
STATUTORY INSTRUMENTS

2015 No. 821

The Nagoya Protocol (Compliance) Regulations 2015

PART 1

Introduction

Citation and commencement

- 1.—(1) These Regulations may be cited as the Nagoya Protocol (Compliance) Regulations 2015.
- (2) Parts 1 and 2 come into force on 9th July 2015.
- (3) Parts 3 to 6 and the Schedule come into force on 12th October 2015.

Interpretation

- 2.—(1) In these Regulations—

“body corporate” includes a limited liability partnership;

“civil sanction” has the meaning given by regulation 7;

“compliance notice” has the meaning given by paragraph 1 of the Schedule;

“the EU Regulation” means Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union ^{M1}[^{F1}as it applies in the United Kingdom];

“inspector” has the meaning given by regulation 9;

“the Nagoya Protocol” means the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity adopted at the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity on 29th October 2010 ^{M2};

“non-compliance penalty” has the meaning given by paragraph 23 of the Schedule;

“officer” in relation to a body corporate, means any director, secretary or other similar officer of the body corporate;

“partnership” does not include a limited liability partnership;

“premises” includes any vehicle, vessel, aircraft, hovercraft, tent or moveable structure;

“stop notice” has the meaning given by paragraph 12 of the Schedule;

“unincorporated association” does not include a partnership;

“variable monetary penalty” has the meaning given by paragraph 2 of the Schedule.

- (2) In paragraph (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

- (3) Subject to paragraph (4), terms used in these Regulations that are used in the EU Regulation have the meaning they bear in that Regulation.

(4) For the purposes of these Regulations, the EU Regulation is to be read as though references to “traditional knowledge associated with genetic resources” include traditional knowledge described in paragraph (5).

(5) These Regulations also apply to traditional knowledge associated with genetic resources held by an indigenous or local community that is described as such in mutually agreed terms applying to the utilisation of traditional knowledge.

Textual Amendments

F1 Words in [reg. 2\(1\)](#) inserted (31.12.2020) by [The Nagoya Protocol \(Compliance\) \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1393\)](#), regs. 1, **2(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M1 OJ No L 150, 20.5.2014, p. 59.
M2 Miscellaneous series No. 5/2014: Cm 8856. ISBN 9781474102919.

PART 2

Competent authority and other functions

Competent authority

3. The Secretary of State is the competent authority for the purposes of the EU Regulation.

Register of collections

4. The Secretary of State must carry out the functions ^{F2}... under Article 5 of the EU Regulation.

Textual Amendments

F2 Words in [reg. 4](#) omitted (31.12.2020) by virtue of [The Nagoya Protocol \(Compliance\) \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1393\)](#), regs. 1, **2(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Monitoring user compliance

5. The Secretary of State must make the request referred to in Article 7(1) of the EU Regulation.

Complementary functions

6. The Secretary of State must—

^{F3}(a)

(b) take any other appropriate, effective and proportionate administrative or policy measures necessary to provide that genetic resources or traditional knowledge associated with genetic resources are utilised in accordance with the Nagoya Protocol.

Textual Amendments

- F3** Reg. 6(a) omitted (31.12.2020) by virtue of The Nagoya Protocol (Compliance) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1393), regs. 1, 2(4); 2020 c. 1, Sch. 5 para. 1(1)

PART 3

Civil sanctions

Power to impose civil sanctions

7.—(1) The Secretary of State may impose a requirement upon a person to comply with a compliance notice, a stop notice or to pay a variable monetary or a non-compliance penalty (a “civil sanction”) as set out in the Schedule.

(2) The Schedule (which provides for civil sanctions) has effect.

Due diligence obligations of the EU Regulation which are subject to civil sanctions

8.—(1) Subject to paragraphs (2) and (3), civil sanctions may be imposed in relation to a failure to comply with any of the following provisions—

- (a) Article 4(1) of the EU Regulation (obligation to exercise due diligence);
- (b) Article 4(3) of the EU Regulation (obligation to seek, keep and transfer information and documentation to subsequent users);
- (c) Article 7(2) of the EU Regulation (obligation to make a declaration of due diligence).

(2) There is no failure to comply with the provisions referred to in paragraph (1) if the Secretary of State is satisfied that the user has shown that they have effectively implemented best practice recognised under Article 8(2) of the EU Regulation.

(3) There is no failure to comply with Article 4(3) of the EU Regulation if the Secretary of State is satisfied that—

- (a) the user is considered to have exercised due diligence under Article 4(4) of the EU Regulation (use of the Plant Treaty's Standard Material Transfer Agreement for material not listed in Annex 1 to that Treaty);
- (b) the user is considered to have exercised due diligence under Article 4(7) of the EU Regulation (users obtaining material from a registered collection); or
- (c) the use is in accordance with Article 4(8) of the EU Regulation (use of pathogen for the purpose of public health emergency preparedness).

