

2005 No. 271

EUROPEAN COMMUNITIES

ENVIRONMENTAL PROTECTION

**The Genetically Modified Organisms (Traceability and
Labelling) Regulations (Northern Ireland) 2005**

Made - - - - - *24th May 2005*

Coming into operation *30th June 2005*

ARRANGEMENT OF REGULATIONS

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SCHEDULE – Specified Community Provisions

The Department of the Environment, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the control and regulation of genetically modified organisms, in exercise of the powers conferred upon it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Genetically Modified Organisms (Traceability and Labelling) Regulations (Northern Ireland) 2005 and shall come into operation on 30th June 2005.

(a) S.I. 1991/755
(b) 1972 c. 68

Interpretation

2.—(1) In these Regulations –

“the Council Regulation” means Regulation (EC) No. 1830/2003(a) 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;

“the Department” means the Department of the Environment;

“inspector” means a person appointed as such under regulation 3;

“specified Community provision” means a provision of the Council Regulation specified in column 1 of the Schedule.

(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) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Enforcement

3.—(1) Subject to paragraph (2) each district council shall, in its area, enforce and execute these Regulations and the Council Regulation.

(2) The Department may, in relation to any case or to cases of a particular description, direct that the duty of a district council under paragraph (1) be discharged –

(a) by the Department instead of the district council, or

(b) by the Department and the district council acting jointly.

(3) A district council or the Department may appoint as inspectors such persons as it or they consider necessary for the purpose of enforcing these Regulations and the Council Regulation.

(4) Any appointment of an inspector under Article 11 of the Genetically Modified Organisms (Northern Ireland) Order 1991(c) having effect at the coming into operation of these Regulations shall have effect as if it were an appointment of the inspector as an inspector by the Department for the purpose of these Regulations.

Powers of inspectors

4.—(1) An inspector may, on production of his authority, if so required, exercise any of the powers specified in paragraph (3) for the purposes of the enforcement and execution of these Regulations and the specified Community provisions.

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

(3) The powers of an inspector are –

(a) at any reasonable time –

(i) to enter premises which he has reason to believe it is necessary for him to enter and to take with him any person duly authorised by a district council or the Department as the case may be, and if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and

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

(a) O.J. No. L268, 18.10.2003 p. 24

(b) 1954 c. 33 (N.I.)

(c) S.I. 1991/1714 (N.I. 19)

- (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 he 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 he has power to enter;
- (e) in the case of any product found on premises which he has power to enter which appears –
 - (i) to consist of or contain genetically modified organisms and which the inspector has reasonable cause to believe is not labelled in accordance with the Council Regulation, or;
 - (ii) in the case of food or feed, to be produced from genetically modified organisms and regarding which the inspector has reasonable cause to believe that the information specified in Article 5(1) of the Council Regulation has not been transmitted to the operator receiving the product,

to take possession of it and detain it for so long as is necessary for all or any of the following purposes –

- (aa) to examine it;
- (bb) to ensure that it is not tampered with before his examination of it is completed; and
- (cc) 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 he 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 his answers;
- (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 him to see for the purposes of any test or inspection and to inspect, and take copies of, or of any entry in, the records; and
- (h) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this paragraph.

(4) Where under the power conferred by paragraph (3)(e) an inspector takes possession of anything found on any premises, he 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 he has seized and stating that he 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 for him 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

5.—(1) For the purpose of the execution and enforcement of these Regulations and the specified Community provisions, a district council or the Department, as the case may be, may by notice in writing served on any person who appears –

- (a) to be involved in the placing on the market of –
 - (i) products consisting of or containing genetically modified organisms; or
 - (ii) food or feed produced from genetically modified organisms; or

(b) to be about to become, or to have been, involved in either of those activities, require that person to furnish such relevant information available to him 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

6.—(1) Where an inspector is satisfied that a product consisting of or containing genetically modified organisms has not been labelled in accordance with Article 4(6) of the Council Regulation he may 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) where the product has been placed on the market prior to the date of the notice require the withdrawal of the product within such period as the inspector may reasonably believe 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; or
- (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.

