
WELSH STATUTORY INSTRUMENTS

2020 No. 206

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020

PART 11

Offences relating to plant health legislation

General

- 38.**—(1) A person commits an offence if the person contravenes or fails to comply with—
- (a) regulation 24(1), 25(1) or 26(1);
 - (b) paragraph 2 or 4 of Schedule 1;
 - (c) paragraphs 2(1) or (2), 5(1) or (2), 11(1), 12(1), 13(1), 14(1), 15, 20(1), 21(7), 22(2), 27(1), 28(7), 29(2) or 31(2) of Schedule 2;
 - (d) a provision of the EU Plant Health Regulation specified in Part 1 of Schedule 3;
 - (e) a provision of the Official Controls Regulation specified in Part 2 of Schedule 3 (insofar as it applies to plants, plant products or other objects which are subject to an EU plant health rule);
 - (f) a provision of any other EU legislation specified in Part 3 of Schedule 3;
 - (g) a provision of an EU emergency decision specified in Schedule 4.
- (2) But paragraph (1) does not apply to anything done under, or in accordance with—
- (a) an authorisation or permit which is granted under these Regulations or has effect under or by virtue of these Regulations;
 - (b) an approval granted under regulation 13(6) or an approval referred to in regulation 54(1);
 - (c) a notice which is given by a plant health inspector or an appropriate authority under these Regulations, or has effect under or by virtue of these Regulations.

Failure to comply with requirements of notices etc.

- 39.** A person commits an offence if the person fails to comply with—
- (a) a provision or condition of a notice which has been served on the person under these Regulations or has effect under or by virtue of these Regulations,
 - (b) a provision or condition of an authorisation or permit which has been granted to the person under these Regulations or has effect under or by virtue of these Regulations, or
 - (c) a provision or condition of a direction given under these Regulations.

Defence: reasonable excuse

40. It is a defence for a person charged with an offence under regulation 38 or 39 to show that the person had a reasonable excuse for contravening or failing to comply with the prohibition or requirement in question.

Provision of false or misleading information

41. A person commits an offence if, for the purposes of obtaining an authorisation or a permit or procuring the issue of a plant passport or certificate, the person—

- (a) knowingly or recklessly makes a statement or representation which is false in a material particular,
- (b) knowingly or recklessly furnishes a document or information which is false in a material particular, or
- (c) intentionally fails to disclose any material information.

Improper use of plant passports or certificates

42.—(1) A person commits an offence if the person—

- (a) dishonestly issues a plant passport or a certificate,
- (b) dishonestly alters a plant passport or a certificate, or
- (c) dishonestly re-uses a plant passport or a certificate.

(2) In paragraph (1), “certificate” means a phytosanitary certificate for export, a phytosanitary certificate for re-export or a pre-export certificate.

Obstruction

43.—(1) A person commits an offence if the person—

- (a) intentionally obstructs a plant health inspector or an authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations,
- (b) without reasonable excuse, fails to give to a plant health inspector or an authorised person any assistance or information which the inspector or authorised person may reasonably require for those purposes, or
- (c) fails to produce a document or record when required to do so by an appropriate authority or a plant health inspector acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) In paragraph (1), “authorised person” means a person authorised by an appropriate authority.

Offence relating to the disclosure of information held by Revenue and Customs

44. A person commits an offence if the person discloses any information received from the Commissioners for Her Majesty’s Revenue and Customs under regulation 34(1) and—

- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure,
- (b) the disclosure is for a purpose other than specified in regulation 34(1), and
- (c) the Commissioners have not given their prior consent to the disclosure.

Defence: lawful disclosure

45. It is a defence for a person charged with an offence under regulation 44 to prove that the person reasonably believed that—

- (a) the disclosure was lawful, or
- (b) the information had previously been made available lawfully.

Offences by bodies corporate

46.—(1) Where an offence under this Part has been committed by a body corporate and the offence is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the part of an officer,

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

(2) In paragraph (1), “officer”, in relation to a body corporate, means—

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

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as it applies to an officer of a body corporate.

Offences by partnerships and unincorporated associations

47.—(1) Proceedings for an offence under this Part alleged to have been committed by a partnership or an unincorporated association must be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate, and
- (b) section 33 of the Criminal Justice Act 1925 (procedure on charge of offence against corporation)⁽¹⁾ and Schedule 3 to the Magistrates’ Courts Act 1980 (corporations)⁽²⁾ apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under this Part is to be paid out of the funds of the partnership or association.

(4) If an offence under this Part committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In paragraph (4), “partner” includes a person purporting to act as a partner.

(1) 1925 c. 86; section 33 was repealed in part by Schedule 6 to the Magistrates Courts Act 1952 (c. 55), and amended by paragraph 19 of Schedule 8 to the Courts Act 1971 (c. 23) and paragraph 71 of Schedule 8, and Schedule 10, to the Courts Act 2003 (c. 39) (subject to savings specified in S.I. 2004/2066).

(2) 1980 c. 43; Schedule 3 was amended by Schedule 13 to the Criminal Justice Act 1991 (c. 53) and paragraph 51 of Schedule 3, and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(6) If an offence under this Part committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In paragraph (6), “officer”, in relation to an unincorporated association, means—

- (a) an officer of the association or a member of its governing body, or
- (b) a person purporting to act in such a capacity.

Penalties

48.—(1) A person guilty of an offence under regulation 38(1), 39, 41, 42 or 43 is liable on summary conviction to a fine.

(2) A person guilty of an offence under regulation 44 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months, to a fine or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.