
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 176

**The Plant Health (Official Controls and
Miscellaneous Provisions) (Miscellaneous
Amendments) (Scotland) Regulations 2020**

Insertion of regulation 32A and 32B

16. After regulation 32 (failure to comply with a notice) insert—

“Removal of ISPM 15 mark from wood packaging material

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

Marking of wood packaging material: power of seizure

32B.—(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 Scotland.

(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 Scottish Ministers 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 37(1).

(6) The Scottish Ministers may apply to the court 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 37(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 Scottish Ministers may dispose of it in whatever way they think 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 Scottish Ministers may recover from the appropriate person all reasonable costs incurred by the Scottish Ministers for the purposes of securing the forfeiture of an item under paragraphs (6) to (8).

(11) Where the retention of the 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 to the court 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 Scottish Ministers may dispose of the item in whatever way they think appropriate.

(13) In this regulation—

“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 having control 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 ownership over it.

“the court” means a sheriff, summary sheriff or justice of the peace.

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