contains specific marketing standards for the following products: apples, citrus fruit, kiwifruit, lettuces, curled leaved and broad-leaved endives, peaches and nectarines, pears, strawberries, sweet peppers, table grapes and tomatoes.

(e) 2000 (c.7); amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(3) Unless otherwise provided in this Regulation, terms used in these Regulations have the same meaning as they have in Council Regulation 1234/2007 and Commission Regulation 1580/2007.

Designations and information disclosure

3.—(1) The Scottish Ministers are designated as the inspection body responsible for the purposes of Article 8(1)(b) of Commission Regulation 1580/2007.

(2) For the purposes of fulfilling the obligations on inspection bodies contained in the Community marketing rules and for the enforcement of these Regulations, the Scottish Ministers may as appropriate or where required to do so provide information to the Secretary of State, the Northern Ireland and Welsh inspection bodies or the European Commission.

(3) The Scottish Ministers may appoint officers for the purposes of the enforcement of these Regulations, in these Regulations referred to as authorised officers.

Authorised officer: powers of entry

4.—(1) An authorised officer may enter any premises at any reasonable hour for the purposes of the enforcement of these Regulations.

(2) An authorised officer must, if requested to do so, produce a duly authenticated authorisation document.

(3) An authorised officer may be accompanied by any other persons and any equipment as the authorised officer considers necessary.

(4) If a justice of the peace or a sheriff, on information in writing sworn on oath, is satisfied there are reasonable grounds for entry into any premises for the purpose of enforcing these Regulations, and—

- (a) admission to an authorised officer has been refused, or a refusal is expected, and (in either case) that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission to the premises, or the giving of such a notice, would defeat the object of the entry; or
- (c) the premises are unoccupied or the occupier is temporarily absent; or
- (d) the case is one of urgency,

the justice of the peace or the sheriff may by a signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(5) A warrant granted under paragraph (4) is valid for a period of one month.

(6) An authorised officer who enters, by virtue of this Regulation, any premises which are unoccupied or the occupier of which is temporarily absent, must leave them as effectively secured against unauthorised entry as they were before entry.

(7) It is an offence for a person who has obtained confidential information in the course of acting for the purposes of the enforcement of these Regulations to disclose that information, whether it was obtained on premises entered under or by virtue of these Regulations or otherwise, unless the disclosure is made in the performance of that person's duty or in accordance with section 17(2) of the Anti-terrorism, Crime and Security Act 2001(a).

Authorised officer: other powers

5.—(1) An authorised officer who has lawfully entered premises for the purpose of the enforcement of these Regulations, may for that purpose—

- (a) require any person to provide such assistance, information or facilities as the authorised officer may reasonably require;
- (b) make any enquiries, observe any activity or process, and take photographs;
- (c) inspect and search the premises;

(a) 2001 c.24.

- (d) inspect any machinery or equipment and any other article on the premises;
 - (e) inspect and take samples of any horticultural produce found on the premises;
 - (f) inspect, seize and detain any container used in connection with horticultural produce;
 - (g) have access to, inspect and copy any label, notice, document or record (in whatever form they are held) and remove them to enable them to be copied or require copies to be made;
 - (h) detach, or give permission to be detached, any produce not compliant with community marketing rules label, or stop notice label when the reasons for their being affixed no longer apply;
 - (i) have access to, inspect and check the data on, and operation of, any computer and any associated apparatus or material that is or has been in use in connection with a label, notice, document or record mentioned in this Regulation, including data relating to deleted files and activity logs; and for this purpose may require any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material to afford such assistance (including the provision of passwords) as may reasonably be required and, where these items are kept by means of a computer, may require them to be produced in a visible and legible form in which they may be taken away;
 - (j) seize any computers and associated equipment for the purpose of copying any data, but only if that authorised officer has a reasonable suspicion that an offence under these Regulations has been committed, and provided they are returned as soon as practicable; and
 - (k) seize and detain any items in sub-paragraph (g) if the authorised officer has reason to believe they may be required as evidence in proceedings under these Regulations.
- (2) An authorised officer must—
- (a) as soon as is reasonably practicable, provide to the person appearing to be responsible for any items that that authorised officer seizes and detains under paragraph (1) a written receipt identifying those items; and
 - (b) as soon as is reasonably practicable after deciding that those items are no longer required, return them, apart from those to be used as evidence in any court or other proceedings under these Regulations.

