

2020 No. 360

PESTICIDES

**The Official Controls (Plant Protection Products) Regulations
(Northern Ireland) 2020.**

Made - - - - - *31st December 2020*

Coming into operation - *31st December 2020*

CONTENTS

PART 1

General

1. Citation, commencement and application
2. Interpretation
3. Designation of competent authority
4. Exchange of information

PART 2

List of operators

5. List of operators

PART 3

Assistance and co-operation under Title IV and recovery of expenses incurred

6. Facilitating assistance and co-operation
7. Expenses

PART 4

Enforcement, penalties and appeal

8. Enforcement
9. Powers of entry
10. Powers of entry: with warrants
11. Execution of warrants
12. General powers
13. Protection of authorised person
14. Enforcement notices
15. Offences and penalties
16. Offences by bodies corporate

17. Time limits for prosecution

The Department of Agriculture, Environment and Rural Affairs makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a).

The Department of Agriculture, Environment and Rural Affairs is a Northern Ireland department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union and measures in the veterinary and phytosanitary fields for the protection of public health^(b).

PART 1

General

Citation, commencement and application

1.—(1) These Regulations may be cited as the Official Controls (Plant Protection Products) Regulations (Northern Ireland) 2020 and come into operation on 31st December 2020.

(2) These Regulations do not apply to non-professional users of plant protection products.

Interpretation

2.—(1) In these Regulations—

“authorised person” means a person authorised by the Department under regulation 8(2) and includes an officer of a district council authorised by a district council under regulation 8(7);

“the Department” means the Department of Agriculture, Environment and Rural Affairs;

“the Official Controls Regulation” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products^(c), in so far as it relates to the areas governed by the relevant legislation;

“operator” means any natural or legal person subject to one or more of the legal obligations provided for in the relevant legislation;

“plant protection product” has the same meaning as in the Plant Protection Products Regulation (see Article 2(1));

“the Plant Protection Products Regulation” means Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market^(d);

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft, hovercraft or marine structure, and
- (b) any tent or moveable structure;

(a) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) S.I. 2000/2812 and S.I. 1999/2027. By virtue of section 2(5) of the European Communities Act 1972, references in section 2(2) to a government department include a department of the Government of Northern Ireland.

(c) OJ No. L 95, 7.4.2017, p.1, as last amended by Commission Delegated Regulation (EU) 2019/2127.

(d) OJ No. L 309, 21.11.2009, p.1, as last amended by Regulation (EU) 2019/1009 (OJ No, L 170, 25.6.2019, p.1).

“professional use” and “professional user” have the same meaning as in the Plant Protection Products (Sustainable Use) Regulations 2012^(a) and the meaning of non-professional user is construed accordingly;

“relevant legislation” means European Union and domestic legislation governing the requirements for—

- (a) the placing on the market and use of plant protection products;
- (b) active substances, safeners and synergists;
- (c) adjuvants and co-formulants;
- (d) the sustainable use of pesticides, with the exception of pesticides application equipment.

(2) Terms used in these Regulations have the same meaning as they have in the Official Controls Regulation.

(3) In these Regulations, active substance, safener, synergist, co-formulant and adjuvant have the same meanings as in the Plant Protection Products Regulation (see Article 2(2) and (3)).

(4) Any reference in these Regulations to an “Article” or “Title” is to an Article or Title of the Official Controls Regulation.

(5) The Interpretation Act (Northern Ireland) 1954^(b) applies to these Regulations as it applies to an Act of the Assembly.

Designation of competent authority

3. The Department is designated the competent authority responsible for the organisation and the performance of official controls and other official activities in Northern Ireland in so far as they relate to the areas governed by the relevant legislation.

Exchange of information

4. The Department may disclose information to other competent authorities in the United Kingdom or in a member State for the purposes of these Regulations or the Official Controls Regulations.

PART 2

List of operators

List of operators

5.—(1) Each operator must notify the Department of—

- (a) their name and legal form;
- (b) the activities they carry out under relevant legislation;
- (c) the premises on which those activities are carried out.

(2) The time period for making the notification in paragraph (1) is—

- (a) in the case of operators concerned with—
 - (i) the placing on the market of plant protection products authorised for professional use;
 - (ii) active substances, safeners and synergists; or
 - (iii) adjuvants or co-formulants,

(a) S.I. 2012/1657.

(b) 1954 c. 33(NI).

including producers, manufacturers, processors, importers, distributors and retailers, within the period of 15 months after the date on which these Regulations come into operation;

(b) in the case of all other operators, within the period of 24 months after the date on which these Regulations come into operation.

(3) Where an operator commences business within the period of 3 months before the end of the period referred to in paragraph (2) for that type of operator, or after that period, the operator must make the notification required by paragraph (1) within three months of commencing business.

