
SCOTTISH STATUTORY INSTRUMENTS

2004 No. []

ENVIRONMENTAL PROTECTION

The Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004

Made - - - - 2004
Laid before the Scottish Parliament 2004
Coming into force - - 2004

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004 and shall come into force on [] 2004.

(2) These Regulations shall extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Council Regulation” means Regulation (EC) No. 1830/2003(b) of the European Parliament and of the Council concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC(c);

“inspector” means a person appointed as such for the purposes of these Regulations by the Scottish Ministers;

“specified Community provision” means a provision of the Council Regulation specified in column 1 of the Schedule to these Regulations;

(2) Expressions in these Regulations which are not defined in paragraph (1) and which appear in or are referred to in the Council Regulation have the same meaning in these Regulations as they have for the purposes of the Council Regulation.

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication as defined in the Electronic Communications Act 2000(d), which has been recorded and is consequently capable of being reproduced.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) O.J. No. L 268, 18.10.2003, p.24.

(c) O.J. No. L 106, 17.4.2001, p.1.

(d) 2000 c.7.

Rights of Entry

3.—(1) An inspector may, on producing (if so required) some duly authenticated document showing the authority of that inspector, exercise any of the powers specified in paragraph (3) for the purposes of the enforcement and administration of the Council Regulation.

(2) For those purposes, those powers are exercisable in relation to any premises other than those used wholly or mainly for domestic purposes.

(3) The powers of an inspector are—

(a) at any reasonable time—

(i) to enter premises which the inspector has reason to believe it is necessary to enter and to take with the inspector any person duly authorised by the Scottish Ministers and, if the inspector has reasonable cause to apprehend the risk of obstruction in the execution of the duty under these Regulations, a constable; and

(ii) to take any equipment or materials required for any purpose for which the power of entry is being exercised;

(b) to carry out such tests and inspections (and to make such recordings), as may in any circumstances be necessary;

(c) to direct that any, or any part of, premises which the inspector has power to enter, or anything in or on such premises, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any test or inspection;

(d) to take samples of any organisms, articles or substances found in or on any premises which the inspector has power to enter;

(e) in the case of anything found on premises which the inspector has power to enter which appears to be a genetically modified organism, or to consist of or include genetically modified organisms, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it;

(ii) to ensure that it is not tampered with before any examination of it is completed; and

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations.

(f) to require any person whom the inspector has reasonable cause to believe to be able to give any information relevant to any test or inspection under this paragraph to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of the answers given;

(g) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept for the purpose of complying with any specified Community provisions or it is necessary for the inspector to see for the purposes of any test or inspection under this sub-paragraph and to inspect, and take copies of, or of any entry in, the records; and

(h) to require any person to afford the inspector such facilities and assistance with respect to any matters or things within the control of that person in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred by this regulation.

(4) Where under the power conferred by paragraph (3)(e) an inspector takes possession of anything found on any premises, the inspector shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars sufficient to identify what has been seized and stating that the inspector has taken possession of it under that power; and before taking possession under that power of—

(a) any thing that forms part of a batch of similar things; or

(b) any substance,

an inspector shall, if it is practical and safe to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

Obtaining Information from Persons

4.—(1) For any purpose of the administration and enforcement of the Council Regulation, the Scottish Ministers may, by notice in writing served on any person who appears to them—

- (a) to be involved in the placing on the market of genetically modified organisms or of products produced from genetically modified organisms; or
- (b) to be about to become, or to have been, involved in that activity,

require that person to furnish such relevant information available to them as is specified in the notice, in such form and within such period following service of the notice as is so specified.

(2) For the purposes of this regulation “relevant information” means information concerning any aspects of the activities in question.

