



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART VI

#### GENETICALLY MODIFIED ORGANISMS

##### *Enforcement powers and offences*

#### **116 Obtaining of information from persons.**

- (1) For the purposes of the discharge of his functions under this Part, the Secretary of State may, by notice in writing served on any person who appears to him—
  - (a) to be involved in the importation, acquisition, keeping, release or marketing of genetically modified organisms; or
  - (b) to be about to become, or to have been, involved in any 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 section “relevant information” means information concerning any aspects of the activities in question, including any damage to the environment which may be or have been caused thereby; and the discharge by the Secretary of State of an obligation of the United Kingdom under the Community Treaties or any international agreement concerning the protection of the environment from harm caused by genetically modified organisms shall be treated as a function of his under this Part.

#### **Commencement Information**

- II** [S. 116](#) partly in force; [s. 116](#) in force for certain purposes at 1.2.1993 see [s. 164\(2\)\(3\)](#) and [S.I. 1992/3253, art. 3](#)

*Status: Point in time view as at 23/03/2007.*

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## 117 Power to deal with cause of imminent danger of damage to the environment.

- (1) Where, in the case of anything found by him on any premises which he has power to enter, an inspector has reason to believe that it is a genetically modified organism or that it consists of or includes genetically modified organisms and that, in the circumstances in which he finds it, it is a cause of imminent danger of damage to the environment, he may seize it and cause it to be rendered harmless (whether by destruction, by bringing it under proper control or otherwise).
- (2) Before there is rendered harmless under this section—
  - (a) any thing that forms part of a batch of similar things, or
  - (b) any substance,
 the inspector shall, if it is practicable 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.
- (3) As soon as may be after anything has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which it was seized and so dealt with by him, and shall—
  - (a) give a signed copy of the report to a responsible person at the premises where it was found by him; and
  - (b) unless that person is the owner of it, also serve a signed copy of the report on the owner;
 and if, where paragraph (b) above applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.

### Commencement Information

**I2** S. 117 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 192/3253, art. 3.

## 118 Offences.

- (1) It is an offence for a person—
  - (a) to do anything in contravention of section 108(1) above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;
  - (b) to fail to comply with section 108(3) above when keeping something which is, and which he knows or has reason to believe is, a genetically modified organism;
  - (c) to do anything in contravention of section 111(1) or (2) above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;
  - (d) to fail to comply with any requirement of subsection (2), (3)(a), (b) or (c) or (4) of section 109 above in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;
  - (e) to fail, without reasonable excuse, to comply with section 108(5) or (6) [F1 or section 111(6A)] above;
  - (f) to contravene any prohibition imposed on him by a prohibition notice;

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- (g) without reasonable excuse, to fail to comply with any requirement imposed under section 115 above;
  - (h) to prevent any other person from appearing before or from answering any question to which an inspector may, by virtue of section 115(3) above, require an answer;
  - (i) intentionally to obstruct an inspector in the exercise or performance of his powers or duties, other than his powers or duties under section 117 above;
  - (j) intentionally to obstruct an inspector in the exercise of his powers or duties under section 117 above;
  - (k) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under section 116 above;
  - (l) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
    - (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of this Part; or
    - (ii) for the purpose of obtaining the grant of a consent to himself or any other person or the variation of a consent;
  - (m) intentionally to make a false entry in any record required to be kept under section 108 or 111 above;
  - (n) with intent to deceive, to forge or use a document purporting to be issued under section 111 above or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;
  - (o) falsely to pretend to be an inspector.
- (2) It shall be a defence for a person charged with an offence under paragraph (a), (b), (c), (d) or (f) of subsection (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (3) A person guilty of an offence under paragraph (c) or (d) of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.
- (4) A person guilty of an offence under paragraph (f) of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (5) A person guilty of an offence under paragraph (a) or (b) of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.

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- (6) A person guilty of an offence under paragraph (e), (j), (k), (l), (m) or (n) of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (7) A person guilty of an offence under paragraph (g), (h) or (i) of subsection (1) above shall be liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both.
- (8) A person guilty of an offence under paragraph (o) of subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) Where a person is convicted of an offence under paragraph (b) of subsection (1) above in respect of his keeping any genetically modified organism, then, if the contravention in respect of which he was convicted is continued after he was convicted he shall be guilty of a further offence and liable on summary conviction to a fine of one-fifth of level 5 on the standard scale for each day on which the contravention is so continued.
- (10) Proceedings in respect of an offence under this section shall not be instituted in England and Wales except by the Secretary of State or with the consent of the Director of Public Prosecutions or in Northern Ireland except with the consent of the Director of Public Prosecutions for Northern Ireland.