PART 3

Assistance and co-operation under Title IV and recovery of expenses incurred

Facilitating assistance and co-operation

6.—(1) For the purposes of assisting a competent authority of a member State as provided for in Article 104, or enabling the Department to do so, an authorised person exercising powers to enter premises under regulation 9 or 10 or to inspect documents under regulation 12(1)(g) may—

- (a) be accompanied by an authorised officers of the competent authority of the member State;
- (b) show the authorised officer any documents inspected by the authorised person;
- (c) make copies, or require copies to be made by the operator, for that authorised officer.

(2) For the purposes of facilitating a visit by an inspection team as provided for in Article 108, an authorised person exercising powers to enter premises under regulation 9 or 10 or to inspect documents under regulation 12(1)(g) may—

- (a) be accompanied by a representative of the EU Commission;
- (b) show the representative any documents inspected by the authorised person;
- (c) make copies, or require copies to be made by the operator, for the representative.

(3) An operator, or the person in charge of the operator's premises may be required to provide an authorised person with such assistance, information or facilities as the authorised person may reasonably require for the purpose of the enforcement of these Regulations or the Official Controls Regulation.

Expenses

7.—(1) Any expenses incurred by the Department in carrying out measures under Articles 66, 67, 69 or 138 may be recovered from the relevant operator and such expenses must be paid on written demand.

(2) The Department may recover any sum owing under paragraph (1) and unpaid as a civil debt.

PART 4

Enforcement, penalties and appeal

Enforcement

8.—(1) Enforcement of these Regulations and the Official Controls Regulation is the responsibility of the Department.

- (2) The Department may authorise any person to exercise enforcement powers.
- (3) A person may be authorised for specified reasons.
- (4) An authorisation must be in writing.

(5) The Department may specify descriptions of district council officers who may be authorised to exercise enforcement powers and may direct that an officer of a particular description may only be appointed to exercise them for a specified purpose.

(6) Any specification or direction under paragraph (5) must be in writing.

(7) Where the Department specifies a description of district council officers under paragraph (5), a district council may authorise any of its officers falling within that description to exercise enforcement powers in its district.

(8) An authorised person exercising powers under these Regulations must produce, on request, evidence of their authorisation.

(9) An authorised person must state, if requested—

- (a) their name;
- (b) the power to be exercised; and
- (c) the grounds for proposing to exercise the power.

(10) In this regulation, “enforcement powers” means the powers conferred on an authorised person by these Regulations.

Powers of entry

9.—(1) An authorised person may enter any premises if the authorised person has reason to believe that it is necessary for the purpose of enforcement of these Regulations or the Official Controls Regulation.

(2) An authorised officer may only enter premises used wholly or mainly as a private dwelling under a warrant issued under regulation 10.

(3) An authorised person must exercise powers of entry under paragraph (1) or regulation 10 at a reasonable hour unless it appears to the authorised person that there are grounds for suspecting that the object of the entry would be defeated if the authorised person seeks to exercise them at a reasonable hour.

(4) An authorised person who enters any unoccupied premises under this regulation or regulation 10 must leave them as effectively secured against unauthorised entry as they were before the authorised person’s entry.

Powers of entry: with warrants

10.—(1) A lay magistrate may by signed warrant authorise an authorised person to enter any premises for the purposes of the enforcement of these Regulations or the Official Controls Regulation if the lay magistrate is satisfied, on a sworn complaint made in writing, that—

- (a) there are reasonable grounds for entering the premises; and
- (b) any one of the conditions in paragraph (2) is 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 urgently required; or
- (d) the premises are unoccupied or the occupier is temporarily absent.

(3) A warrant is valid for 30 days beginning on the day it is issued.

(4) A warrant must specify—

- (a) the name of the person who applied for it;
- (b) the date on which it is issued;
- (c) that it is issued under this regulation;

- (d) the address of the premises to be entered; and
- (e) the purpose for which entry is required.

Execution of warrants

11.—(1) Where the occupier of the premises to be entered is present at the time when an authorised person seeks to execute a warrant, the authorised person must—

- (a) identify themselves to the occupier;
- (b) produce the warrant to the occupier; and
- (c) supply the occupier with a certified copy of it.

(2) Where the occupier of the premises is not present at the time when an authorised person seeks to execute a warrant, but some other person who appears to the authorised person to be in charge of the premises is present, sub-paragraph (1) has effect as if any reference to the occupier were a reference to that other person.

(3) If there is no person present who appears to the authorised person to be in charge of the premises, the authorised person must leave a certified copy of the warrant in a prominent place on the premises.

