

2020 No. 552

PESTICIDES

**The Official Controls (Plant Protection Products) Regulations
2020**

<i>Made</i> - - - -	<i>28th May 2020</i>
<i>Laid before Parliament</i>	<i>1st June 2020</i>
<i>Coming into force</i> - -	<i>22nd June 2020</i>

CONTENTS

PART 1

General

1. Citation, commencement and extent
2. Interpretation and scope
3. Designation for the purposes of Article 4
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 and penalties

8. Enforcement
9. Powers of entry
10. Search warrants
11. Execution of warrants
12. General powers
13. Protection of authorised persons
14. Enforcement notices

15. Offences and Penalties
16. Offences by bodies corporate
17. Prosecutions
18. Time limits for prosecution

PART 5 Supplementary

19. Review
20. Transitional provision

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972^(a) in relation to the common agricultural policy of the European Union^(b) and measures in the veterinary and phytosanitary fields for the protection of public health^(c).

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, and, with the consent of the Treasury, in exercise of powers conferred by section 56(1) of the Finance Act 1973^(d).

PART 1 General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Official Controls (Plant Protection Products) Regulations 2020 and come into force on 22nd June 2020.

(2) These Regulations extend to Great Britain.

Interpretation and scope

2.—(1) In these Regulations—

“authorised person” means a person authorised by a competent authority under regulation 8(2) to exercise the powers set out in Part 4 of these Regulations;

“competent authority” has the meaning given in regulation 3;

“component” means—

(a) any active substance, safener, synergist, or co-formulant that could form a component part of a plant protection product; or

(a) 1972 c. 68. Section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“ECA”) were repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) with effect from exit day, but saved with modifications until IP completion day by section 1A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 ECA 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). Despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under EU law, so far as exercisable within devolved competence, the Secretary of State retains power to exercise functions for the purposes specified in section 2(2) of the European Communities Act 1972 as regards Scotland by virtue of section 51(1) of the Scotland Act 1998 (c.46). In relation to Wales, the Secretary of State retains a power to make subordinate legislation for the purposes of implementing any EU obligation of the United Kingdom in relation to Wales, by virtue of paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32).

(b) S.I. 1972/1811.

(c) S.I. 1999/2027.

(d) 1973 c.51. Section 56(1) was amended by S.I. 2011/1043, and prospectively amended by paragraph 17 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c.16) from a date and time to be appointed.

(b) any adjuvant,

and active substance, safener, synergist, co-formulant and adjuvant have the same meanings as in the Plant Protection Products Regulation;

“the OC 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^(a);

“the Official Controls Regulations” means the OC Regulation and the Implementing Regulations and Delegated Regulations made under it;

“plant protection product” has the same meaning as in the Plant Protection Products Regulation;

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

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

(a) any vehicle, vessel, aircraft, hovercraft or marine structure, and

(b) any tent or moveable structure;

“professional use” and “professional user” have the same meaning as in the Plant Protection Products (Sustainable Use) Regulations 2012^(c);

“relevant legislation” means retained direct EU legislation and domestic legislation governing the requirements for the placing on the market and use of plant protection products and the sustainable use of pesticides, with the exception of pesticides application equipment.

(2) These Regulations apply in relation to the area referred to in Article 1(2)(h).

(3) Non-professional users of plant protection products are not subject to these Regulations.

(4) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in the OC Regulation.

(5) Any reference in these Regulations to an “Article” or “Title” is to an Article or Title of the OC Regulation.

Designation for the purposes of Article 4

3. For the purposes of Article 4 in relation to the requirements for the placing on the market and use of plant protection products and components and the sustainable use of pesticides, with the exception of pesticides application equipment, the competent authority designated is—

(a) the Secretary of State, for England,

(b) the Scottish Ministers, for Scotland, and

(c) the Welsh Ministers, for Wales.

Exchange of information

4. The competent authorities may disclose information to each other and to other competent authorities in the United Kingdom and EU member States for the purposes of applying these Regulations and the Official Controls Regulations.

(a) OJ No. L 95, 7.4.2017, p.1, amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.3.2019, p.4).

(b) 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).

(c) S.I. 2012/1657.

