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STATUTORY INSTRUMENTS

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**2019 No. 527**

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

**PART 5**

**Enforcement**

**General**

**21.**—(1) This Order is enforced by enforcement officers and designated customs officials.

(2) The competent authorities for the purpose of the official controls referred to in Article 15 of the Principal Regulation (which requires the designation of competent authorities responsible for official controls to prevent the introduction into the Union of invasive alien species) are—

(a) in England and the offshore marine area—

- (i) the Secretary of State;
- (ii) the Food Standards Agency;
- (iii) county councils, district councils, Port Health Authorities, London borough councils; and
- (iv) in the city of London, the Common Council of the City of London;

(b) in Wales—

- (i) the Secretary of State;
- (ii) the Welsh Ministers;
- (iii) the Food Standards Agency; and
- (iv) county councils, county borough councils and Port Health Authorities;

(c) in Scotland—

- (i) the Secretary of State;
- (ii) the Scottish Ministers;
- (iii) Food Standards Scotland; and
- (iv) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(1)</sup>;

(d) in Northern Ireland—

- (i) the Secretary of State;
- (ii) the Department of Agriculture, Environment and Rural Affairs;
- (iii) the Food Standards Agency; and
- (iv) district councils.

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<sup>(1)</sup> 1994 c. 39, to which there are amendments not relevant to this Order.

**Power to stop and search persons**

**22.**—(1) If a constable or a designated customs official has reasonable grounds to suspect that any person is committing or has committed an offence under this Order, the constable or designated customs official may, without warrant—

- (a) stop and detain that person for the purpose of a search;
- (b) search that person if the constable or designated customs official suspects with reasonable cause that evidence of the commission of the offence is to be found on that person; or
- (c) search or examine anything which that person may be using or which is in that person's possession if the constable or designated customs official suspects with reasonable cause that evidence of the commission of the offence is to be found on it.

(2) Nothing in this article authorises a strip search or an intimate search.

(3) A rub-down search shall not be carried out except by a person of the same sex as the person being searched.

(4) The powers conferred by this article may be exercised in any place to which the constable or designated customs official has access (whether or not it is a place to which the public has access).

(5) In this article, “intimate search”, “rub-down search” and “strip search” have the same meanings as in section 164(5) of the Customs and Excise Management Act 1979 (power to search persons)(2).

**Power to enter and search vehicles**

**23.**—(1) If a constable or designated customs official 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 constable or designated customs official 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) a constable or designated customs official has stopped a vehicle under this article, and
- (b) the constable or designated customs official considers that it would be impracticable to search the vehicle in the place where it has stopped,

the constable or designated customs official may require the vehicle to be taken to such place as the constable or designated customs official directs to enable the vehicle to be searched.

(3) A constable or designated customs official 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 constable or designated customs official 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 constable or designated customs official has access (whether or not it is a place to which the public has access).

(5) In this article—

“vehicle” includes any vessel, including any aircraft;

“relevant evidence” means evidence that an offence under this Order has been committed.

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(2) 1979 c. 2. Section 164(5) was inserted by section 10(3) of the Finance Act 1988 (c. 39).

## **Powers of entry**

**24.—**(1) Where an enforcement officer has reasonable grounds to suspect a specimen is being kept at premises, other than premises used wholly or mainly as a private dwelling, the enforcement officer may, at a reasonable time and on giving reasonable notice, 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; or
- (c) ascertaining whether a condition of a permit or of a licence is being or has been complied with.

(2) The requirement to give notice does not apply—

- (a) where reasonable efforts to agree an appointment have failed;
- (b) where the enforcement officer reasonably believes that giving notice would defeat the object of the entry;
- (c) where the enforcement officer has reasonable grounds for suspecting that an offence under this Order is being or has been committed; or
- (d) in an emergency.

(3) Paragraph (4) applies where—

- (a) on an application made by an enforcement officer, or a justice of the peace (in England or Wales), sheriff or summary sheriff (in Scotland) or lay magistrate (in Northern Ireland) is satisfied that—
  - (i) 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 justice of the peace, sheriff or summary sheriff, or lay magistrate (as the case may be) may issue a warrant authorising an enforcement officer to enter, search and inspect premises, and such a warrant may authorise persons to accompany the enforcement officer 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 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; or
- (c) the premises are unoccupied or the occupier is temporarily absent.

