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STATUTORY RULES OF NORTHERN IRELAND

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**2019 No. 159**

**The Invasive Alien Species (Enforcement and  
Permitting) Order (Northern Ireland) 2019**

**PART 5**

**ENFORCEMENT**

**General**

17. This Order is enforced by the Department and authorised persons.

**Powers of entry**

18.—(1) Where an authorised person has reasonable grounds to suspect a specimen is being kept at premises, other than premises used wholly or mainly as a private dwelling, that authorised person may, at a reasonable time and on giving reasonable notice to the owner (and, where a different person, the occupier), enter, search and inspect those premises for the purpose of—

- (a) ascertaining whether an offence under this Order is being or has been committed;
  - (b) verifying information supplied by a person for the purpose of obtaining a permit or a licence;
  - (c) ascertaining whether a condition of a permit or a licence is being or has been complied with; or
  - (d) carrying out works under Article 22 (enforcement notices).
- (2) The requirement to give notice does not apply—
- (a) where reasonable efforts to agree an appointment have failed;
  - (b) where the authorised person reasonably believes that giving notice would defeat the object of the entry;
  - (c) where the authorised person has reasonable grounds for suspecting that an offence under this Order is being or has been committed; or
  - (d) in an emergency and/or where, in the opinion of the Department, there is an imminent risk of adverse effects or an imminent threat to biodiversity, ecosystem services, human health and/or the economy.
- (3) Paragraph (4) applies where—
- (a) on an application made by an authorised person, a lay magistrate is satisfied—
    - (i) that there are reasonable grounds to suspect that an offence under this Order is being or has been committed and that evidence of the offence may be found on any premises;
- or

- (ii) there is a need to ascertain whether a condition of a permit or of a licence is being or has been complied with; and
  - (b) one of the conditions specified in paragraph (5) applies.
- (4) Where this paragraph applies the lay magistrate may issue a warrant authorising an authorised person to enter, if necessary by reasonable force, search and inspect premises, and such a warrant may authorise persons to accompany the authorised person who is executing it.
- (5) The conditions referred to in paragraph (3)(b) are that—
- (a) entry to the premises has been refused, or is likely to be refused, and notice of the intention to apply for a warrant has been given to the owner (and, where a different person, the occupier); or
  - (b) one of the grounds specified in paragraph (6) justifying the absence of such notice applies.
- (6) The grounds justifying absence of notice are—
- (a) asking for admission to the premises, or giving such notice, would interfere with the purpose or effectiveness of the entry;
  - (b) entry is required urgently and/or there is an imminent risk of adverse effects to biodiversity, ecosystem services, human health and/or the economy; or
  - (c) the premises are unoccupied or the owner (or, where a different person, the occupier) is temporarily absent.
- (7) An authorised person entering any premises which are unoccupied or from which the owner (or, where a different person, the occupier) is temporarily absent must—
- (a) where entry is by virtue of paragraph (4), leave a copy of the warrant in a prominent place on the premises; and
  - (b) leave the premises as effectively secured against unauthorised entry as they were before entry.
- (8) An authorised person who enters premises by virtue of this Article may—
- (a) examine, photograph or mark any part of the premises or any object on the premises;
  - (b) open any bundle, container, package, packing case or item of personal luggage, or require the owner or any person in charge of the same to open it in the manner specified by the authorised person;
  - (c) make copies of any documents or records (in whatever form they may be held); and
  - (d) require any person to—
    - (i) produce any document or record that is in that person's possession or control; and
    - (ii) render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.
- (9) An authorised person who is, by virtue of paragraph (1) or (4), lawfully on premises may—
- (a) be accompanied by such other persons; and
  - (b) bring onto the premises such equipment, vehicles or materials,
- as the authorised person considers necessary.
- (10) Any person accompanying an authorised person under paragraph (9)(a) may—
- (a) remain on the premises and from time to time re-enter the premises without the authorised person;
  - (b) bring onto the premises any equipment or vehicle that the person considers necessary; and
  - (c) carry out work on the premises in the manner directed by an authorised person.

(11) Where, on application for a warrant under paragraph (3), the condition specified in paragraph (5)(b) applies, the application may be made without notice.

(12) A warrant granted under this Article continues in force for three months.

(13) An authorised person must, if requested to do so, by the owner (and, where a different person, the occupier) of the premises, produce evidence of their authority before entering premises by virtue of paragraph (1) or (4).

### **Power to enter and search vehicles**

**19.**—(1) If an authorised person has reasonable grounds to suspect that there is relevant evidence in a vehicle, other than a vehicle used wholly or mainly as a private dwelling, the authorised officer may, at any time—

- (a) stop and detain the vehicle for the purposes of entering and searching it; and
- (b) enter the vehicle and search it for that evidence.