Authorised officer: power to affix a non compliance label

6.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these regulations, finds horticultural produce subject to a specific marketing standard which has affixed to it a label or is accompanied by a notice or a document required by Community marketing rules, or is in a container to which such a label is affixed or which is accompanied by such a notice or document—

- (a) indicating in either case that that horticultural produce is of a particular class under the relevant specific marketing standard; but
- (b) which the authorised officer has reasonable cause to believe to be of an inferior class under that specific marketing standard,

the authorised officer may amend or cancel the label, notice or document and may affix to the horticultural produce, or, as the case may be, to the notice or container, a non compliance label.

(2) For the purposes of regulations 6, 7 and 8, a non compliance label shall be—

- (a) in the form set out in Part I of Schedule 1 to these Regulations; and
- (b) completed in accordance with Part II of that Schedule.

7.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any horticultural produce which either has affixed to it a label or is accompanied by a notice or a document required by Community marketing rules, or is in a container to which such a label is affixed or which is accompanied by such a notice or document, indicating in either case that one of the situations in paragraphs (2) to (4) applies, an

authorised officer may amend or cancel the label, notice or document and may affix to the horticultural produce, or, as the case may be, to the notice or container, a non compliance label.

- (2) Situation 1 is where the label, notice or document indicates—
 - (a) that horticultural produce is of a class marketable under the specific marketing standard applicable to it; but
 - (b) which the authorised officer has reasonable cause to believe does not comply with any class of that specific marketing standard but only complies with the general marketing standard.
- (3) Situation 2 is where the label, notice or document indicates—
 - (a) that horticultural produce is of a class marketable under the specific marketing standard applicable to it; but
 - (b) which the authorised officer has reasonable cause to believe is not of a standard marketable under Community marketing rules.
- (4) Situation 3 is where the label, notice or document indicates—
 - (a) that horticultural produce complies with the general marketing standard; but
 - (b) which the authorised officer has reasonable cause to believe is not of a standard marketable under Community marketing rules.

8.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any horticultural produce, or container holding horticultural produce, which—

- (a) does not have a label required by the Community marketing rules affixed to it;
- (b) is not accompanied by a notice or document required by the Community marketing rules;
- (c) has a label required by the Community marketing rules affixed to it, or to its container, but the label appears to the authorised officer to be incorrect (other than in relation to a particular class under the specific marketing standard applying to that horticultural produce, if applicable), or to have been altered or defaced; or
- (d) is accompanied by a notice or document required by the Community marketing rules but which appears to the authorised officer to be incorrect (other than in relation to a particular class under the specific marketing standard applying to that horticultural produce, if applicable), or to have been altered or defaced with the result that it is incorrect,

the authorised officer may, as appropriate, amend or cancel the label, notice or document and may affix to the horticultural produce, or, as the case may be, to the container, a non compliance label.

Authorised officer: Requirement to serve a notice in terms of regulations 6, 7 and 8

9.—(1) If an authorised officer deems it appropriate to affix a non compliance label to horticultural produce or to its container in terms of regulation 6, 7 or 8, the officer must, at the same time serve a written notice on the owner of the horticultural produce or an agent or employee of the owner, advising of the reasons for non compliance and clearly indicating:—

- (a) in the case where regulation 6 applies, which of the circumstances contained in regulation 6(1)(a) or (b) is applicable;
- (b) in the case where regulation 7 applies, which of the circumstances contained in regulation 7(2) to (4) is applicable; or
- (c) in the case where regulation 8 applies, which of the circumstances contained in regulation 8(1)(a) to (d) is applicable.

