



OFFICIAL CONTROLS (PLANT PROTECTION PRODUCTS AND GENETICALLY MODIFIED ORGANISMS) REGULATIONS 2020

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European Communities (Isle of Man) Act 1973

OFFICIAL CONTROLS (PLANT PROTECTION PRODUCTS AND GENETICALLY MODIFIED ORGANISMS) REGULATIONS 2020

Laid before Tynwald:

Coming into Operation: in accordance with regulation 2

The Council of Ministers makes the following Regulations under section 2B of the European Communities (Isle of Man) Act 1973¹.

PART 1 – INTRODUCTORY

1 Title

These Regulations are the Official Controls (Plant Protection Products and Genetically Modified Organisms) Regulations 2020.

2 Commencement

These Regulations come into operation on the day they are made².

3 Interpretation and scope

(1) In these Regulations –

"**authorised person**" means a person authorised by the competent authority under regulation 9(2) (enforcement) to exercise the powers set out in Part 4 of these Regulations;

"**competent authority**" has the meaning given in regulation 4 (designation for the purposes of Article 4);

¹ In accordance with regulation 6 (Saving of the European Communities (Isle of Man) Act 1973 for implementation period) of the European Union and Trade Act 2019 (Withdrawal Agreement) Regulations 2020.

² Section 2B(9) of the European Communities (Isle of Man) Act 1973 specifies that regulations shall be laid before Tynwald as soon as possible after they are made and if Tynwald at the sitting before which the regulations are laid or at the next following sitting resolves that the regulations shall be annulled, the regulations shall upon such resolution cease to have effect.

"**component**" means —

- (a) any active substance, safener, synergist, or co-formulant that could form a component part of a plant protection product; or
- (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 of 15 March 2017 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 products³;

"**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 and of the Council of 21 October 2009 concerning the placing of plant protection products on the market⁴;

"**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 user**" means any person who uses plant protection products in the course of that person's work activities, including operators, technicians, employers and self-employed people, both in the farming and other sectors and "professional use" is construed accordingly; and

"**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.

³ OJ No. L 95, 7.4.2017, p.1, as last amended by Commission Delegated Regulation (EU) 2019/2127 (OJ L 321, 12.12.2019, p. 111).

⁴ 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).

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

4 Designation for the purposes of Article 4

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 the Department of Environment, Food and Agriculture.

5 Exchange of information

The competent authority may disclose information to other competent authorities in the United Kingdom for the purposes of applying these Regulations and the Official Controls Regulations.

PART 2 – LIST OF OPERATORS

6 List of operators

- (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 3 months of commencing business.

PART 3 – ASSISTANCE AND CO-OPERATION UNDER TITLE IV AND RECOVERY OF EXPENSES INCURRED

7 Facilitating assistance and co-operation

- (1) For the purposes of assisting another competent authority, 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 that other competent authority;
 - (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) 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.

8 Expenses

- (1) Any expenses incurred by the 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

9 Enforcement

- (1) Enforcement of these Regulations and the Official Controls Regulations is the responsibility of the competent authority.
- (2) The 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) An authorised person performing functions under these Regulations or the Official Controls Regulations must produce, on request, evidence of their authorisation.

- (6) 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 Powers of entry

- (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 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.

11 Search warrants

- (1) A justice of the peace 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 affidavit.
- (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 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 is practicable, what is to be sought.
- (9) The court must provide two copies of the warrant certified as such.

12 Execution of warrants

- (1) Entry under a warrant must be within 3 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 Chief Registrar 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 3 months from the date of its issue.
- (6) A warrant which is returned under paragraph (5) must be retained for 12 months from its return by the Chief Registrar.
- (7) 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.

13 General powers

- (1) An authorised person exercising powers of entry pursuant to regulation 10(1) (powers of entry), or in accordance with a warrant granted under regulation 11(1) (search warrants), 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) be accompanied by any persons and bring any equipment or materials the authorised person considers 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.
- (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 (“P”) to whom the questions are put under paragraph (6) may nominate a person to be with P when P answers.
- (8) When P 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 P in pursuance of a requirement imposed under paragraph (6) is admissible in evidence against that person or their spouse or civil partner in proceedings for any offence.

14 Protection of authorised persons

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.

15 Enforcement notices

- (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.

16 Offences and penalties

- (1) A person is guilty of an offence if without reasonable excuse that person fails to provide the information required by regulation 6(1) (list of operators) to the competent authority within the time period specified in regulation 6(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 15(1) (enforcement notices).
- (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 to a fine not exceeding level 5 on the standard scale.

17 Prosecutions

The Department may delegate to the Attorney General functions in relation to the prosecution of an offence under these Regulations.

18 Time limit for prosecutions

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

- (a) 3 years from the commission of the offence; or
 - (b) one year from its discovery by the prosecuting authority,
- whichever is the earlier.

PART 5 — GENTICALLY MODIFIED ORGANISMS**19 Genetically Modified Organisms Act 2001 amended**

- (1) The Genetically Modified Organisms Act 2001 is amended as follows.
- (2) In section 2(4) (prohibition on import etc of GMOs), for the words “subsection (1)”, substitute **(a)** subsections (1)(a),(b),(e),(f),(g) or (h) **(a)**.
- (3) After paragraph 3(2) of the Schedule (power to deal with GMOs), insert —
 - (2A)** Sub-paragraph (2) does not apply where seizure and destruction are necessary to prevent or stop the escape or deliberate release of the genetically modified organisms. **(a)**.

PART 6 — SUPPLEMENTARY**20 Transitional provision**

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.

MADE 21 DECEMBER 2020

W GREENHOW
Chief Secretary

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 095. 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 makes amendments to the Genetically Modified Organisms Act 2001 in order to partially implement Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ L 106 17.4.2001, p. 1).

Part 6 provides for a transition until IP completion day.