
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 613

The Plant Health (Scotland) Order 2005

PART 6

**MEASURES TO CONTROL THE LANDING OF RELEVANT
MATERIAL AND PREVENT THE SPREAD OF PLANT PESTS**

Examination, sampling and marking

31.—(1) Subject to article 38, inspectors shall have a right on producing their authority, if so requested, at all reasonable times to enter any premises for the purpose of enforcing the provisions of this Order and in particular—

- (a) checking compliance with any provision of this Order; or
- (b) carrying out an examination of a plant trader's premises or of relevant material or documents or records on such premises for any purpose in connection with the granting or suspending of any authority to issue a plant passport under article 29.

(2) An inspector entering premises by virtue of paragraph (1) or of a warrant granted under article 38 may—

- (a) examine, photograph or mark any part of the premises or any object on the premises;
- (b) take samples of or from any plant pest or relevant material or from any container or package, or any material which has been or may have been in contact with such pest or relevant material; and
- (c) inspect or make copies of any documents or records (in whatever form they may be held) relating to the production of or trade in any relevant material.

(3) An inspector may, for the purpose of exercising any of the powers under paragraph (2), open, or authorise any person to open on the inspector's behalf any container or package or require the owner or any person in charge of any container or package to open it, in such manner as the inspector may specify.

(4) Inspectors may, so far as is necessary to enable them to exercise any of the powers conferred by paragraph (2), prohibit entirely or to such extent as they may specify the movement, treatment or destruction of any plant pest or relevant material, container or package, or any material which may have been in contact with such pest or relevant material.

(5) Where any such record or document as is mentioned in paragraph (2)(c) is kept by means of a computer, an inspector may—

- (a) have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the record or document; and
- (b) require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the inspector such assistance as the inspector may reasonably require.

(6) An inspector may destroy or otherwise dispose of any sample taken under paragraph (2)(b) where that sample is no longer required in connection with this Order.

(7) An inspector entering premises by virtue of paragraph (1), or of a warrant granted under article 38, may be accompanied by such other persons, including representatives of the European Commission, and such equipment and vehicles as the inspector considers necessary, and any such other persons may, whether or not accompanied by the inspector and on production, if so requested, of their authority given in that behalf by the Scottish Ministers, remain on and from time to time re enter the premises with any equipment or vehicles that person considers necessary, and carry out such work in such manner as the inspector may direct.

Actions which may be required by an inspector

32.—(1) If an inspector has reasonable grounds for suspecting that any plant pest or relevant material is likely to be or has been landed in Scotland in contravention of this Order the inspector may serve a notice in writing in accordance with paragraphs (2) and (3).

(2) An inspector may serve a notice under paragraph (1) on—

- (a) a plant trader or other person who is in possession of or in any way entitled to the custody or control of the plant pest or relevant material which has been landed; or
- (b) any person in charge of the premises from which any plant pest or relevant material is likely to be or has been landed.

(3) A notice under paragraph (1) may—

- (a) prohibit the landing of any plant pest or relevant material;
- (b) specify the manner in which the landing is to be carried out and the precautions which are to be taken during and subsequent to the landing;
- (c) require any plant pest or relevant material to be treated, re exported, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice;
- (d) prohibit the removal of any plant pest or relevant material from premises specified in the notice for such period as may be so specified and, where appropriate, impose such other prohibitions as appear to the inspector to be necessary to prevent the introduction or spread of any plant pest;
- (e) require the removal of any plant pest or relevant material from premises specified in the notice in such manner and within such reasonable time as may be so specified;
- (f) require the taking of such other steps, specified in the notice, as appear to the inspector to be necessary to prevent the introduction or spread of any plant pest in such a manner and within such reasonable time as may be specified in the notice.