PART 4

Enforcement

Inspectors

9. The Secretary of State may authorise in writing a person (an “inspector”) to carry out inspections for the purpose of enforcing the EU Regulation.

Powers of entry

10.—(1) An inspector may, on serving reasonable notice, enter premises at any reasonable hour for the purpose of enforcing the EU Regulation, except premises used wholly or mainly as a private dwelling house.

(2) The requirement to serve a notice does not apply—

- (a) where reasonable efforts to agree an appointment have failed;
- (b) where an inspector reasonably believes that serving a notice would defeat the object of the entry;
- (c) where an inspector has a reasonable suspicion that an offence has been committed under regulation 13; or
- (d) in an emergency.

(3) An inspector must, if requested, produce a duly authenticated authorisation document.

(4) Paragraph (1) does not affect any right of entry conferred by a warrant issued in accordance with paragraph (5).

(5) A justice of the peace may by signed warrant permit an inspector to enter premises, if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied that—

- (a) there are reasonable grounds for an inspector to enter those premises for the purpose of enforcing the EU Regulation; and
- (b) one of the conditions in paragraph (6) is met.

(6) The conditions are that—

- (a) entry to the premises without warrant has been refused or is likely to be refused, and notice of the intention to apply for a warrant has been served on the occupier;
- (b) asking for admission to the premises, or serving notice of entry, would defeat the object of the entry;
- (c) entry is urgently required;
- (d) the premises are unoccupied or the occupier is temporarily absent.

(7) But the power in paragraph (5) does not extend to premises used wholly or mainly as a dwelling house.

(8) A warrant is valid for three months.

(9) An inspector entering premises under this regulation may—

- (a) be accompanied by such other persons as the inspector considers necessary;
- (b) bring onto the premises such equipment as the inspector considers necessary.

(10) Where an inspector enters premises which are unoccupied or from which the occupier is temporarily absent, the inspector must leave them as effectively secured against unauthorised entry as they were before the inspector's entry.

(11) An inspector may require a vehicle, vessel, aircraft or hovercraft that the inspector has reasonable grounds to believe is transporting evidence to stop to allow the inspector to exercise the powers conferred by these Regulations.

(12) In paragraph (5)—

- (a) in relation to Scotland, a reference to a justice of the peace is a reference to a sheriff, and the reference to “sworn information in writing” is a reference to evidence on oath;
- (b) in relation Northern Ireland, a reference to a justice of the peace is a reference to a lay magistrate, and the reference to “sworn information in writing” is a reference to a sworn complaint in writing.

Powers of inspection

- 11.**—(1) An inspector who has entered premises in exercise of a power under regulation 10 may—
- (a) inspect the premises and any products, goods or biological material found on the premises;
 - (b) search the premises;
 - (c) have access to, inspect and copy documents, records or other information, in whatever form they are held, and remove them to enable them to be copied;
 - (d) require the production of, and inspect and check the data on, and operation of, any computer and any associated apparatus used in connection with such documents, records or other information, and require computer records to be produced in a form in which they may be easily accessed and taken away by the inspector;
 - (e) take samples of products, goods or biological material;
 - (f) carry out any examination, investigation or test; and
 - (g) take photographs, measurements or recordings.
- (2) An inspector may require any person to provide as may be necessary for the purpose of enforcing the EU Regulation any—
- (a) assistance;
 - (b) documents, records or other information.

Restrictions on enforcement powers

- 12.** Nothing in these Regulations must be taken as—
- (a) requiring a person to produce any document which that person would be entitled to refuse to produce in any proceedings in any court on the grounds that it is the subject of legal professional privilege or, in Scotland, that it contains a confidential communication made by or to an advocate or solicitor in that capacity; or
 - (b) authorising a person to take possession of any document which is in the possession of a person who would be so entitled.

PART 5

Offences and penalties

Offences

- 13.** It is an offence to fail to comply with—
- (a) a compliance notice;
 - (b) a stop notice within the time limit specified in the notice;
 - (c) Article 4(6) of the EU Regulation (obligation to keep information for 20 years after utilisation).

Obstruction of an inspector

- 14.** Where an inspector exercises a power under these Regulations, it is an offence for any person to—
- (a) intentionally obstruct the inspector;

- (b) without reasonable excuse, fail to give the inspector any information or assistance that the inspector may reasonably require;
- (c) knowingly give false or misleading information to the inspector;
- (d) without reasonable excuse, fail to produce a record or document when reasonably required to do so by the inspector.

Offences by bodies corporate, partnerships and unincorporated associations

15.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate; and
- (b) the following provisions apply as they apply in relation to a body corporate—
 - (i) section 33 of the Criminal Justice Act 1925 (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980 (corporations); and
 - (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (procedure on charge) and Schedule 4 to the Magistrates Courts' (Northern Ireland) Order 1981 (corporations).