PART 2

List of operators

List of operators

- 5.—(1) Each operator must notify the competent authority of—
- (a) the name of the operator;
 - (b) the activities carried out by the operator that relate to the placing on the market and use of plant protection products and components and the sustainable use of pesticides;
 - (c) the premises on which those activities are carried out.
- (2) The time period for making the notification in paragraph (1) is—
- (a) within the period of 15 months after the date on which these Regulations come into force, for operators concerned with the placing on the market of plant protection products authorised for professional use, and components, including those who produce, manufacture, process, import, distribute and sell those products; and
 - (b) within the period of 24 months after the date on which these Regulations come into force, for all other operators.
- (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, that operator must make the notification required by paragraph (2) 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 competent authority to do so, an authorised person exercising powers in relation to plant protection products and components to enter premises or to inspect records may—
- (a) be accompanied by authorised officers of a competent authority of a member State;
 - (b) show records to such accompanying authorised officers; and
 - (c) make copies for them, or require copies to be made for them, of the records.
- (2) For the purposes of facilitating a visit by an inspection team as provided for in Article 108, an authorised person may be accompanied by representatives of the EU Commission when exercising powers under relevant legislation to enter premises and inspect records.
- (3) A person 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 execution or enforcement of these Regulations or the Official Controls Regulations.

Expenses

- 7.—(1) Any expenses incurred by a competent authority in carrying out official controls or enforcement activities under these Regulations, or the Official Controls Regulations may be recovered from the relevant operator and such expenses must be paid on written demand.
- (2) Any sum owing under this regulation and unpaid may be recovered—
- (a) as a civil debt;
 - (b) under an order of the court, on such terms as the court may order.

PART 4

Enforcement and penalties

Enforcement

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

(2) A competent authority may authorise any person to exercise the powers given to authorised persons in these Regulations.

(3) A person may be authorised for specified purposes.

(4) An authorisation must be in writing.

(5) A competent authority may specify descriptions of local authority 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) If a competent authority specifies a description of local authority officers under paragraph (5), a local authority may authorise any of its officers falling within that description to exercise enforcement powers.

(8) An authorised person performing functions under these Regulations or the Official Controls Regulations must produce, on request, evidence of their authorisation.

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

(a) their name;

(b) the functions to be performed; and

(c) the grounds for proposing to perform those functions.

(10) In this regulation “enforcement powers” means the powers set out in this Part.

(11) In this regulation “local authority” means—

(a) in relation to England—

(i) where there is a unitary authority, within the meaning of the Local Government Changes for England Regulations 1994(a), that authority;

(ii) where there is not a unitary authority—

(aa) in a metropolitan district, the council of that district;

(bb) in a non-metropolitan district, the council of that county or the council of a district within the county area;

(cc) in each London borough, the council of that borough;

(iii) in the City of London, the Common Council; or

(iv) the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or a county borough council; and

(c) in relation to Scotland, a Council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(b).

Powers of entry

9.—(1) An authorised person may enter any premises (except premises used wholly or mainly as a private dwelling) without prior notice, if the authorised person has reason to believe that it is

(a) S.I. 1994/867.

(b) 1994 c. 39. Section 2 was amended by section 120(1) of, and paragraph 232(1) of Schedule 22 to, the Environment Act 1995 (c.25).

necessary for the purpose of enforcement of these Regulations or the Official Controls Regulations.

(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 the authorised person seeks to exercise them at a reasonable hour.

(3) An authorised person who enters any unoccupied premises must leave it as effectively secured against unauthorised entry as it was before the authorised person's entry.

Search warrants

10.—(1) A justice of the peace in England and Wales or a sheriff, summary sheriff 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 purpose of the enforcement of these Regulations or the Official Controls Regulations if satisfied that the authorised person has reasonable grounds for requiring entry and any of the conditions set out in paragraph (2) are satisfied.

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

- (a) admission has been, or is likely to be, refused and (in either case) that notice of the application 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 paragraph (1) the authorised person must state—

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

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

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

(6) An authorised person must answer on oath any question that the justice of the peace, summary sheriff or sheriff hearing the application asks the authorised person.