(2) Any notice issued by an authorised officer in terms of this regulation shall, in addition to the information required in terms of regulation 9(1)(a), (b) or (c) (as applicable), also contain the following information:—

- (a) the Notice shall be named “Notice of Non compliance with Community marketing rules”;

- (b) reference to the Marketing of Horticultural Produce (Scotland) Regulations 2009;
- (c) a reference number to correspond with the compliance check, this reference number to be entered on the non compliance label affixed to the produce;
- (d) the name and address of the trader or importer or exporter responsible for the horticultural produce;
- (e) reasons for the non compliance with the Community marketing rules;
- (f) a warning that it is an offence in terms of these regulations to display or offer for sale, deliver or market in any other manner horticultural produce in contravention of or in non compliance with the Community marketing rules;
- (g) the product (with the variety/type claimed, if applicable);
- (h) origin of produce claimed;
- (i) class of produce claimed/attained, if applicable;
- (j) quantity of the consignment;
- (k) signature of the authorised officer;
- (l) date, time and place of the compliance check; and
- (m) an official stamp bearing the number identifying the authorised officer.

Authorised officer: powers to control the movement of horticultural produce

10.—(1) An authorised officer may, by written notice pursuant to paragraph (2), prohibit the movement of any horticultural produce if the authorised officer reasonably suspects that an offence under these Regulations is being committed in respect of that horticultural produce.

(2) The written notice referred to in paragraph (1) must be served on the person appearing to the authorised officer to be in charge of the horticultural produce concerned and must—

- (a) specify the date, place and time of service of the notice;
- (b) contain details of the recipient of the notice;
- (c) specify the horticultural produce in relation to which the power has been exercised;
- (d) state the reason for its detention;
- (e) confirm that options for bringing the horticultural produce into conformity with the Community marketing rules or for the appropriate disposal of that horticultural produce have been discussed between the authorised officer and the person appearing to be in charge of the horticultural produce;
- (f) state the location of that horticultural produce;
- (g) state that the horticultural produce may not be moved from that location without the written consent of an authorised officer; and
- (h) contain the authorised officer’s official stamp and number.

(3) Any notice served under paragraph (1) shall state—

- (a) the right of appeal to the sheriff under regulation 11; and
- (b) the period within which such an appeal may be brought.

Appeals

11.—(1) The person on whom the stop notice is served, or owner of the horticultural produce or an agent or employee acting on behalf of the owner may appeal to the sheriff against a decision of an authorised officer to serve a notice under regulation 10(1).

(2) The inspecting authority may be a party to an appeal under this regulation.

(3) An appeal under this regulation shall be made by way of summary application and shall be lodged with the sheriff clerk within the period of 48 hours from the day on which the decision to serve the stop notice is made.

(4) On good cause shown, the sheriff may hear an appeal under this regulation notwithstanding that it was not lodged within the time mentioned in paragraph (3).

(5) For the purposes of an appeal under this regulation, the sheriff may require the inspecting authority to give reasons for that decision, and the inspecting authority shall comply with such a requirement.

(6) The sheriff may uphold an appeal under this regulation only if the sheriff considers that the inspecting authority, in arriving at the decision—

- (a) erred in law;
- (b) based the decision on any incorrect material fact;
- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

(7) In considering an appeal under this regulation, the sheriff may hear evidence by or on behalf of any party to the appeal.

(8) On upholding an appeal under this regulation, the sheriff may—

- (a) remit the case with the reasons for such decision to the inspecting authority for reconsideration of their decision
- (b) cancel the notice or confirm it, with or without modification.

(9) On remitting a case under paragraph (8)(a), the sheriff may—

- (a) specify a date by which the reconsideration by the authority must take place; or
- (b) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including these regulations).