(4) If an inspector has reasonable grounds for suspecting that there is present or likely to be present on any premises any plant pest referred to in paragraph (5) or any relevant material referred to in paragraph (6), the inspector may by notice in writing served on the occupier or other person in charge of the premises or such plant pest or relevant material—

- (a) require any plant pest or relevant material to be treated, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice;
- (b) prohibit the removal of any plant pest or relevant material from premises specified in the notice for such period as may be so specified and, where appropriate, impose such other prohibitions as appear to the inspector to be necessary to prevent the spread of any plant pest;
- (c) require the removal of any plant pest or relevant material to premises specified in the notice in such manner and within such reasonable time as may be so specified; or

- (d) require the taking of such other steps, specified in the notice, as appear to the inspector to be necessary to prevent the spread of any plant pest in such manner and within such reasonable time as may be specified in the notice.
- (5) The plant pests referred to in paragraph (4) are—
 - (a) a plant pest of a description specified in Schedule 1 or in column 3 of Schedule 2;
 - (b) any plant pest which is not normally present in Great Britain and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread in Great Britain; and
 - (c) any plant pest which is not normally present in another part of the European Community and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread to another part of the European Community.
- (6) The relevant material referred to in paragraph (4) is—
 - (a) any relevant material which is carrying or is infected with, or which may be carrying or infected with, a plant pest referred to in paragraph (5); and
 - (b) any relevant material the landing of which in Scotland is prohibited under article 5 or 19 or the movement of which in Scotland is prohibited under article 20.
- (7) If an inspector has reasonable grounds for believing that it is necessary for the purpose of preventing the spread of or ensuring the eradication of any plant pest from the premises mentioned in paragraph (4), the inspector may by notice in writing served on the occupier or other person in charge of any other premises impose such prohibitions and require the taking of such reasonable steps, specified in the notice, as appear to the inspector to be necessary for that purpose, such steps to be taken in such manner and in such reasonable time as may be specified in the notice.

Actions which may be taken by an inspector

33.—(1) Without prejudice to article 32, and subject to article 38, if an inspector has reasonable grounds for suspecting that there is present or likely to be present on any premises any plant pest referred to in paragraph (2) or any relevant material referred to in paragraph (3), the inspector may, after giving the occupier or other person in charge of the premises reasonable notice of the inspector's intention and upon production if so required of the inspector's authority, enter such premises and either on those premises or elsewhere take steps—

- (a) to destroy any plant pest referred to in paragraph (2) and to prevent the spread of any such plant pest; or
- (b) to destroy or treat any relevant material referred to in paragraph (3).
- (2) The plant pests referred to in paragraph (1) are—
 - (a) a plant pest of a description specified in Schedule 1 or column 3 of Schedule 2; and
 - (b) any plant pest not normally present in Great Britain and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread in Great Britain.
- (3) The relevant material referred to in paragraph (1) is—
 - (a) any relevant material which is carrying or is infected with, or which may be carrying or may be infected with, a plant pest referred to in paragraph (2); and
 - (b) any relevant material not carrying or infected with a plant pest referred to in paragraph (2), but in respect of which there is, in the opinion of the inspector, an imminent danger of such a plant pest spreading or being spread.
- (4) An inspector on entering any premises under paragraph (1) may be accompanied by such persons, including representatives of the European Commission, and such equipment and vehicles

as the inspector considers necessary for the purposes of facilitating the exercise of the inspector's powers under that paragraph.

(5) Any person who accompanies an inspector on to premises in accordance with paragraph (4) may, whether or not accompanied by an inspector, upon production if so required of the authority given in that behalf by the Scottish Ministers, remain on the premises and from time to time re enter the premises with any equipment or vehicles that person considers necessary, and carry out such work in such manner as the inspector may direct.

Miscellaneous provisions as to notices

34.—(1) A notice served under paragraph (1) or (2) of article 32 may specify one or more requirements or alternative requirements.

(2) Any treatment, re export, destruction or disposal required by a notice served under article 32 shall be carried out or arranged to be carried out by the person on whom the notice is served to the satisfaction of an inspector from or at a place designated by an inspector and, except with the written authority of an inspector, no plant pest or relevant material to which the notice relates shall be moved otherwise than directly from or to such a place.

(3) An inspector may amend or withdraw a notice served by an inspector under this Order by a further notice served on the person on whom the original notice was served or on the person who is the occupier or in charge of the premises in respect of which the further notice is intended to be served.

(4) A notice under paragraph (3) may be subject to such conditions, if any, as the inspector considers expedient to impose for the purpose of preventing the introduction or spread of any plant pest or re infection or re infestation by the plant pest to which the original notice relates.

