

## SCHEDULE 3

Regulation 20(8)

### Powers of authorised persons

#### **Powers of entry**

1.—(1) An authorised person may enter any premises (except any premises used wholly or mainly as a private dwelling) if he or she has reasonable grounds to believe that any plant protection product is being, or has been, applied to or stored on or in them, transported on or applied by means of them and that it is necessary to enter for the purpose of ensuring that these Regulations are complied with.

(2) An authorised person must exercise powers of entry at a reasonable hour unless it appears to the authorised person that there are grounds for suspecting that the exercise of the power of entry may be frustrated if he or she seeks to exercise them at a reasonable hour.

(3) An authorised person who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before his or her entry.

#### **Search warrants**

2.—(1) A justice of the peace in England and Wales, a lay magistrate in Northern Ireland, or a sheriff, stipendiary magistrate or justice of the peace in Scotland may issue a warrant permitting an authorised person to enter any premises if necessary by reasonable force for the purposes of the enforcement of these Regulations, if satisfied that the authorised person has reasonable grounds for requiring entry and any of the conditions set out in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) admission has been refused, or a refusal is expected, and (in either case) that notice to apply for a warrant has been given to the occupier;
- (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
- (c) the case is one of urgency; or
- (d) the premises are unoccupied or the occupier is temporarily absent.

(3) Where an authorised person applies for a warrant under sub-paragraph (1), he or she must state—

- (a) the grounds upon which the application is made;
- (b) that the warrant would be issued under this Schedule; and
- (c) what is being sought.

(4) An application for a warrant under sub-paragraph (1) must be supported by an information in writing, in England and Wales; on sworn complaint in writing in Northern Ireland; or by evidence on oath in Scotland.

(5) An application for a warrant under sub-paragraph (1), where the condition satisfied is set out in sub-paragraph (2)(a), must be made on notice, and where the condition satisfied is set out in sub-paragraph(2)(b), (c) or (d), must be made without notice.

(6) The authorised person shall answer on oath any question that the justice of the peace, lay magistrate, sheriff or stipendiary magistrate hearing the application asks him or her.

(7) A warrant shall authorise entry on one occasion only.

(8) A warrant shall specify—

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

(d) the address of the premises to be entered and searched;  
and shall identify, so far as is practicable, what is to be sought.

(9) The court shall provide two copies of the warrant certified as such.

### **Execution of warrants**

**3.—**(1) Entry and search under a warrant must be within three months from the date of its issue.

(2) Where the occupier of the premises to be entered and searched is present at the time when an authorised person seeks to execute a warrant to enter and search them, the authorised person shall—

- (a) identify himself or herself to the occupier and shall produce to the occupier evidence of his or her authority;
- (b) produce the warrant to the occupier; and
- (c) supply the occupier with a certified copy of it.

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

(4) 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 copy of the warrant in a prominent place on the premises.

(5) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(6) An authorised person executing a warrant shall make an endorsement on it stating whether what was sought was found.

(7) A warrant shall be returned to the designated officer for the local justice area in which the justice of the peace, lay magistrate, sheriff or stipendiary magistrate was acting when the warrant was issued—

- (a) when it has been executed; or
- (b) in the case of a warrant which has not been executed, upon the expiry of three months from the date of its issue or sooner.

(8) In Scotland the designated officer is the sheriff clerk if the warrant was issued by a sheriff, and the clerk of the justice of the peace's court if the warrant was issued by a justice of the peace or stipendiary magistrate.

(9) In Northern Ireland the designated officer is the clerk of the court for the area in which the lay magistrate was acting when the warrant was issued.

(10) A warrant which is returned under sub-paragraph (7) shall be retained for 12 months from its return by the designated officer for the local justice area.

(11) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, such inspection shall be allowed.

### **General powers**

**4.—**(1) An authorised person exercising powers of entry pursuant to paragraph 1(1), or in accordance with a warrant granted under paragraph 2(1), 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 him or her any persons and equipment or materials he or she considers necessary for the enforcement of these Regulations;
  - (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 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; 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 that authorised person.
- (3) Where an authorised person takes samples under sub-paragraph (1)(f) he or she may only take an amount that is reasonably needed for the performance of his or her functions under these Regulations.
- (4) Nothing in sub-paragraph (1)(g), (h) or (i) shall be taken to compel the production by any person of a document which he or she would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court in England and Wales, or Northern Ireland, or on grounds of confidentiality of communications in proceedings in the Court of Session in Scotland.
- (5) An authorised person may require any person to give him or her information as to the formulation, effects or use of any substance.
- (6) An authorised person performing functions under these Regulations may require a person whom he or she has reasonable cause to believe is able to give information which will assist in the execution of these Regulations—
- (a) to answer such questions as the authorised person thinks it appropriate to ask; and
  - (b) to sign a declaration of the truth of the answers provided.
- (7) Any person to whom questions are put under sub-paragraph (6) may nominate a person to be with him or her when he or she answers.
- (8) When a person answers any such questions the only other persons who may be present, apart from the questioner, are—
- (a) the person (if any) nominated under sub-paragraph (7); and
  - (b) any person authorised by the authorised person to be present.
- (9) No answer given by a person in pursuance of a requirement imposed under sub-paragraph (6) shall be admissible in evidence in the United Kingdom against that person, his or her spouse, or his or her civil partner in proceedings for any offence.