(10) The sheriff may include in the decision on an appeal under this regulation such order as to the expenses of the appeal as the sheriff thinks proper.

(11) The sheriff must complete the appeal as soon as reasonably practicable and in any event within 48 hours of the request, and notify the person who requested it, and, if different, the person on whom the notice was served and any other person in possession of the horticultural produce, of the outcome, as soon as reasonably practicable.

(12) A decision which is the subject of appeal shall, unless the inspecting authority direct otherwise in writing, have effect until the date of determination of that appeal.

Authorised officer: power to affix a stop notice label

12.—(1) An authorised officer may affix to any controlled horticultural produce, or to any container in which the controlled horticultural produce is packed, a label warning of the exercise of the power in regulation 10(1) (a “stop notice label”).

(2) A stop notice label must be—

- (a) in the form set out in Part III of Schedule 1 to these Regulations; and
- (b) completed in accordance with Part IV of that Schedule.

Authorised officer: consents to the movement of controlled horticultural produce

13.—(1) An authorised officer may, at any time, give written consent to the movement of controlled horticultural produce and must give such consent, upon request, if the circumstances in paragraph (2) or (3) apply.

(2) The circumstances in which this paragraph applies are where—

- (a) the authorised officer is satisfied that no offence under these Regulations would be committed in respect of the horticultural produce if it were sold in circumstances in which Community marketing rules apply; or

- (b) the authorised officer, or any other authorised officer, has been given a written undertaking that the horticultural produce will be disposed of in a specified manner and the authorised officer is satisfied that if the horticultural produce is disposed of in that manner, no offence under these Regulations would be committed in respect of it and the authorised officer has no reason to doubt that the terms of the undertaking will not be met.
- (3) The circumstances in which this paragraph applies are where—
- (a) the authorised officer, or any other authorised officer, has been given a written undertaking to the effect that—
 - (i) the horticultural produce will be moved to a place approved by an authorised officer;
 - (ii) steps required will be taken to ensure that the horticultural produce may be sold in circumstances in which Community marketing rules apply without an offence under these Regulations being committed in respect of it or will be disposed of in such a manner that no offence under these Regulations would be committed in respect of it; and
 - (iii) the horticultural produce will not be moved from that place without the written consent of an authorised officer; and
 - (b) the authorised officer has no reason to doubt that the terms of the undertaking will not be met.
- (4) A consent given by an authorised officer under this Regulation must—
- (a) specify the horticultural produce to which it relates; and
 - (b) where the consent is given under paragraph (3), state that the horticultural produce continues to be controlled.

Exercise of powers on premises

14. The powers under regulations 4 to 10 and 12 to 13 of these Regulations may not be exercised on premises used wholly as a private dwelling house.

Community marketing rules offences

15.—(1) Subject to paragraph (2), a person is guilty of an offence if he or she displays, offers for sale, delivers or markets in any other manner, horticultural produce in contravention of or in non-compliance with—

- (a) the general marketing standard, if applicable; or
- (b) any specific marketing standard applying to that horticultural produce.

(2) A person is guilty of an offence if he or she fails to comply with any provision of Commission Regulation 1580/2007 mentioned in column 1 of Schedule 2 to these Regulations, as read with any provision mentioned in any corresponding entry in column 2 of that Schedule.

(3) Where—

- (a) an authorised officer has inspected horticultural produce and found it not to conform with Community marketing rules; and
- (b) the person in charge of that horticultural produce has given an undertaking, or has been responsible for the giving of an undertaking in relation to that horticultural produce,

it is an offence for that person to act in breach of the undertaking or to cause or permit his or her agent or employee to act in breach of the undertaking.

(4) A person is guilty of an offence if, in purporting to provide the information particulars required by Community marketing rules for horticultural produce, he or she gives an inaccurate or false description of that horticultural produce on a label affixed to, or in a notice or document accompanying, that horticultural produce.