(7) An enforcement officer entering any premises which are unoccupied, or from which 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 enforcement officer 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 it to open it in the manner specified by the enforcement officer;
  - (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 enforcement officer 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 enforcement officer considers necessary.
- (10) A person accompanying an enforcement officer under paragraph (9)(a) may—
  - (a) remain on the premises and from time to time re-enter the premises without the enforcement officer;
  - (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 enforcement officer.
- (11) A warrant granted under this article continues in force for three months.
- (12) An enforcement officer must, if requested to do so, produce evidence of his or her authority before entering premises by virtue of paragraph (1) or (4).

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

**25.—**(1) An enforcement officer 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 enforcement officer;
  - (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 enforcement officer may destroy or otherwise dispose of any sample taken under this article when the sample is no longer required.
- (3) In this article, “sample” means a sample of blood, tissue or other biological material.

### **Power of seizure for purposes of investigation etc.**

26.—(1) An enforcement officer exercising the powers conferred by this Part may seize anything where the enforcement officer has 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 imported or is being kept in contravention of the Principal Regulation;
- (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 enforcement officer, it is not for the time being practicable for the enforcement officer to seize and remove any item from premises, the enforcement officer may require any person on the premises to secure that the item is not removed or otherwise interfered with until such time as the enforcement officer may seize and remove it.

(3) Where—

- (a) any item which an enforcement officer wishes to seize is in a container, and
- (b) the enforcement officer 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 enforcement officer 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 a vehicle, any person who appears to the enforcement officer to be the owner of the vehicle, or otherwise in charge of the vehicle;
- (c) in the case of an item seized from premises, any person who appears to the enforcement officer to be the occupier of the premises, or otherwise in charge of the premises;
- (d) in any other case, or where the enforcement officer believes that the item may belong to any person not falling within sub-paragraph (a) to (c), to the person to whom the enforcement officer believes the item belongs.

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

(6) Any relevant organism seized by an enforcement officer must, unless the enforcement officer is satisfied that it is not a specimen, be held and transported in contained holding.

(7) Any such relevant organism—

- (a) may be transferred—
  - (i) to another enforcement officer; or
  - (ii) to an establishment or facility which is authorised to keep it by a permit or licence (as the case may be); or
- (b) where the enforcement officer is satisfied it is a specimen, may be humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro-organisms) as the enforcement officer sees fit.

**Power of seizure to facilitate functions of an enforcement officer**

27.—(1) A designated customs official may, for the purpose of facilitating the exercise by an enforcement officer of any functions conferred on an enforcement officer by or under this Order, seize any relevant organism which is being imported or exported or which has been imported or brought to a place for the purpose of export—

- (a) where the designated customs official suspects that it is a specimen; or
- (b) on the request of an enforcement officer.

(2) Any relevant organism seized under paragraph (1) may be detained for not more than five working days.

(3) A request under paragraph (1)(b)—

- (a) may identify the relevant organism in any relevant way; and
- (b) must be made in writing or be made orally and confirmed in writing as soon as reasonably practicable thereafter.

(4) Any relevant organism seized under paragraph (1)—

- (a) must, if seized following a request under paragraph (1)(b), be dealt with during the period of its detention in such manner as the requesting enforcement officer may direct;
- (b) may, if the designated customs official considers it appropriate, be transferred to an enforcement officer, who may hold it for a period not longer than the remainder of the detention period referred to in paragraph (2).

(5) A relevant organism held by an enforcement officer under paragraph (4)(b) must be held in contained holding.

**Power to use reasonable force**

28. Designated customs officials and enforcement officers may use reasonable force, if necessary, in the exercise of the powers conferred by articles 22 to 27.

**Proof of lawful import or export**

29.—(1) Where a relevant organism is being imported or exported, or has been imported or brought to a place for the purpose of being exported, a designated customs official who suspects that the relevant organism is a specimen may require a person possessing or having control, or appearing to possess or have control, of that relevant organism to furnish relevant proof.

(2) Until relevant proof is provided to the satisfaction of the designated customs official, the designated customs official may detain the relevant organism for not more than five working days.