(2) The notice may contain such conditions as the inspector is satisfied are reasonable 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, an inspector may arrange for it to be complied with, and all reasonable costs of compliance shall be recoverable by the district council or the Department, as the case may be, as the debt from the person on whom the notice is served.

Offences

7.—(1) It shall be an offence for a person –

- (a) 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 4;
- (c) without reasonable excuse to fail to comply with any requirement imposed under regulation 4;
- (d) without reasonable excuse to fail to comply with the requirements of a notice issued under regulation 5 or regulation 6;
- (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 a specified Community provision; or
 - (ii) a request of an inspector made for a purpose in connection with the execution or enforcement of these Regulations; or
- (f) intentionally to make a false entry in any record required to be kept under a specified Community provision.

(2) It shall be a defence for a person charged with an offence under regulation 7(1)(a) to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

Offences by third parties

8. Where the commission by any person of an offence under regulation 7 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 regulation whether or not proceedings are taken against the first mentioned person.

Offences by bodies corporate

9. For the purposes of these Regulations section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Penalties

10. 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

11.—(1) Proceedings for an offence under regulation 7 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 his knowledge.

(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 in his opinion to warrant the proceedings came to his knowledge 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.

Sealed with the Official Seal of the Department of the Environment on 24th May 2005.

(L.S.)

Judena Goldring
A senior officer of the Department of the Environment

SCHEDULE

Regulation 2(1)

SPECIFIED COMMUNITY PROVISIONS

<i>Provision of the Council Regulation</i>	<i>Subject Matter</i>
Article 4(1)	Obligation to ensure, at the first stage of placing on the market of a product consisting of or containing GMOs, that the information specified in Article 4(1) is transmitted in writing to the operator receiving the product.
Article 4(2)	Obligation to ensure, at subsequent stages of placing on the market, that the information specified in Article 4(1) is transmitted in writing to the operator receiving the product.
Article 4(3)	Obligation to ensure that products consisting of or containing GMOs to be used only and directly as food or feed or for processing are accompanied either by the information specified in Article 4(1)(b) or by a declaration of use, accompanied by a list of the unique identifiers for all those GMOs used to constitute the mixture.
Article 4(4)	Obligation to keep records of the information referred to in paragraphs (1), (2), (3) and (4) of Article 4 for a period of five years.
Article 4(6)	Obligation to ensure that the information specified in Article 4(6) appears on the labels of products consisting of or containing GMOs.
Article 5(1)	Obligation to ensure, when placing products produced from GMOs on the market, that the information specified in Article 5(1) is transmitted in writing to the operator receiving the product.
Article 5(2)	Obligation to keep records of the information referred to in Article 5(1) for a period of five years.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as respects Northern Ireland, for the execution and enforcement of Regulation (EC) No. 1830/2003 of the European Parliament and of the Council of 22nd September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability and labelling of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC (O.J. No. L268, 18.10.2003, p. 24).

Regulation 3 provides for the enforcement of the Regulations and the specified Community provisions (the provisions of Regulation (EC) No. 1830/2003 specified in the Schedule) and makes provision for the appointment of inspectors.

Regulation 4 sets out the powers of inspectors, including the power to carry out tests and inspections and to take samples.

Regulation 5 makes provision for district councils and the Department to obtain information.

Regulation 6 provides for the service by inspectors of notices dealing with incorrectly labelled products.

Regulation 7 makes it an offence to contravene the specified Community provisions; to obstruct inspectors in the exercise of powers under these Regulations; and to give false information. It sets out a due diligence defence in respect of the contravention of the specified Community provisions.

Regulation 8 makes provision for offences committed by third parties.

Regulation 9 makes provision for offences committed by corporate bodies.

Regulations 10 and 11 prescribe penalties and specify time limits for bringing prosecutions.

A Regulatory Impact Assessment for these Regulations has been prepared and can be obtained at <http://www.food.gov.uk/multimedia/pdfs/gmria.pdf>

Copies of the European Council Regulation and Directive may be obtained at <http://europa.eu.int/eur-lex/en/index.html> and from The Stationery Office Ltd., 16 Arthur Street, Belfast, BT1 4GD.

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