(5) A person, other than an authorised officer, is guilty of an offence if he or she affixes, or causes or permits to be affixed, a non compliance label to any container of horticultural produce, or to the horticultural produce itself, or to any notice or document which is required by Community marketing rules to accompany that horticultural produce.

(6) A person, other than an authorised officer, is guilty of an offence if he or she removes, conceals, defaces or alters, or causes or permits to be removed, concealed, defaced or altered—

- (a) any notice or document which is required by Community marketing rules to accompany horticultural produce or any label which is required by Community marketing rules to be affixed to that horticultural produce or to its container; or
- (b) a non compliance label which has been applied by an authorised officer in the execution of these Regulations to the horticultural produce or to its container.

(7) A person is guilty of an offence if he or she exports or imports any consignment of horticultural produce to or from any place outside the European Community without a document, label or notice which is required by Community marketing rules to accompany that horticultural produce.

Derogation from specific marketing standards

16. Horticultural produce to which a specific marketing standard applies is not required to comply with that specific marketing standard if that horticultural produce complies with the general marketing standard and if it is—

- (a) presented for retail to consumers for their personal use; and
- (b) labelled “product intended for processing” or with any other equivalent wording^(a).

Offences relating to movement of controlled horticultural produce

17.—(1) A person is guilty of an offence if he or she moves controlled horticultural produce or a container with controlled horticultural produce in it, or causes or permits it to be moved without the written consent of an authorised officer.

(2) A person, other than an authorised officer, is guilty of an offence if he or she removes or causes or permits to be removed from that controlled horticultural produce or its container a stop notice label affixed by an authorised officer under regulation 12(1).

(3) A person is guilty of an offence if he or she fails to comply with the undertaking they gave for the purposes of regulation 13.

(4) It is a defence for a person charged with an offence under this Regulation, to prove that, when the power conferred by regulation 10(1) was exercised, there was no failure to comply with these Regulations in respect of the horticultural produce concerned.

Obstruction

18.—(1) A person is guilty of an offence if he or she—

- (a) intentionally obstructs an authorised officer acting for the purpose of the enforcement of these Regulations, or a person accompanying such an authorised officer under regulation 4(3);
- (b) without reasonable excuse, proof of which shall lie on the accused, fails to give an authorised officer acting for the purpose of the enforcement of these Regulations any assistance or information or to provide any record or facilities that that authorised officer may reasonably require;

(a) Regulation 16 exercises the derogation from Article 113(a)(3) of Commission Regulation (EC) No. 1234/2007 in Article 3 of Commission Regulation (EC) No. 1580/2007 as amended by Article 1(2)(a) and (c) of Commission Regulation (EC) 1221/2008 laying down implementing rules of Council Regulations (EC) No. 2200/96, (EC) No. 2201/96 and (EC) No. 1182/2007 in the fruit and vegetable sector as regards marketing standards (O.J. No. L 336, 13.12.2008, p.1.

- (c) fails to make any request for inspection when required by Community marketing rules or to give any notice or information required by Community marketing rules; or
- (d) without reasonable excuse, proof of which shall lie on the accused, supply to an authorised officer acting for the purpose of the enforcement of these Regulations any information knowing it to be false or misleading.

Offence due to fault of another person

19.—(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

20.—(1) It is a defence for a person charged (“A”) with an offence under these Regulations, except for the offences in regulation 18 (obstruction), 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) where an intermediate diet is held, at or before that diet; or
- (b) where such a diet is not to be held, no later than 10 clear days before the trial diet.

Offences by bodies corporate

21.—(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 Scottish 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 Scottish 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 Scottish 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 141 of the Criminal Procedure (Scotland) Act 1995(a) applies in relation to the partnership or unincorporated association as it applies in relation to a body corporate.

(8) A fine imposed on a Scottish 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.

Penalties

22. 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.

