
WELSH STATUTORY INSTRUMENTS

2020 No. 206

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

PART 9

General powers of plant health inspectors and enforcement

Interpretation

27.—(1) In this Part—

“ISPM 15 mark” (“*nod SRFFf 15*”) means the mark referred to in Article 96(1) of the EU Plant Health Regulation, which may be applied to wood packaging material to attest that it has been treated in accordance with Annex 1 to ISPM 15;

“premises” (“*mangre*”) includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure;

“wood packaging material” (“*deunydd pecynnu pren*”) includes any wood or other object which is required to be treated and marked in accordance with Annex 1 to ISPM 15.

(2) For the purposes of regulations 32 and 33, a person “incorrectly” applies the ISPM 15 mark to wood packaging material if the person applies the mark otherwise than in the manner specified in Article 96(1) of the EU Plant Health Regulation, as read with Article 97(1) of the EU Plant Health Regulation.

Powers of entry

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

- (a) performing official controls to verify that—
 - (i) an operator is complying with the Official Controls Regulation,
 - (ii) a professional operator is complying with the EU Plant Health Regulation,
 - (iii) a person is complying with these Regulations, or
 - (iv) 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 that rule or those requirements;
- (b) carrying out other official activities which are to be performed by the appropriate authority 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 an appropriate authority under these Regulations or 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 his or her 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 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—
 - (i) any plant pest,
 - (ii) any plant, plant product or other object, or
 - (iii) 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—
- (a) be accompanied—
 - (i) by a representative of the European Commission or an authorised officer of any competent authority designated in the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation, or
 - (ii) such other persons as the inspector considers necessary, and
 - (b) bring onto the premises such equipment and vehicles as the inspector considers necessary.
- (7) A plant health inspector who is accompanied by a person mentioned in paragraph (6)(a)(i) may—
- (a) show the person any documents or records which are inspected by the inspector under paragraph (4)(e), and
 - (b) make copies, or require copies to be made, of those documents or records for that person.
- (8) A person accompanying a plant health inspector under paragraph (6)(a)(ii) 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, and
 - (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 justice of the peace

29.—(1) A justice of the peace may by signed warrant permit an inspector to enter premises under regulation 16(1), 28(1) or 31(1), if necessary by reasonable force, if the justice, 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, or
- (d) the premises are unoccupied or the occupier is temporarily absent.

(3) A warrant is valid for one month.

(4) An inspector who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

Information notices

30.—(1) A plant health inspector or any other officer of an appropriate authority 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), or
- (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 inspector or other officer must be reasonable.

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

31.—(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 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) 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.

(5) A person accompanying a plant health inspector under paragraph (4) 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, and
- (c) carry out work on the premises in a manner directed by a plant health inspector.

Removal of ISPM 15 mark from wood packaging material

32. 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

33.—(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 Wales.

(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 Welsh 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 38(1).

(6) The Welsh Ministers may apply to the magistrate's 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 38(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 Welsh 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 Welsh Ministers may recover from the appropriate person all reasonable costs incurred by the Welsh Ministers for the purposes of securing the forfeiture of an item under paragraphs (6) to (8).
- (11) Where the retention of any 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 magistrate’s 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 Welsh 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 in charge 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.
- (14) Nothing in this regulation affects the powers of a plant health inspector under regulation 32.

Disclosure of information held by the Commissioners for Her Majesty’s Revenue and Customs

34.—(1) The Commissioners for Her Majesty’s Revenue and Customs may disclose any information in their possession to an appropriate authority for the purposes of enabling or assisting the appropriate authority to carry out any function conferred on it 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.

Disclosure of information to other competent authorities

35.—(1) The Welsh Ministers may disclose information to any other competent authority in another part of the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation.

(2) Nothing in paragraph (1) affects any other power or requirement of the Welsh Ministers to disclose information.