Incorrectly Labelled Products

5.—(1) Where an inspector is satisfied that a product consisting of or containing genetically modified organisms or food or feed produced from genetically modified organisms has not been labelled in accordance with the Council Regulation the inspector shall by notice in writing served on the operator—

- (a) prohibit the placing on the market of the product until it has been correctly labelled;
- (b) require the withdrawal of any products described in the notice that have not been labelled in accordance with the Council Regulation and that have been placed on the market prior to the date of the notice within such period as the inspector may reasonably deem to be necessary;
- (c) prohibit the removal of the product from the premises described in the notice other than to enable the product to be labelled correctly;
- (d) require the product to be labelled in accordance with the Council Regulation within such period as the inspector may reasonably deem to be necessary;
- (e) return the product by the mode of transport by which it was introduced into Scotland, to a destination located within a third country agreed with the inspector, within a period of sixty days commencing with the day following the service of the notice.

(2) The notice may contain such reasonable conditions as the inspector is satisfied are reasonable for the purpose and may be amended, suspended or revoked by further notice in writing at any time.

(3) A notice under this regulation shall be complied with at the expense of the person on whom the notice is served.

(4) If a notice under this regulation, or an action required to be taken by the notice, is not complied with within the period specified in the notice, an inspector may arrange for it to be complied with at the expense of the person on whom the notice is served.

Offences

6. Subject to regulation 10, it shall be an offence for a person—

- (a) without reasonable excuse to contravene, or to fail to comply with, any specified Community provision;
- (b) to obstruct an inspector in the exercise of a power conferred by regulation 3;
- (c) without reasonable excuse to fail to comply with a request made under regulation 3(3)(g) or regulation 4;
- (d) without reasonable excuse to fail to comply with the terms of a notice issued under regulation 5;

- (e) knowingly or recklessly to make a statement or furnish any information that is false or misleading in a material particular where the statement is made or the information is furnished in purported compliance with—
 - (i) any requirement imposed by the specified Community provisions;
 - (ii) by a request of an inspector made for a purpose in connection with the administration or enforcement of these Regulations;
- (f) intentionally to make a false entry in any record required to be kept under the Council Regulation.

Offences by Bodies Corporate

7.—(1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such) that person as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

Penalties

8. A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months, or to both.

Time Limits

9.—(1) Proceedings for an offence under regulation 6 may, subject to paragraph (2), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings comes to the knowledge of the prosecutor.

(2) No such proceedings shall be commenced by virtue of this regulation more than three years after the commission of the offence.

(3) For the purpose of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

Defences

10.—(1) It shall be a defence for a person charged with an offence under regulation 6(a) to prove that the accused person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) Where the commission by any person of an offence under regulation 6 is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first mentioned person.

Enforcement

11. It shall be the duty of the Scottish Ministers to enforce these Regulations.

Service of Notices

12.—(1) Any notice or other document to be given or served on any person under or in relation to these Regulations may be given or served either—

- (a) by delivering to that person;
- (b) in the case of an incorporated body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it by post to that person at that office;
- (c) in the case of any other person, by leaving it, or sending it by post to that person, at that person’s usual or last known address.

(2) Where a notice or other document is to be given or served on the occupier of any premises and it is not practicable after reasonable enquiry to ascertain the name and address of the person to or on whom it should be given or served, or the premises are unoccupied, the document may be given or served by addressing it to the person concerned by the description of “occupier” of the premises (naming them) and—

- (a) by delivering it to some person on the premises; or
- (b) if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Inspectors under the Environmental Protection Act 1990: Transitional Provisions

13. Any appointment of an inspector under Part VI of the Environmental Protection Act 1990(a) having effect at the coming into force of these Regulations shall have effect as if it were an appointment of the inspector as an inspector by the Scottish Ministers for the purpose of these Regulations.

St Andrew’s House,
Edinburgh

Name
A member of the Scottish Executive

2004

(a) 1990 c.43.

SCHEDULE

Regulation 2(1)

Specified Community Provisions

Column 1	Column 2
<i>Provision of the Council Regulation</i>	<i>Subject Matter</i>
Article 4(1)	Transmission of information
Article 4(2)	Transmission of information
Article 4(3)	Declaration of use
Article 4(4)	Requirement to keep records
Article 4(6)	Labelling requirements
Article 5(1)	Transmission of information
Article 5(2)	Requirement to keep records