Revocations

23. In so far as they apply to Scotland, the following statutory instruments are revoked—

- (a) the Grading of Horticultural Produce (Amendment) Regulations 1973(b);
- (b) the Grading of Horticultural Produce (Amendment) Regulations 1983(c); and
- (c) the Grading of Horticultural Produce (Forms of Labels) Regulations 1982(d).

Disapplication

24. In so far as they apply to Scotland, the following Acts do not apply to horticultural produce—

- (a) the Agriculture and Horticulture Act 1964(e) and the Horticultural Produce Act 1986(f) which modifies it;
- (b) the Agricultural Produce (Grading and Marking) Acts 1928(g) and 1931(h); and
- (c) the Agricultural Marketing Act 1958(i).

RICHARD LOCHHEAD

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
3rd June 2009

(a) 1995 c.46.
(b) S.I. 1973/22.
(c) S.I. 1983/1053.
(d) S.I. 1982/387.
(e) 1964 c.28.
(f) 1986 c.20.
(g) 1928 c.19.
(h) 1931 (c.40); this Act amended the Agricultural Produce (Grading and Marking) Act 1928 and the two Acts may be cited together as the Agricultural Produce (Grading and Marking) Acts 1928 and 1931.
(i) 1958 c.47.

SCHEDULE 1


Regulation 6

Form and Completion of Labels

PART I

Regulations 6, 7 and 8

Form of non compliance Label


 The Scottish Government	
PRODUCE NOT COMPLIANT WITH COMMUNITY MARKETING RULES	
It is an offence to remove, conceal, deface or alter this label without prior authorisation.	
(a)	(b)

PART II

Completion of non compliance Label

1. The reference number assigned to the label shall be inserted at (a).
2. The personal number assigned to the authorised officer shall be inserted at (b).

PART III
Regulation 12
Form of Stop Notice Label

 The Scottish Government
DO NOT REMOVE THIS PRODUCE
<p>This consignment is subject to a Stop Notice. Unauthorised movement of this consignment from these premises or the unauthorised removal of this label is an offence under the Marketing of Horticultural Produce (Scotland) Regulations 2009.</p>
(a) (b)

PART IV
Completion of Stop Notice Label

1. The reference number assigned to the label shall be inserted at (a).
2. The personal number assigned to the authorised officer shall be inserted at (b).

SCHEDULE 2

Regulation 15(2)

Provisions under Commission Regulation 1580/2007

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Relevant provision of Commission Regulation 1580/2007	Provision of Commission Regulation 1580/2007 to be read with the provision in column 1	Subject matter
Article 4(1)	Annex I, Art. 3(3), Art. 4(2), Art. 4(3), Art. 4(4), Art. 5 and Art. 6(2) and Art. 6(3).	General requirements for information particulars.
Article 4(2)	Annex I, Art. 4(1), Art. 4(3), Art. 4(4) and Art. 6(1), Art. 6(2) and Art. 6(3).	Requirements for information particulars in documents accompanying bulk shipments and goods loaded directly onto a means of transport.
Article 4(3)	Annex I, Art. 4(1), Art. 4(4) and Art. 6(1), 6(2) and Art. 6(3).	Requirement for information particulars in the case of distance contracts to be available before the purchase is concluded.
Article 4(4)	Annex I, Art. 4(1), Art. 4(2), Art. 4(3) and Art. 6(1), Art. 6(2) and Art. 6(3).	Requirement for information particulars on invoices and accompanying documents.
Article 5	Annex I, Art. 3(3) and Art. 6(1), Art. 6(2) and 6(3).	Requirement for information particulars at the retail stage.
Article 6(1)	Annex I, Art. 3(3), Art. 5, Art. 6(2) and Art. 6(3).	Requirements for sale of mixes of different types of fruit and vegetables.
Article 9(5)	Art. 9(1), Art. 9(2), Art. 9(3) and Art. 9(4).	Requirement for traders to provide information that Member States consider necessary for the database.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Article 10(4)	Art. 10(1), Art. 10(2), Art. 10(3), Art. 11, Art. 12a and Annex III, and Art. 13.	Requirement for traders to provide inspection bodies with all information required by them for organising and carrying out conformity checks.
Article 20(3), final subparagraph	Art. 9, Art 20(1) and Annex VI, Art. 20(2), Art. 20(3).	Requirement for traders to supply all information deemed necessary by the inspection body for method of inspection.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a new statutory framework for the enforcement of the Community marketing rules in the fresh fruit and vegetable sector provided for in Articles 113 and 113a of Council Regulation (EC) No 1234/2007 (O.J. No. L 299, 16.11.2007, p.1) establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), and contained in Title II of Commission Regulation (EC) No. 1580/2007 (O.J. No. L 350, 31.12.2007, p.1) laying down implementing rules of Council Regulations (EC) No. 2200/96, (EC) No. 2201/96 and (EC) No. 1182/2007 in the fruit and vegetable sector. In particular, they implement the revisions made to the Community marketing rules introduced by Commission Regulation (EC) No. 1221/2008 (O.J. No. L 336, 13.12.2008, p.1) amending Regulation (EC) No. 1580/2007 laying down implementing rules of Council Regulations (EC) No. 2200/96, (EC) No. 2201/96 and (EC) No. 1182/2007 in the fruit and vegetable sector as regards marketing standards.