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

(4) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to the negligence of an officer,

that officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) If an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to the negligence of a partner,

that partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) If an offence under these Regulations committed by an unincorporated association is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or member of its governing body, or
- (b) to be attributable to the negligence of that officer or member,

that officer or member, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In paragraphs (4), (5) and (6), any reference to an officer, partner or member, as the case may be, includes any person purporting to act in such a capacity.

Penalties

16.—(1) A person guilty of an offence under paragraph (a) or (b) of regulation 13 is liable—

- (a) on summary conviction to a fine not exceeding £5,000 or to a term of imprisonment not exceeding three months, or to both;

- (b) on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or to both.
- (2) A person guilty of an offence under paragraph (c) of regulation 13^{F4}, or regulation 14,] is liable on summary conviction to a fine not exceeding £5,000.
- (3) For the purposes of paragraph (1), the reference to £5,000 in relation to a fine in Northern Ireland shall be read as meaning the statutory maximum.
- (4) For the purposes of paragraph (2), the reference to £5,000 in relation to a fine in Scotland or Northern Ireland shall be read as meaning level 5 on the standard scale.
- (5) Notwithstanding section 127 of the Magistrates Court Act 1980^{M7} (limitation of time) or article 19 of the Magistrates Court (Northern Ireland) Order 1981^{M8} (time within which complaint charging offence must be made to give jurisdiction), if the relevant condition in paragraph (6) is met in respect of an offence under regulation 13—
- (a) a magistrates' court in England and Wales, may try an information;
- (b) a magistrates' court in Northern Ireland, may try a complaint.
- (6) The condition is that, within three years of the date of the offence or within one year from the discovery of the offence by the prosecutor, whichever is earlier—
- (a) in the case of England and Wales, the information is laid;
- (b) in the case of Northern Ireland, the complaint is made.
- (7) In Scotland, summary proceedings for an offence under regulation 13 may be commenced within three years of the date of the offence or within one year of the discovery of the offence by the prosecutor, whichever is earlier.
- (8) For the purposes of paragraph (7), section 136(3) of the Criminal Procedure (Scotland) Act 1995^{M9} will apply as it applies for the purposes of that section.
- (9) For the purposes of this regulation—
- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

Textual Amendments

- F4** Words in reg. 16(2) inserted (11.10.2015) by [The Nagoya Protocol \(Compliance\) \(Amendment\) Regulations 2015 \(S.I. 2015/1691\)](#), **regs. 1, 2**

Marginal Citations

- M7** 1980 c. 43.
M8 S.I. 1981/1675.
M9 1995 c. 46.

Recovery of expenses of enforcement

17.—(1) This regulation applies where a court convicts a person of an offence under regulation 13.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the Secretary of State for any expenditure the Secretary of State or

any inspector has reasonably incurred in investigating the offence, including expenditure incurred in the exercise of any power conferred by regulation 10 or 11.

PART 6

Miscellaneous provisions

Service of notices

18.—(1) Any notice served under these Regulations must be in writing and may be amended, suspended or revoked in writing at any time.

(2) A notice may be served on a person by—

- (a) personal delivery;
- (b) leaving it at the person's proper address; or
- (c) sending it by post or by electronic means to person's proper address.

(3) In the case of a body corporate, a notice may be served on an officer of that body.

(4) In the case of a partnership, a notice may be served on a partner or person who has control or management of the partnership business.

(5) In the case of an unincorporated association, a notice may be served on an officer of the association or a member of its governing body.

(6) For the purposes of this regulation and section 7 of the Interpretation Act 1978 (which relates to service of documents by post) so far as it applies to this regulation, “proper address” means—

- (a) in the case of a body corporate or an officer of that body—
 - (i) the registered or principal office of the body; or
 - (ii) the email address of the officer.
- (b) in the case of a partnership or a partner or person who has control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of the partner or person who has that control or management.
- (c) in the case of an unincorporated association or an officer of the association or member of its governing body—
 - (i) the principal office of the association; or
 - (ii) the email address of the officer or member;
- (d) in any other case, a person's last known address, which includes an email address.

(7) For the purposes of paragraph (6), the principal office of a company registered outside the United Kingdom or a partnership or unincorporated association carrying on business outside the United Kingdom is its principal office in the United Kingdom.

(8) If the name or address of any occupier of premises on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

Review

19.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;

- (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to the how the EU Regulation is enforced in other member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.
- (4) The first report under this regulation must be published before the end of the period of five years beginning on the date this regulation comes into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Department for Environment, Food and Rural
Affairs

de Mauley
Parliamentary Under Secretary of State

Changes to legislation:

There are currently no known outstanding effects for the The Nagoya Protocol (Compliance) Regulations 2015.