General powers

12.—(1) An authorised person entering premises under regulation 9 or under a warrant issued under regulation 10 may—

- (a) search for any item, if necessary using reasonable force;
- (b) open or examine, or both, anything that is on, attached to or otherwise forms part of the premises, if necessary using reasonable force;
- (c) take with them any persons and equipment or materials they consider necessary for the enforcement of these Regulations or the Official Controls Regulation;
- (d) open any container, if necessary using reasonable force;
- (e) carry out any searches, inspections, measurements and tests;
- (f) take samples;
- (g) have access to, and inspect and copy any documents, books or records (in whatever form they are held) which the authorised person has reason to believe may be relevant in connection with the enforcement of these Regulations or the Official Controls Regulation and remove them to enable them to be copied;
- (h) photograph or copy anything which the authorised person has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations or the Official Controls Regulation; and
- (i) seize any computers and associated equipment for the purpose of copying documents provided that they are returned as soon as practicable.

(2) Any person who accompanies an authorised person in accordance with sub-paragraph (1)(c) may perform any of the authorised person's functions but only under the supervision of the authorised person.

(3) Where an authorised person takes samples under sub-paragraph (1)(f), the authorised person may only take an amount that is reasonably needed for the performance of their functions under these Regulations or the Official Controls Regulation.

(4) Nothing in sub-paragraphs (1)(g), (h) or (i) shall be taken to compel the production by any person of a document which they would be entitled to refuse to produce on grounds of legal professional privilege or in proceedings in the High Court.

(5) An authorised person may require any person to give the authorised person information as to the formulation, effects or use of any substance.

Protection of authorised person

13. An authorised person is not liable in any civil or criminal proceedings for anything done in the purported performance of their functions as an authorised person if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Enforcement notices

14.—(1) If an authorised person has reason to believe that an operator is in breach of the requirements of these Regulations or the Official Controls Regulation, the authorised person may serve on the operator a notice, specifying the breach the authorised person believes has occurred, and directing the operator to take either or both of the steps set out in paragraph (2).

(2) A notice under paragraph (1) may direct—

- (a) that any premises on or in which it appears the breach has occurred, or anything which is on or in it, must be left undisturbed (whether generally or in particular respects) for as long as the authorised person believes to be reasonably necessary;
- (b) the operator to act in accordance with these Regulations or the Official Controls Regulation or prohibit that person from acting in contravention of these Regulations or the Official Controls Regulation.

(3) A notice served under paragraph (1) must be in writing and must, in the case of a direction given under paragraph (2)(b), give a time limit for compliance.

(4) An authorised person may withdraw, by further notice in writing, a notice served under paragraph (1) at any time.

(5) An authorised person may serve an operator with a notice under paragraph (1) even if a previous notice served on the operator has been withdrawn.

Offences and penalties

15.—(1) A person is guilty of an offence if without reasonable excuse that person fails to provide the information required by regulation 5(1) to the Department within the time period specified in regulation 5(2) or (3), as appropriate.

(2) A person is guilty of an offence if without reasonable excuse that person fails to comply with an enforcement notice issued in accordance with regulation 14(1).

(3) A person is guilty of an offence if without reasonable excuse that person obstructs an authorised person in the performance of their functions under these Regulations or under the EU Official Controls Regulations, or causes or permits an authorised person to be so obstructed.

(4) For the purpose of paragraph (3), obstruction includes failure by any person—

- (a) to produce records or provide reasonable facilities for copying records; or
- (b) to provide relevant information when requested.

(5) A person is guilty of an offence if, without reasonable excuse, that person supplies information to the Department or an authorised person which, in any material particular, is false or misleading.

(6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offences by bodies corporate

16.—(1) For the purposes of these Regulations section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members are limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

(2) Where any offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the partner's part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under these Regulations committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the of the association or a member of its governing body;
- (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Time limits for prosecution

17. A prosecution for an offence under this Part shall not begin after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the Department,

whichever is the earlier.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 31st December 2020



Dave Foster
A senior officer of the
Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement and enforce Regulation (EU) 2017/625 (OJ No L 95, 7.4.2017, p.1) on official controls and other activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the Official Controls Regulation”) as regards plant protection products.

Part 2 provides for a list of operators.

Part 3 provides for assistance and co-operation under Title IV of the Official Controls Regulation and recovery of expenses incurred.

Part 4 provides for enforcement and penalties.

A full impact assessment has not been produced for these Regulations as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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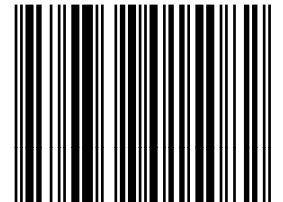
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£6.90

NI202012311008 01/2021 19585

<http://www.legislation.gov.uk/id/nisr/2020/360>

ISBN 978-0-33-801508-2



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