These Regulations revoke the Grading of Horticultural Produce (Amendment) Regulations 1973 (S.I. 1973/22), the Grading of Horticultural Produce (Forms of Labels) Regulations 1982 (S.I. 1982/387) and the Grading of Horticultural Produce (Amendment) Regulations 1983 (S.I. 1983/1053).

They disapply the Agriculture and Horticulture Act 1964 (c.28) and the Horticultural Produce Act 1986 (c.20) which modifies the 1964 Act. They also disapply the Agricultural Produce (Grading and Marking) Acts 1928 and 1931 (c.19 and c.40 respectively) and the Agricultural Marketing Act 1958 (c.47) from the Community marketing rules in the fresh fruit and vegetable sector.

These Regulations make the failure to comply with Article 113a(3) of Council Regulation (EC) No. 1234/2007, and the provisions of Commission Regulation (EC) No. 1580/2007 mentioned in the Schedule, an offence. They contain some additional offences necessary for the effective enforcement of the Community marketing rules (Regulation 16 and Schedule 2).

They exercise the derogation in Article 3(3) of Commission Regulation (EC) No. 1580/2007 (Regulation 16(2)). This derogation exempts products presented for retail sale to consumers for their personal use from the specific marketing standards provided they are labelled “product intended for processing”, or with other equivalent wording.

Regulation 14 provides that powers in the Regulations cannot be exercised on premises used wholly as a dwellinghouse. The Regulations confer powers of entry (Regulation 4) and other powers (Regulation 5), including seizure powers which require authorised officers to fulfil certain duties in relation to any items seized. They contain powers to affix labels indicating non compliance with the Community marketing rules (regulations 6, 7 and 8) and at the same time to serve notice containing detailed reasons for the non compliance.

They confer power to control the movement of horticultural produce (regulation 10) and the power to affix a stop notice label warning of its exercise (regulation 12). There is provision for giving consent to the movement of controlled horticultural produce when certain conditions are met (regulation 13). There are provisions on offences relating to the unlawful movement of controlled horticultural produce, to unlawfully removing stop notice labels and relating to failure to comply with an undertaking given in relation to controlled horticultural produce (regulation 15).

These Regulations make obstruction an offence (regulation 18). They also contain provisions relating to the commission of an offence due to the fault of another person (regulation 19). They provide for defences of acting with lawful authority or exercising due diligence and taking reasonable precautions (regulation 20), and for the commission of offences by bodies corporate (regulation 21). They provide for penalties for offences (regulation 22).