(2) Where—

- (a) an authorised person has stopped a vehicle under this Article; and
- (b) the authorised person considers that it would be impractical to search the vehicle in the place where it has stopped,

the authorised person may require the vehicle to be taken to such a place as the authorised officer directs to enable the vehicle to be searched.

(3) An authorised person may require—

- (a) any person travelling in a vehicle; or
- (b) the registered keeper of a vehicle,

to afford such facilities and assistance with respect to matters under that person's control as the authorised person considers would facilitate the exercise of any power conferred by this Article.

(4) The powers conferred by this Article may be exercised in any place to which the authorised person has access (whether or not it is a place to which the public has access).

(5) In this Article, “relevant evidence” means evidence that an offence under this Order has been committed.

### **Examining relevant organisms and taking samples**

**20.**—(1) An authorised person may, for the purpose of ascertaining whether an offence under this Order is being or has been committed—

- (a) require that any relevant organism in the possession of any person is made available for examination by the authorised person;
- (b) in order to determine the identity or ancestry of any relevant organism, require the taking of a sample of that relevant organism, provided that—
  - (i) where the sample is to be taken from a live animal—
    - (aa) it is taken by a registered veterinary surgeon; and
    - (bb) the taking of the sample will not cause any avoidable pain, distress or suffering; and
  - (ii) where the sample is to be taken from a live plant or fungus, the taking of the sample will not cause lasting harm to the plant or fungus.

(2) An authorised person may destroy or otherwise dispose of any sample taken under this Article where the sample is no longer required.

**Power of seizure**

21.—(1) An authorised person exercising the powers conferred in this Part may seize anything where they have reasonable grounds for believing that—

- (a) seizure is necessary for the purpose of determining whether an offence under this Order is being or has been committed;
- (b) it is a specimen which has been unlawfully transported or is being unlawfully kept in contravention of this Order;
- (c) seizure is necessary for the conservation of evidence; or
- (d) seizure is necessarily incidental to seizure of a thing pursuant to sub-paragraph (a), (b) or (c).

(2) If, in the opinion of the authorised person, it is not for the time being practicable for the authorised person to seize and remove any item from premises, the authorised person may require any person on the premises to secure that the item is not removed or otherwise interfered with until such time as the authorised person may seize and remove it.

(3) Where—

- (a) any item which an authorised person wishes to seize is in a container; and
- (b) the authorised person reasonably considers that it would facilitate the seizure of the item if it remained in the container for that purpose,

any power to seize the item conferred by this Article includes power to seize the container.

(4) The authorised person must make reasonable efforts to give a written receipt for anything that is seized to each of the following persons—

- (a) in the case of an item seized from a person, the person from whom the item was seized;
- (b) in the case of an item seized from premises, any person who appears to the authorised person to be the occupier of the premises, or otherwise in charge of the premises; or
- (c) in any other case, or where the authorised person believes that the item may belong to any person not falling within sub-paragraph (a) or (b), to the person to whom the authorised person believes the item belongs.

(5) Where an item is seized from premises and it is not reasonably practicable to give written notice to the person referred to in paragraph (4), the authorised person must leave a copy of the receipt in a prominent place in or on the premises.

(6) Any relevant organism seized by an authorised person (unless the authorised person is satisfied that it is not a specimen)—

- (a) must be held and transported in a contained holding;
- (b) may be transferred to another authorised person or to an establishment or facility which may lawfully keep it by virtue of a permit or a licence (as the case may be); and
- (c) may, where the authorised person is satisfied it is a specimen, be humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro-organisms) as the authorised person sees fit.

(7) The court which convicts a person of an offence under this Order must order the offender to reimburse the Department any costs incurred in connection with keeping a relevant specimen by the person to whom it was entrusted following its seizure by an authorised officer under paragraph (1).

(8) Where an order is made under paragraph (7) and the amount specified in the order is not paid within the period specified in the order, the unpaid amount is recoverable summarily as a civil debt.

(9) In paragraph (7), “relevant specimen” means the specimen in relation to which the offence was committed.

### **Enforcement notices**

**22.**—(1) Where it appears to the Department that an invasive alien species is present on any premises contrary to Article 17 (rapid eradication at an early stage of invasion) of the Principal Regulation, the Department may serve an enforcement notice on the occupier, requiring that person to carry out such of the following works or operations as may be specified in the notice, that is to say—

- (a) steps to remove and dispose of any invasive alien species, in a manner and within the period specified in the notice; and
- (b) steps to ensure that the ecosystem is, so far as reasonably possible, restored to its condition before the invasive alien species was caused or permitted to be on the premises.

