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STATUTORY RULES OF NORTHERN IRELAND

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**2019 No. 230**

**The Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2019**

**PART 9**

**General powers of inspectors, enforcement, recovery of expenses and appeal**

**Interpretation**

**26.** In this Part, “premises” includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure.

**Powers of entry**

**27.—**(1) A plant health inspector may enter any premises at a reasonable time for the purpose of—

- (a) performing official controls to verify that—
  - (i) an operator is complying with the Official Controls Regulation;
  - (ii) a professional operator is complying with the EU Plant Health Regulation;
  - (iii) a person is complying with these Regulations; or
  - (iv) any plants, plant products or other objects which are subject to the an EU plant health rule or to the requirements in Schedule 1 comply with the rule or those requirements;
- (b) carrying out other official activities which are to be performed by the Department pursuant to the Official Controls Regulation or the EU Plant Health Regulation or these Regulations;
- (c) enforcing the Official Controls Regulation, the EU Plant Health Regulation or these Regulations;
- (d) verifying information supplied by a person in connection with an application for registration or for an authorisation, or permit granted or to be granted, under these Regulations;
- (e) ascertaining whether a condition of an authorisation, or permit granted by the Department for the purpose of the EU Plant Health Regulation or the Official Controls Regulation is being or has been complied with.

(2) A plant health inspector must, if requested to do so, produce evidence of his or her authority before entering any premises for the purposes specified in paragraph (1).

(3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours’ notice has been given to the occupier.

(4) A plant health inspector who enters premises for a purpose specified in paragraph (1) or under a warrant issued by a lay magistrate may—

- (a) examine, photograph or mark any part of the premises, any object on the premises or anything that is attached to or forms part of the premises;
  - (b) in the case of premises being used to manufacture wood packaging material, examine or test any treatment facility, machinery, tools or other equipment used for the manufacture of wood packaging material or observe and monitor the manufacture of wood packaging material;
  - (c) take samples of or from any plant, plant product or other object or any container, package or item which has been or may have been in contact with a plant pest or plant, plant product or other object;
  - (d) open any container or package or require the owner or person in charge of any container or package to open the container or package;
  - (e) inspect or make copies of any documents or records (in whatever form they may be held) relating to the production of, or any activities relating to, any plant, plant product or other object.
- (5) A plant health inspector may destroy or otherwise dispose of any sample taken under this regulation when the sample is no longer required.
- (6) A plant health inspector may be accompanied by such other persons (including representatives of the European Commission) and bring onto the premises such equipment and vehicles as the inspector considers necessary.
- (7) A person accompanying a plant health inspector under paragraph (6) may—
- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector;
  - (b) bring onto the premises any equipment or vehicles that the person considers necessary; and
  - (c) carry out work on the premises in a manner directed by a plant health inspector.

### **Right of entry conferred by a warrant issued by a lay magistrate**

**28.—**(1) A lay magistrate may by signed warrant permit an inspector to enter premises under regulation 27 or 31 if necessary by reasonable force, if the lay magistrate, on sworn information in writing, is satisfied that—

- (a) there are reasonable grounds to enter those premises; and
  - (b) any of the conditions in paragraph (2) are met.
- (2) The conditions are that—
- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier;
  - (b) asking for admission to the premises, or giving notice of the intention to apply for a warrant, would defeat the object of the entry;
  - (c) entry is required urgently;
  - (d) the premises are unoccupied or the occupier is temporarily absent.
- (3) A warrant is valid for one month.
- (4) An inspector who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

## Information notices

**29.**—(1) A plant health inspector may by notice in writing require an appropriate person to give to the inspector, within the time specified in the notice, any information which the person may possess as to—

- (a) the plants grown or products stored at any time on the premises specified in the notice;
- (b) any plant pest or plant, plant product or other object referred to in paragraph (4)(b); or
- (c) the persons who have had or are likely to have had any plant pest or plant, plant product or other object referred to in paragraph (4)(b) in their possession or under their charge.

(2) The time within which the information is required to be given to the inspector or other officer must be reasonable.

(3) An appropriate person must produce for examination by the inspector any authorisation, official statement, certificate, plant passport, record, invoice or other document relating to a plant pest or any plant, plant product or other object specified in the notice.

(4) In this regulation “appropriate person” means—

- (a) in relation to any premises to be specified in a notice under paragraph (1), a person who is the owner, occupier or other person in charge of the premises;
- (b) a person who has, has had, or is reasonably suspected by the inspector to have or have had, possession or charge of—
  - (i) a controlled plant pest;
  - (ii) any plant, plant product or other object which was carrying a controlled plant pest or which was infested by or infected with a controlled plant pest; or
  - (iii) any plant, plant product or other object which the inspector knows or suspects to have been imported into or exported from Northern Ireland; or
- (c) a person who, as auctioneer, salesman or otherwise, has sold, offered for sale or otherwise disposed of a controlled plant pest.

## Failure to comply with a notice

**30.**—(1) If a person fails to comply with a notice served on that person under these Regulations, a plant health inspector may enter any affected premises at all reasonable times to take or cause to be taken any steps that the plant health inspector considers necessary to ensure compliance with the notice or to remedy the consequences of the failure to carry them out.

(2) A plant health inspector, acting under paragraph (1) must, if requested to do so, show evidence of their authority to act.