#### Textual Amendments

- F1** Words in [s. 118\(1\)\(e\)](#) inserted (1.2.1993) by [S.I. 1992/3280](#), [reg. 13\(2\)](#) made by specified Ministers acting as respects England, as respects Wales and as respects Scotland.

#### Commencement Information

- I3** [S. 118](#) partly in force; [s. 118](#) not in force at Royal Assent see. [s. 164\(2\)\(3\)](#); [s. 118\(1\)\(a\)\(c\)\(e\)-\(l\)\(m\)](#) (in so far as it relates to [s. 111](#)) ([n](#))([o](#))(2)-(10) in force at 1.2.1993 [S.I. 1992/3253](#), [art. 3](#)

## 119 Onus of proof as regards techniques and evidence.

- (1) In any proceedings for either of the following offences, that is to say—
- (a) an offence under section 118(1)(c) above consisting in a failure to comply with the general condition implied by section 112(4)(c) or (5)(c) above; or
  - (b) an offence under section 118(1)(d) above consisting in a failure to comply with section 109(3)(c) or (4)(c) above;
- it shall be for the accused to prove<sup>F2</sup> the matters described in subsection (1A) below.

- (1A) The matters referred to in subsection (1) above are—
- (a) in the case of an offence under section 118(1)(c) above consisting in a failure to comply with the general condition implied by section 112(5)(c) above—
    - (i) that no measures, other than the measures taken by him, were necessary to prevent damage being caused to the environment from the release or, as the case may be, marketing of the organisms, or
    - (ii) in a case where he took no measures, that no measures were necessary; and

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- (b) in any other case,] that there was no better available technique not entailing excessive cost than was in fact used to satisfy the condition or to comply with that section.
- (2) Where an entry is required by a condition in a consent to be made in any record as to the observance of any other condition and the entry has not been made, that fact shall be admissible as evidence that that other condition has not been observed.

#### Textual Amendments

- F2** Words in s. 119 inserted: (E.) (17.10.2002) by [Genetically Modified Organisms \(Deliberate Release\) Regulations 2002 \(S.I. 2002/2443\)](#), regs. 1(2)(3), **30**; (S.) (5.12.2002) by [Genetically Modified Organisms \(Deliberate Release\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/541\)](#), **reg. 30**; (W.) (31.12.2002) by virtue of [Genetically Modified Organisms \(Deliberate Release\) \(Wales\) Regulations 2002 \(S.I. 2002/3188\)](#), **reg. 31**

#### Commencement Information

- I4** [S. 119](#) wholly in force at 1.2.1993 see [s. 164\(2\)\(3\)](#) and [S.I. 1992/3253](#), **art. 3**.

### 120 Power of court to order cause of offence to be remedied.

- (1) Where a person is convicted of an offence under section 118(1)(a), (b), (c), (d), (e) or (f) above in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.
- (2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this subsection, as the case may be.
- (3) Where a person is ordered under subsection (1) above to remedy any matters, that person shall not be liable under section 118 above in respect of those matters, in so far as they continue during the time fixed by the order or any further time allowed under subsection (2) above.

#### Commencement Information

- I5** [S. 120](#) wholly in force at 1.2.1993 see [s. 167\(2\)\(3\)](#) and [S.I. 1992/3253](#), **art. 3**

### 121 Power of Secretary of State to remedy harm.

- (1) Where the commission of an offence under section 118(1)(a), (b), (c), (d), (e) or (f) above causes any harm which it is possible to remedy, the Secretary of State may, subject to subsection (2) below—
- (a) arrange for any reasonable steps to be taken towards remedying the harm; and
- (b) recover the cost of taking those steps from any person convicted of that offence.
- (2) The Secretary of State shall not exercise his powers under this section, where any of the steps are to be taken on or will affect land in the occupation of any person other

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than a person convicted of the offence in question, except with the permission of that person.

**Commencement Information**

**16** S. 121 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, art. 3.

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