(2) An enforcement notice must—

- (a) state the name of the person on whom it is served and the matters constituting the contravention;
- (b) state the premises to which it relates;
- (c) specify the species to which it relates;
- (d) specify the steps which the person served with the notice is required to take to remedy the contravention;
- (e) specify how the steps are to be carried out;
- (f) state the date by which those steps must be carried out; and
- (g) inform the person on whom it is served of the right of appeal under Article 25 (appeals).

(3) If an enforcement notice is not complied with, the Department may—

- (a) take such steps as it considers reasonably necessary (including the removal and disposal of the invasive alien species) to—
  - (i) ensure compliance with the requirements of the notice;
  - (ii) remedy the consequences of the failure to carry them out; and
  - (iii) recover any expenses reasonably incurred in so doing from the person who was served with the notice.

(4) An enforcement notice does not take effect until 28 days after it is served.

(5) The Department may remove and dispose of any invasive alien species without serving an enforcement notice—

- (a) where, in the opinion of the Department, there is an imminent risk of adverse effects or an imminent threat to biodiversity, ecosystem services, human health and/or the economy; and
- (b) at the cost of the owner and, as the case may be, the occupier who caused or permitted, whether knowingly or otherwise, the invasive alien species to be present on the premises.

(6) Except where Article 25(3) applies, any person served with an enforcement notice commits an offence if the enforcement notice is not complied with.

### **Supplementary power in relation to the owner of premises**

**23.**—(1) Where the Department is satisfied that the grounds in paragraphs (2), (3) or (4) are met, it may serve an enforcement notice on the owner of any premises under Article 22(1).

(2) The grounds in this paragraph are that it appears to the Department that an invasive alien species is present on the premises contrary to Article 17 (rapid eradication at an early stage of invasion) of the Principal Regulation and—

- (a) there is no occupier of the premises; or
  - (b) the occupier cannot be found without the Department incurring unreasonable expense.
- (3) The grounds in this paragraph are that—
- (a) the Department has served an enforcement notice under Article 22(1);
  - (b) the occupier of the premises is not the same person as the owner of the premises; and
  - (c) the occupier has failed to comply with the enforcement notice.
- (4) The grounds in this paragraph are that—
- (a) the Department has served an enforcement notice under Article 22(1);
  - (b) the occupier of the premises is not the same person as the owner of the premises; and
  - (c) the occupier having appealed against the notice under Article 25 (appeals), the final decision of the magistrates' court pursuant to Article 25(4) was to quash, in whole or in part, the enforcement notice.
- (5) Article 22(2) to (6) applies in relation to enforcement notices served pursuant to this Article on the owner of the premises as it applies to enforcement notices served under Article 22(1) on the occupier of the premises.

#### **Recovery of expenses of enforcement notices**

**24.**—(1) This Article applies where the occupier or, where a different person, the owner, or both commits an offence under Article 22(6).

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the Department for any expenditure which the Department has incurred under Article 22 (enforcement notices).

#### **Appeals**

**25.**—(1) Any person served with an enforcement notice under Article 22(1) may, at any time before the notice takes effect pursuant to Article 22(4), appeal against it to a magistrates' court.

(2) The procedure on appeal is by way of complaint and the Magistrates' Courts (Northern Ireland) Order 1981 applies to the proceedings.

(3) Where an appeal is made under paragraph (1), the notice shall not have effect pending the final decision of the magistrates' court or the withdrawal of the appeal.

(4) On an appeal the court may either quash or affirm the notice and, if the court affirms the notice, it may do so either in its original form or with such modifications as the court thinks fit.

(5) Paragraph (3) does not apply where the notice includes a statement that, in the opinion of the Department, there is an imminent risk of adverse effects or an imminent threat to biodiversity, ecosystem services, human health and/or the economy.

#### **Information sharing**

**26.**—(1) The Department and any authorised person may exchange information for the purposes of this Order, and may divulge information to any other enforcement authority in the UK for the purposes of this Order or the equivalent legislation applicable in the UK.

(2) Disclosure of information which is authorised by this Article does not breach—

- (a) an obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

(3) But nothing in this Article authorises the disclosure of information where doing so breaches—

- (a) the Data Protection Act 2018<sup>(1)</sup>; or
  - (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing [Directive 95/46/EC](#)<sup>(2)</sup>.
- (4) This Article does not limit the circumstances in which information may be exchanged apart from this Article.

### **Forfeiture**

- 27.**—(1) The court by which any person is convicted of an offence under this Order—
- (a) must order the forfeiture of any specimen or other thing in respect of which the offence was committed; and
  - (b) may order the forfeiture of any vehicle, equipment or other thing which was used to commit the offence.
- (2) A specimen forfeited under this Article must be—
- (i) humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro-organisms); or
  - (ii) transferred to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

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(1) 1998 c. 29.

(2) OJ No. L119, 4.5.2016, p.1.