(3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours’ notice has been given to the occupier.

(4) Paragraph (1) does not affect any right of entry conferred by a warrant issued by a lay magistrate.

(5) A plant health inspector may be accompanied by such other person (including representatives of the European Commission) and bring onto the premises such equipment and vehicles as the inspector considers necessary.

(6) A person accompanying a plant health inspector under paragraph (5) may—

- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector;
- (b) bring onto the premises any equipment or vehicles that the person considers necessary;
- (c) carry out work on the premises in a manner directed by a plant health inspector.

**Marking of wood packaging material: power of seizure**

**31.—**(1) This regulation applies where a plant health inspector knows, or has reasonable grounds for suspecting, that a person has incorrectly applied or intends to incorrectly apply the ISPM No. 15 mark to wood packaging material at any premises in Northern Ireland.

(2) The plant health inspector may seize and detain from that person or from those premises any stencil, template or other item of equipment that appears to the inspector to be capable of being used to apply the ISPM No. 15 mark.

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

(4) The plant health inspector must make reasonable efforts to give written notice to the appropriate person—

- (a) stating what has been seized and the reason for its seizure;
- (b) explaining the effect of paragraphs (5) to (11).

(5) Any item seized under paragraph (2) may be retained by the Department for as long as is necessary in all the circumstances, and in particular for the purposes of proceedings in relation to an offence specified in regulation 37(1).

(6) The Department may apply to the magistrate's court for the forfeiture of any item retained under paragraph (5).

(7) Where an application is made under paragraph (6), the court may order the item to be forfeited if the court is satisfied that—

- (a) an offence specified in regulation 37(1) has been committed in respect of it; or
- (b) it was used in the commission of such an offence.

(8) If the court orders the item to be forfeited, the Department may dispose of it in whatever way they think appropriate.

(9) If the court does not order the item to be forfeited, it must order the item to be returned to the appropriate person.

(10) The Department may recover from the appropriate person all reasonable costs incurred by the Department for the purposes of securing the forfeiture of an item.

(11) Where the retention of any item has been, but is no longer, authorised under this regulation—

- (a) the item must be returned to the appropriate person;
- (b) the appropriate person may apply to the magistrate's court for an order that the item be returned.

(12) Where the item is required to be returned to the appropriate person and reasonable efforts have been made, without success, to return the item to that person, the Department may dispose of the item in whatever way they think appropriate.

(13) In this regulation—

“appropriate person” means—

- (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, the occupier or any other person in charge of the premises;
- (c) in the case of an item seized from a person or premises which does not belong to a person falling within paragraph (a) or (b), the person to whom it belongs and who asserts their ownership over it.

“ISPM No 15” means International Standard for Phytosanitary Measures No 15 of March 2002 on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the International Plant Protection Convention established by the Food and Agriculture Organisation of the United Nations, excluding treatment by methyl bromide<sup>(1)</sup>;

“ISPM No. 15 mark” means the mark referred to in Article 96(1) of the Plant Health Regulation which may be applied to wood packaging material to attest that it has been treated in accordance with Annex I to ISPM No. 15;

“wood packaging material” includes any wood or other object which requires an attestation that it has been treated in accordance with Annex I to ISPM No. 15.

(14) For the purposes of paragraph (1), a person “incorrectly” applies the ISPM No. 15 to wood packaging material if the person applies the mark otherwise than in the manner specified in Article 96(1) of the EU Plant Health Regulation, as read with Article 97(1) of the EU Plant Health Regulation.

### **Recovery of expenses**

**32.—**(1) Any expenses incurred by the Department in carrying out enforcement activities under these Regulations shall may be charged to the relevant business operator and such expenses must be paid on written demand.

(2) Any unpaid sum under these Regulations may be recovered—

- (a) as a civil debt;
- (b) under an order of the court, on such terms as the court may order.

### **Disclosure of information held by the Commissioners for Her Majesty’s Revenue and Customs**

**33.—**(1) The Commissioners for Her Majesty’s Revenue and Customs may disclose any information in their possession to the Department for the purposes of enabling or assisting the Department to carry out any function conferred on it under or by virtue of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) Nothing in paragraph (1) affects any other power or requirement of the Commissioners to disclose information.

### **Disclosure of information**

**34.—**(1) The Department may disclose information to other competent authorities in the United Kingdom or any other part of the Union territory, for the purposes of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) Nothing in paragraph (1) affects any other power or requirement of the Department to disclose information.

(3) In this regulation, “other competent authorities in the UK” means—

- (a) in relation to England, the Secretary of State or the Forestry Commissioners;
- (b) in relation to Scotland, the Scottish Ministers;
- (c) in relation to Wales, the Welsh Ministers.

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(1) Available from the Secretariat of the International Plant Protection Convention, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

## **Appeal**

**35.** A person who is aggrieved by a decision taken by a plant health inspector of the Department in accordance with Article 55, Article 66(3) and (6), Article 67, point (b) of Article 137(3), and Article 138(1) and (2) concerning natural or legal persons shall be subject to such persons' right of appeal in accordance with the Magistrates' Court (Northern Ireland) Order 1981 which shall apply to the proceedings<sup>(2)</sup>.

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<sup>(2)</sup> 1981 No. 1675 (N.I. 26).