### **Protection of authorised persons**

**5.** An authorised person shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his or her 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.

### **Seizure and disposal of products and requirements to recover**

6.—(1) If an authorised person is of the opinion that a person is committing, has committed or is likely to commit an offence contrary to these Regulations, the authorised person has the power to—

- (a) seize or dispose of a plant protection product or both, or serve a notice on the holder of any approval, authorisation or permission relating to the plant protection product, the owner of the plant protection product or any other person appearing to be in charge of it requiring him or her to dispose of it; or
- (b) seize or dispose of anything treated with a plant protection product (“treated item”) or both, or serve a notice on any person appearing to the authorised person to be the owner or the person in charge of anything so treated requiring him or her to dispose of it; or
- (c) serve a notice on the holder of any approval, authorisation or permission relating to the plant protection product, the owner of the plant protection product or any other person appearing to the authorised person to be in charge of it requiring him or her to take such remedial action as appears to the authorised person to be necessary, including recovery of the plant protection product from the market in the United Kingdom.

(2) If an authorised person has exercised his or her power under sub-paragraph (1)(a) or (b) to seize or dispose, or both, he or she must serve a notice on the relevant person informing that person that the power has been exercised.

(3) A notice served under this paragraph must be in writing.

(4) A notice served under sub-paragraph (1) must give a time limit for compliance with the notice.

(5) A notice served under sub-paragraph (1) or (2) must—

- (a) state that the authorised person is of the opinion that a person is committing, has committed or is likely to commit an offence contrary to these Regulations and specify the offence;
- (b) specify why the authorised person is of that opinion;
- (c) identify any plant protection product or treated item to which the notice relates; and
- (d) state the quantity of any plant protection product or treated item to which the notice relates.

(6) An authorised person may withdraw a notice served under this paragraph at any time.

(7) An authorised person may serve a person with a notice under this paragraph even if a previous notice served on that person has been withdrawn.

(8) In sub-paragraph (2) “relevant person” means—

- (a) in relation to the seizure, disposal or both of a plant protection product—
  - (i) the holder of any approval, authorisation or permit relating to that plant protection product; or
  - (ii) the owner of the plant protection product; or
  - (iii) any other person appearing to the authorised person to be in charge of it; and
- (b) in relation to the seizure, disposal or both of a treated item—
  - (i) any person appearing to the authorised person to be the owner of that treated item; or
  - (ii) the person appearing to the authorised person to be in charge of that treated item.

### **Enforcement notices**

7.—(1) If an authorised person is of the opinion that a person—

- (a) is committing an offence under regulation 24 by contravening or failing to comply with any paragraph of regulations 8 to 17 or regulation 31; or

- (b) has committed such an offence in circumstances that make it likely that the offence will be repeated,

he or she may serve on that person a notice that he or she is of that opinion, specifying the offence as to which he or she is of that opinion and directing them to take either of the steps set out in sub-paragraph (2).

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

- (a) that any premises on or in which it appears that the offence was being committed or anything which is on or in them, shall be left undisturbed (whether generally or in particular respects) for as long as it appears to be reasonably necessary; or
- (b) that specific remedial or preventative measures shall be taken.

(3) If an authorised person is of the opinion that a person is committing, or is likely to commit, an offence under regulation 24 by contravening or failing to comply with any paragraph of regulations 8 to 17, or regulation 31 he or she may serve on that person a notice—

- (a) stating that opinion;
- (b) specifying why he or she is of that opinion; and
- (c) requiring that person to act in accordance with these Regulations or prohibiting that person from acting in contravention of these Regulations.

(4) A notice served under sub-paragraph (1) or (3) must be in writing and must give a time limit for compliance with the notice.

(5) An authorised person may withdraw a notice served under sub-paragraph (1) or (3) at any time.

(6) An authorised person may serve a person with a notice under sub-paragraph (1) or (3) even if a previous notice served on that person has been withdrawn.

**Changes to legislation:**

There are currently no known outstanding effects for the The Plant Protection Products (Sustainable Use) Regulations 2012, SCHEDULE 3.