(5) Any notice served under this Part may define by reference to a map or plan or otherwise the extent of the premises referred to in the notice.

(6) Where a notice is served under paragraph (2) or (4) of article 32 (“an article 32 notice”), an inspector may, either in that notice or in a separate notice served on the owner or on such other person as appears to the inspector to be in charge of the premises to which the article 32 notice relates, require the person on whom the notice is served to inform—

- (a) the Scottish Ministers of any change in the occupation of the premises to which the article 32 notice relates together with the date of such change and the name of the new occupier; and
- (b) the new occupier of the premises of the contents of the article 32 notice.

Service of notices

35.—(1) Subject to paragraphs (2), (3) and (4), a notice under this Order may be served on any person—

- (a) by personal delivery;
- (b) by leaving it for that person at that person's last known place of abode or business; or
- (c) by sending it through the post addressed to that person at that person's last known place of abode or business.

(2) Where a notice under this Order must be served on the occupier or other person in charge of premises, and the last known place of abode or business of that person cannot be ascertained after reasonable inquiry, the notice shall be taken to be served seven days after it has been addressed to “the occupier” and affixed conspicuously to an object on the premises to which the notice relates.

(3) Subject to paragraph (4), a notice served under this Order may—

- (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body at the address of the registered or principal office of that body;
- (b) in the case of a partnership (other than a limited liability partnership), be served on a partner or person having the control or management of the partnership business at the address of the principal office of the partnership; or
- (c) in the case of a limited liability partnership, be served on a member of the partnership at the address of the registered or principal office of that partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be its principal office within the United Kingdom.

(4) In the case of a registered plant trader a notice under this Order shall be served on the trader either by personal delivery, or by leaving it for the trader, or sending it through the post addressed to the trader, at the address of the premises listed in the register or, if more than one such address is registered, any address specified by the trader as the principal address.

Information as to compliance with notices

36. A person on whom a notice has been served, or is deemed to have been served, under this Order must, if so required by an inspector, immediately inform the inspector whether the requirements of the notice have been complied with and, if they have been complied with, of the details of the steps taken in order to comply with those requirements.

Failure to comply with a notice

37.—(1) Subject to article 38, if any person fails to comply with a notice served, or deemed to be served, on that person under this Order then, without prejudice to any proceedings consequent upon such failure, an inspector may, on production if so required of the inspector's authority, at all reasonable times for the purposes of this Order enter any premises in which any plant pest or relevant material to which the notice relates may be present and take or cause to be taken such steps as appear to the inspector to be necessary either to ensure compliance with the requirements of the notice or to remedy the consequences of the failure to carry them out.

(2) An inspector entering any premises under paragraph (1) may be accompanied by such other persons, including representatives of the European Commission, and such equipment and vehicles as the inspector considers necessary for the purposes of facilitating the exercise of the powers under that paragraph, and such other persons whether or not accompanied by the inspector and on production, if so requested, of their authority given in that behalf by the Scottish Ministers, may remain on the premises and from time to time re enter the premises with any equipment or vehicles that person considers necessary, and carry out such work and in such manner as the inspector may direct.

(3) Where an inspector takes any steps pursuant to paragraph (1), the Scottish Ministers may recover all reasonable costs of taking such steps as a debt from the person on whom the notice was served.

Power to enter premises used wholly or mainly as a dwelling

38.—(1) The power to enter premises conferred by articles 31, 33 and 37 may be exercised by an inspector to enter premises used wholly or mainly as a dwelling only if the inspector has been granted a warrant by a sheriff or a justice of the peace.

(2) A sheriff or a justice of the peace may grant a warrant under paragraph (1) only if satisfied—

- (a) that admission to any premises has been refused, or is likely to be refused, or that the case is one of urgency, or that a request for admission might prejudice the purpose of the entry; and
 - (b) that there are reasonable grounds for entry under article 31, 33 or 37 as the case may be.
- (3) A warrant granted under paragraph (1) shall remain in force–
- (a) for one month; or
 - (b) until the purpose for which the warrant is granted has been fulfilled,
- whichever period is the shorter.