

2004 No. 2412

ENVIRONMENTAL PROTECTION, ENGLAND

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

<i>Made</i> - - - -	<i>14th September 2004</i>
<i>Laid before Parliament</i>	<i>16th September 2004</i>
<i>Coming into force</i> - -	<i>8th October 2004</i>

The Secretary of State for Environment, Food and Rural Affairs, being designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the control and regulation of genetically modified organisms, in exercise of the powers conferred on her by that section, makes the following Regulations:

Title, commencement, extent and application

1.—(1) These Regulations may be cited as the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004 and shall come into force on 8th October 2004.

(2) These Regulations extend to England and Wales but shall apply to England only.

Interpretation

2.—(1) In these Regulations—

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

“electronic communications” has the same meaning as in the Electronic Communications Act 2000^(d);

“inspector” means a person appointed as such under regulation 4;

“local authority” means—

(a) in any part of England where there is, within the meaning of the Local Government Changes for England Regulations 1994^(e), a unitary authority for that local government area, that authority;

(b) where there is not a unitary authority—

(i) in a metropolitan district, the council of that district;

(a) S.I. 1991/755.

(b) 1972 c. 68.

(c) OJ No. L268, 18.10.2003 p.24.

(d) 2000 c. 7; the definition of electronic communications in section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

(e) S.I. 1994/867, to which there are amendments not relevant to these Regulations.

- (ii) in a non-metropolitan district, the council of that county; or
 - (iii) in each London borough, the council of that borough;
 - (c) where there is a Port Heath Authority, that authority in addition to the authority specified in (a) or (b) above;
 - (d) as respects the City of London, the Common Council; and
 - (e) as respects the Isles of Scilly, the Council of the Isles of Scilly;
- “the Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs; and
- “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.

Enforcement

3.—(1) Except as provided in paragraph (2), each local authority shall, within its area, enforce and execute the provisions of these Regulations and the specified Community provisions.

(2) The Secretary of State may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed on a local authority by this regulation shall be discharged—

- (a) by the Secretary of State and not by the local authority; or
- (b) by the Secretary of State and by the local authority acting jointly.

Appointment of inspectors

4.—(1) Each local authority, or in any case to which a direction of the Secretary of State under regulation 3(2) applies the Secretary of State, may appoint as inspectors such persons as the local authority or the Secretary of State respectively considers necessary for the purpose of enforcing these Regulations and the specified Community provisions.

(2) Any appointment of—

- (a) an authorised officer under section 5(6) of the Food Safety Act 1990(a), or
- (b) an inspector under—
 - (i) section 67(3) of the Agriculture Act 1970(b), or
 - (ii) part VI of the Environmental Protection Act 1990(c)

having effect at the coming into force of these Regulations shall have effect as if it were an appointment of that officer or inspector as an inspector for the purpose of these Regulations.

Rights of entry

5.—(1) An inspector may, on production of his authority, if so required, exercise any of the powers specified in paragraph (3) below 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.

(a) 1990 c. 16. Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraphs 7 and 8 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28).

(b) 1970 c. 40.

(c) 1990 c. 43.

(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 the local authority by which he was appointed or, in any case to which a direction of the Secretary of State under regulation 3(2) applies, by the Secretary of State, 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;

(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 that 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, namely—

(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 provision or it is necessary for him to see for the purposes of any test or inspection under this paragraph 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 regulation.

(4) Where under the power conferred by paragraph (3)(e) above an inspector takes possession of any product 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

6.—(1) For the purpose of the execution and enforcement of these Regulations and the specified Community provisions, the local authority or the Secretary of State 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

7.—(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 believe 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 local authority or by the Secretary of State as a debt from the person on whom the notice was served.

Offences

8.—(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 5;
- (c) without reasonable excuse to fail to comply with any requirement imposed under regulation 5;
- (d) without reasonable excuse to fail to comply with a request made under regulation 5(3)(g) or regulation 6;

- (e) without reasonable excuse to fail to comply with the requirements of a notice issued under regulation 7;
- (f) 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
- (g) 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 8(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 due to fault of another person

9. Where the commission by any person of an offence under regulation 8 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

10.—(1) Where an offence under these Regulations committed by a body corporate 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 a person who was purporting to act in any such capacity, he 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 preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Penalties

11. 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

12.—(1) Proceedings for an offence under regulation 8 may, subject to paragraph (2) below, 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.

Service of notices

- 13.—(1) Any notice to be served under these Regulations shall be in writing.
- (2) Any such notice may be served on a person—
- (a) by delivering it to that person, or by sending it by post to him at his usual or last known address;
 - (b) in the case of an incorporated body, by delivering it to the secretary or clerk at the registered or principal office, or by sending it by post to him at that office;
 - (c) in the case of a partnership (other than a limited liability partnership), by delivering it to a partner or person having the control or management of the partnership business, or by sending it by post to him at the registered or principal office of that partnership;
 - (d) in the case of a limited liability partnership, by delivering it to a member of the limited liability partnership, or by sending it by post to him at the registered or principal office of that partnership;
 - (e) in the case of any other person, by leaving it, or sending it by post to him, at his usual or last known address; or
 - (f) where an address for service using electronic communications has been given by that person, sending it using electronic communications to that person at that address.
- (3) Where a notice is to be 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 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.
- (4) Where a notice is served using electronic communications, the service is deemed to be effected by properly addressing and transmitting the electronic communication.

14th September 2004

Elliot Morley
Minister of State
Department for Environment, Food and Rural Affairs

THE SCHEDULE

Regulation 2(1)

Specified Community Provisions

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Council Regulation</i>	<i>Subject Matter</i>
Article 4(1)	Failure to ensure, at the first stage of placing on the market of a product consisting of or containing GMOs, that specified information is transmitted in writing to the operator receiving the product.
Article 4(2)	Failure to ensure, at subsequent stages of placing on the market, that the information specified in article 4(1) of the Council Regulation is transmitted in writing to the operator receiving the product.
Article 4(3)	Failure to ensure that products consisting of or containing GMOs to be used only and directly as food or feed or for processing are accompanied by a declaration of use, along with a list of the unique identifiers for all those GMOs used to constitute the mixture.
Article 4(4)	Failure 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)	Failure to ensure that the information specified in Article 4(6) appears on the labels of products consisting of or containing GMOs.
Article 5(1)	Failure 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)	Failure 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 England, for the execution and enforcement of Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 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 (OJ No. L 268, 18.10.2003, p.24).

The Regulations come into force on 8th October 2004.

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).

Regulation 4 make provision for the appointment of inspectors.

Regulation 5 provides powers of entry, including the power to carry out tests and inspections and to take samples.

Regulation 6 enables inspectors to require the provision of information.

Regulation 7 provides for the service by inspectors of notices dealing with incorrectly labelled products.

Regulation 8 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; and sets out a due diligence defence in respect of the contravention of the specified Community provisions.

Regulation 9 makes provision for offences committed due to the fault of another person.

Regulation 10 makes provision for offences committed by corporate bodies.

Regulations 11 and 12 prescribe penalties and specify time limits for bringing prosecutions.

A Regulatory Impact Assessment has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the Regulatory Impact Assessment can be obtained from GM Controls Unit, DEFRA, Zone G/9, Ashdown House, 123 Victoria Street, London SW1E 6DE.

£3.00

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