(7) A warrant authorises entry on one occasion only.

(8) A warrant must 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 regulation;
- (d) the address of the premises to be entered; and
- (e) identify, so far as it practicable, what is to be sought.

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

Execution of warrants

11.—(1) Entry 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 it, the authorised person must—

- (a) identify themselves to the occupier and must produce evidence of their authority to the occupier;

- (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, paragraph (2) has 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 warrant must be returned to the designated officer for the local justice area in which the justice of the peace, summary sheriff or sheriff 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, on or before the expiry of three months from the date of its issue.

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

(7) A warrant which is returned under paragraph (5) must be retained for 12 months from its return by the designated officer for the local justice area.

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

General powers

12.—(1) An authorised person exercising powers of entry pursuant to regulation 9(1), or in accordance with a warrant granted under regulation 10(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 them any persons and equipment or materials they consider necessary for the enforcement of these Regulations or the Official Controls 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 or the Official Controls 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 or the Official Controls 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 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 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 Regulations.

(4) Nothing in paragraphs (1)(g), (h) or (i) compels the production by any person of a document which they would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court in England and Wales, 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 the authorised person information as to the formulation, effects or use of any substance.

(6) An authorised person performing functions under these Regulations or the Official Controls Regulations may require a person whom the authorised person has reasonable cause to believe is able to give information which will assist in the execution of these Regulations or the Official Controls 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 the questions are put under paragraph (6) may nominate a person to be with them when they answer.

(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 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 paragraph (6) is admissible in evidence in Great Britain against that person or their spouse or civil partner in proceedings for any offence.

Protection of authorised persons

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 a person is in breach of the requirements of these Regulations or the Official Controls Regulations, the authorised person may serve on that person a notice, specifying the breach the authorised person believes has occurred, and directing that person 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) that person to act in accordance with these Regulations or the Official Controls Regulations or prohibit that person from acting in contravention of these Regulations or the Official Controls Regulations.

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

(4) An authorised person may withdraw a notice served under paragraph (1) at any time.

(5) An authorised person may serve a person with a notice under paragraph (1) even if a previous notice served on that person 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 competent authority 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 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 competent authority 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—

- (a) in England and Wales, to a fine; or
- (b) in Scotland, to a fine not exceeding level 5 on the standard scale.

Offences by bodies corporate

16.—(1) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where—

- (a) an offence under these Regulations has been committed in Scotland by a body corporate, a Scottish partnership or other unincorporated association, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual, or
 - (ii) a person purporting to act in the capacity of a relevant individual,

the individual, as well as the body corporate, Scottish partnership or unincorporated association commits the offence and is liable to be proceeded against and punished accordingly.

(4) In paragraph (3), a “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner; or
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Prosecutions

17. An authorised person, if so authorised by the person authorising them, may, although not of counsel or a solicitor, prosecute before a magistrates’ court in England and Wales proceedings for an offence under these Regulations.

Time limits for prosecution

18. A prosecution for an offence under these Regulations may begin no later than the earlier of the expiry of —

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the prosecuting authority.

PART 5

Supplementary

Review

19.—(1) The Secretary of State, in relation to England, must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 14th December 2024.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015^(a) requires that a report published under this regulation must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Transitional provision

20. Until IP completion day, the reference to retained direct EU legislation in the definition of relevant legislation in these Regulations, is to be read as a reference to EU legislation.

26th May 2020

Victoria Prentis
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

We approve

28th May 2020

James Morris
Maggie Throup
Two of the Lords Commissioners of Her Majesty’s Treasury

(a) 2015.c26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement and provide for the enforcement of Regulation (EU) 2017/625 (OJ No. L 95. 7.4.2017, p. 1) 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 (“the OC 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 OC Regulation and recovery of expenses incurred.

Part 4 provides for enforcement and penalties.

Part 5 inserts a review provision in accordance with the Small Business, Enterprise and Employment Act 2015 (c.26), and a transitional provision until IP completion day.

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.

© Crown copyright 2020

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 and Queen’s Printer of Acts of Parliament.

£6.90

UK202005291014 06/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/552>

ISBN 978-0-11-119649-6



9 780111 196496