
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 421

The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019

PART 9

General powers of inspectors and enforcement

Interpretation

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

Powers of entry

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

- (a) performing official controls to verify—
 - (i) that an operator is complying with the Official Controls Regulation, the EU Plant Health Regulation and these Regulations,
 - (ii) that 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 Scottish Ministers 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 Scottish Ministers 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 sheriff, a summary sheriff or a justice of the peace 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 any plant pest or 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 may 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,
 - (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 sheriff, a summary sheriff or a justice of the peace

- 30.**—(1) A sheriff, a summary sheriff or a justice of the peace may by signed warrant permit a plant health inspector to enter premises under regulation 16 or 29 if necessary by reasonable force, if the sheriff, the summary sheriff or the justice of the peace, 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.

Information notices

31.—(1) A plant health inspector or any other officer of the Scottish Ministers may by notice in writing require an appropriate person to give to the inspector or officer, 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),
- (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 or other officer must be reasonable.

(3) An appropriate person must produce for examination by the plant health inspector or other officer 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 or officer 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,
 - (iii) any plant, plant product or other object which the inspector or officer knows or suspects to have been imported into or exported from Scotland,
- (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

32.—(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) Paragraph (1) does not affect any right of entry conferred by a warrant issued by a sheriff, a summary sheriff or a justice of the peace.

(5) 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.

(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.

Disclosure of information held by Revenue and Customs

33.—(1) The Commissioners for Her Majesty’s Revenue and Customs may disclose any information in their possession to the Scottish Ministers for the purposes of enabling or assisting the Scottish Ministers to carry out any function conferred on them 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.