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STATUTORY INSTRUMENTS

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**2009 No. 1361**

**The Marketing of Fresh Horticultural Produce Regulations 2009**

**PART 2**

**General offences, derogation and exercise of powers on premises**

**Community marketing rules offences**

4.—(1) A person is guilty of an offence if they display, offer for sale, deliver or market in any other manner, horticultural produce in contravention of or which is not compliant with—

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

(2) Paragraph (1) does not apply in the circumstances mentioned in regulation 5.

(3) A person is guilty of an offence if they fail to comply with any provision of Commission Regulation 1580/2007 mentioned in column 1 of the Schedule, as read with any provision mentioned in any corresponding entry in column 2 of that Schedule.

(4) Where—

- (a) an authorised officer has inspected horticultural produce and found it not to be compliant 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 their agent or employee to act in breach of the undertaking.

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

(6) A person, other than an authorised officer, is guilty of an offence if they affix, or cause or permit to be affixed, a re-graded label, an out-graded label or a labelling defect label to the 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.

(7) A person, other than an authorised officer, is guilty of an offence if they remove, conceal, deface or alter, or cause or permit 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 required by Community marketing rules to be affixed to that horticultural produce or to its container;
- (b) a re-graded label, an out-graded label or a labelling defect label which has been applied by an authorised officer in the execution of these Regulations to the horticultural produce or to its container;

- (c) any demarcation tape or other material used by an authorised officer in accordance with regulation 8(1)(f) to identify horticultural produce or a specific lot of horticultural produce which is found not to be compliant with Community marketing rules.

(8) A person is guilty of an offence if they export or import any consignment of horticultural produce to or from any place outside the European Community without a document, label or notice required by Community marketing rules to accompany that horticultural produce.

#### **Derogation from specific marketing standards**

5. Horticultural produce to which a specific marketing standard applies is not required to comply<sup>(1)</sup> with that specific marketing standard if that horticultural produce complies with the general marketing standard and if it is—

- (a) presented for retail sale to consumers for their personal use;
- (b) labelled “product intended for processing” or with any other equivalent wording; and
- (c) not intended for industrial processing.

#### **Exercise of powers on premises**

6. The powers under Part 3 and Part 4 of these Regulations may not be exercised on premises, or part of any premises, used only as a dwelling-house.

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(1) Regulation 5 exercises the derogation in Article 3(3) of [Commission Regulation \(EC\) No 1580/2007](#), as replaced with new text by virtue of Article 1(c) of [Commission Regulation \(EC\) No. 1221/2008](#) 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 (OJ No L 336, 13.12.2008, p 1 as corrected by Corrigendum (OJ No L 36, 5.2.2009, p 84)).