

STATUTORY RULES OF NORTHERN IRELAND

**2020 No. 293**

**The Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2020**

**PART 9**

**General powers of plant health inspectors,  
enforcement, recovery of expenses and appeals**

**Interpretation**

**27.—(1)** In this Part—

“ISPM 15 mark” means the mark referred to in Article 96(1) of the EU 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 15;

“premises” includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure;

“wood packaging material” includes any wood or other object which is required to be treated and marked in accordance with Annex I to ISPM 15.

(2) For the purposes of regulations 32 and 33, a person “incorrectly” applies the ISPM 15 mark 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.

**Commencement Information**

**II** Reg. 27 in operation at 23.12.2020, see [reg. 1](#)

**Powers of entry**

**28.—(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 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, 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 the inspector's 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 otherwise 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—
    - (i) any plant pest;
    - (ii) any plant, plant product or other object; or
    - (iii) 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—
- (a) be accompanied—
    - (i) by a representative of the European Commission or an authorised officer of any competent authority designated in the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation; or
    - (ii) such other persons as the inspector considers necessary; and
  - (b) bring onto the premises such equipment and vehicles as the inspector considers necessary.
- (7) A plant health inspector who is accompanied by a person mentioned in paragraph (6)(a)(i) may—
- (a) show the person any documents or records which are inspected by the inspector under paragraph (4)(e); and
  - (b) make copies, or require copies to be made, of those documents or records for that person.
- (8) A person accompanying a plant health inspector under paragraph (6)(a)(ii) 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.

**Commencement Information**

**I2** Reg. 28 in operation at 23.12.2020, see [reg. 1](#)

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

**29.**—(1) A lay magistrate may by signed warrant permit a plant health inspector to enter premises under regulation 16(1), 28(1) or 31(1), 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) A plant health inspector who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

**Commencement Information**

**I3** Reg. 29 in operation at 23.12.2020, see [reg. 1](#)

**Information notices**

**30.**—(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 plant health inspector must be reasonable.

(3) An appropriate person must produce for examination by the plant health 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 plant health 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.

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**Commencement Information**

**I4** Reg. 30 in operation at 23.12.2020, see [reg. 1](#)

**Failure to comply with a notice**

**31.**—(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 the inspector's 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) A plant health inspector may—

- (a) be accompanied by—
  - (i) a representative of the European Commission; or
  - (ii) such other persons as the inspector considers necessary; and
- (b) bring onto the premises such equipment and vehicles as the inspector considers necessary.

(5) A person accompanying a plant health inspector under paragraph (4)(a)(ii) 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.

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**Commencement Information**

**I5** Reg. 31 in operation at 23.12.2020, see [reg. 1](#)

**Removal of ISPM 15 mark from wood packaging material**

**32.** Where a plant health inspector knows, or has reasonable grounds for suspecting, that the ISPM 15 mark has been incorrectly applied to wood packaging material, the inspector may remove the mark or, by notice in writing, require another person to remove it.

### Commencement Information

**16** Reg. 32 in operation at 23.12.2020, see [reg. 1](#)

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

**33.**—(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 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 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 (12).

(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 40(1).

(6) The Department may apply to a magistrates' court for an order 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 40(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 it thinks 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 under paragraphs (6) to (8).

(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 within three months of the date of seizure to a magistrates' court by notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(1) 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 it thinks appropriate.

(13) In this regulation—

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(1) 1981 No. 1675 (N.I. 26).

“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.

(14) Nothing in this regulation affects the powers of a plant health inspector under regulation 32.

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**Commencement Information**

**17** Reg. 33 in operation at 23.12.2020, see [reg. 1](#)

**Recovery of expenses**

**34.**—(1) Any expenses incurred by the Department in carrying out official control measures under Article 66, 67, 69 or 138 of the Official Controls Regulation shall be charged to the operator responsible for the consignment and such expenses must be paid on written demand.

(2) Any unpaid sum under these Regulations may be recovered as a civil debt.

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**Commencement Information**

**18** Reg. 34 in operation at 23.12.2020, see [reg. 1](#)

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

**35.**—(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.

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**Commencement Information**

**19** Reg. 35 in operation at 23.12.2020, see [reg. 1](#)

**Disclosure of information**

**36.**—(1) For the purposes of enabling a UK authority to carry out its functions under the EU Plant Health Regulation, the Official Controls Regulation, these Regulations or any equivalent regulations having effect in another part of the United Kingdom, the Department may disclose information to another UK authority or a competent authority in another part of the Union territory.

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

(3) In this regulation “UK authority” means—

- (a) in relation to Northern Ireland, the Department;

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

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**Commencement Information**

**I10** Reg. 36 in operation at 23.12.2020, see [reg. 1](#)

**Appeal**

**37.**—(1) A person who is aggrieved by a decision taken by the Department in accordance with Articles 55, 66(3) and (6), 67, point (b) of 137(3), and 138(1) and (2) of the Official Controls Regulation may appeal by notice to a court of summary jurisdiction.

(2) Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 applies to the proceedings<sup>(2)</sup>.

(3) The period within which an appeal under paragraph (1) may be brought is one month from the date on which notice of the decision is given by the Department.

(4) The court may confirm, quash or vary the decision of the Department.

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**Commencement Information**

**I11** Reg. 37 in operation at 23.12.2020, see [reg. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2020, PART 9.