(3) Any relevant organism detained under this article may, if the designated customs official considers it appropriate, be transferred to an enforcement officer, who may hold the relevant organism for a period not longer than the remainder of the detention period referred to in paragraph (2).

(4) A relevant organism held by an enforcement officer under paragraph (3) must be held in contained holding.

(5) In this article, and in article 30, “relevant proof” in relation to the importation or exportation of a relevant organism, means proof—

- (a) that the relevant organism is not a specimen; or
- (b) that such importation or exportation (as the case may be) is or was authorised by a permit or a licence, or (if it would otherwise be unlawful) is lawful by virtue of a defence under articles 15 to 18.

## Action following seizure

**30.**—(1) This article applies where a relevant organism has—

- (a) been seized under article 26 whilst being imported or exported, or once imported or brought to a place for the purpose of export,
- (b) been seized under article 27 or 29(2), or
- (c) otherwise been seized following the official controls referred to in Article 15 of the Principal Regulation,

and the designated customs official or enforcement officer (as the case may be) suspects that the relevant organism is a specimen.

(2) In a case where the relevant organism has been imported or was being imported and relevant proof is not provided to the satisfaction of the designated customs official or enforcement officer, as the case may be, within 5 working days of seizure, the relevant organism must be re-dispatched to a destination outside of the United Kingdom, except in a case within paragraph (3) or (4).

(3) Where the relevant organism is required for enforcement purposes, an enforcement officer may arrange for the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(4) Where re-dispatch of the relevant organism under paragraph (2) would contravene the Principal Regulation, or is not reasonably practicable, an enforcement officer may arrange—

- (i) where the enforcement officer is satisfied it is a specimen, for its humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms); or
- (ii) for the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(5) In a case where a relevant organism was being exported, or has been brought to a place for the purpose of export, and relevant proof is not provided to the satisfaction of the designated customs official or enforcement officer, as the case may be, within 5 working days of seizure—

- (a) where an enforcement officer considers it appropriate, the relevant organism may be released to the exporter, provided such release would not result in the commission of an offence under article 3, or

(b) an enforcement officer may arrange—

- (i) where the enforcement officer is satisfied it is a specimen, for its humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms); or

(ii) the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(6) Where relevant proof is provided within five working days of seizure, the relevant organism must be released to the importer or exporter (as the case may be).

(7) In paragraphs (6) “importer” and “exporter” include any authorised representative of the importer or exporter, as the case may be.

## Information sharing

**31.**—(1) The Commissioners of Her Majesty’s Revenue and Customs, a designated customs official, a competent authority and an enforcement officer may exchange information for the purposes of this Order, and may divulge information to the enforcement authorities in Scotland and Northern Ireland for the purposes of this Order or the equivalent legislation in those jurisdictions.

(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>(3)</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>(4)</sup>.
- (4) This article does not limit the circumstances in which information may be exchanged apart from this article.

### Recovery of costs

- 32.**—(1) The importer or exporter (as the case may be) is responsible for—
- (a) the costs of storing a relevant organism detained under article 27(2) or 29(2) during its period of detention;
  - (b) the costs incurred by an enforcement officer under article 30(2), (4) and (5).
- (2) The court which convicts a person of an offence under this Order must order the offender to reimburse any costs incurred in connection with keeping a relevant specimen by the person—
- (a) holding it following its seizure by an enforcement officer under article 26(1); or
  - (b) to whom it was transferred under article 30(3).
- (3) Where—
- (a) the costs referred to in paragraph (1) are not paid, or
  - (b) an order is made under paragraph (2), and the amount specified in the order is not paid,
- the unpaid amount is recoverable summarily as a civil debt.
- (4) In this article—
- “importer” and “exporter” include any authorised representative of the importer or exporter, as the case may be;
  - “relevant specimen” means the specimen in relation to which the offence was committed.

### Forfeiture

- 33.**—(1) The court by which any person is convicted of an offence under this Order—
- (a) must order the forfeiture of a 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) In paragraph (1)(b), “vehicle” includes aircraft, hovercraft and boats.
- (3) 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).

(3) 2018 c. 12.

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



