Changes to legislation: *The Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005 is up to date with all changes known to be in force on or before 30 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 316

ENVIRONMENTAL PROTECTION

The Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005

Made - - - -	*7th June 2005*
Laid before the Scottish Parliament - - - -	*8th June 2005*
Coming into force - -	*30th June 2005*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1] and of all other powers enabling them in that behalf, hereby make the following Regulations:

F1 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred on 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.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005 and shall come into force on 30th June 2005.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"the Council Regulation" means Regulation (EC) No. 1946/2003[F2] of the European Parliament and of the Council on transboundary movements of genetically modified organisms;

"electronic communications" has the same meaning as in the Electronic Communications Act 2000 [F3];

"inspector" means a person appointed as such under regulation 4;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 [F4];

"specified Community provision" means any requirement specified in column 2 of Schedule 1 in relation to a provision of the Council Regulation referred to in column 1 of that Schedule.

(2) In these Regulations–

(a) expressions 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; and

(b) unless the context otherwise requires, any reference to a numbered article is a reference to the article so numbered in the Council Regulation.

F2 O.J. No. L 287, 5.11.2003, p.1.
F3 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.
F4 1994 c. 39.

Competent authority

3. The Scottish Ministers are designated as competent authority for the purpose of Article 17.

Enforcement

4.—(1) It shall be the duty of Scottish Ministers to enforce and execute the provisions of these Regulations and the Council Regulation.

(2) The Scottish Ministers may, in any case or in cases of a particular description, direct that the duty referred to in paragraph (1) shall be discharged–

(a) by a local authority in its area and not by Scottish Ministers; or

(b) by a local authority in its area and Scottish Ministers acting jointly.

(3) The Scottish Ministers or a local authority may appoint as inspectors such persons as they or it consider necessary for the purpose of enforcing these Regulations and the Council Regulation.

(4) Any appointment of–

(a) an inspector under section 67(3) of the Agriculture Act 1970 [F5];

(b) an authorised officer under section 5(6) of the Food Safety Act 1990 [F6]; or

(c) an inspector under Part VI of the Environmental Protection Act 1990 [F7],

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

F5 1970 c. 40.
F6 1990 c. 16.
F7 1990 c. 43.

Powers of inspectors

5.—(1) An inspector may, on production (if so required) of evidence of authority to do so, exercise any of the powers specified in Schedule 2 to these Regulations for the purposes of the enforcement of these Regulations and the Council Regulation.

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

Obtaining information from persons

6.—(1) For any purpose of the enforcement and execution of these Regulations and the Council Regulation, the Scottish Ministers or a local authority may, by notice served on any person who appears to them–

(a) to be involved in the exportation of 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 that person 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 activity in question.

(3) Nothing in paragraph (1) authorises the Scottish Ministers or the local authority to require disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

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 5 and Schedule 2;

(c) without reasonable excuse to fail to comply with any requirement imposed under regulation 5 and Schedule 2, or regulation 6;

(d) 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; or

(ii) a requirement an inspector made for a purpose in connection with the execution or enforcement of these Regulations or the Council Regulation; or

(e) intentionally to make a false entry in any record required to be kept under the Council Regulation.

(2) It shall be a defence for a person charged with an offence under paragraph (1) to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by that person or another person under that person's control.

Offences due to fault of another person

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 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.—(1) Where an offence under these Regulations committed by a body corporate or a Scottish 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 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 or the partnership, as the case may be, 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.

Time limits

10.—(1) Proceedings for an offence under regulation 7 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 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.

Penalties

11.—(1) Any person who contravenes or fails to comply with any of the specified Community provisions contained in Part I of Schedule 1 to these Regulations shall be guilty of an offence and liable–

(a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three 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.

(2) Any person who contravenes or fails to comply with any of the specified Community provisions contained in Part II of Schedule 1 to these Regulations shall be guilty of an offence and 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.

(3) A person guilty of an offence under sub-paragraphs (b), (c), (d) or (e) of regulation 7(1) 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.

Service of notices

12.—(1) Any notice to be served on any person under these Regulations shall be in writing and notice may be served–

(a) by delivering it or by sending it by post to that person at that person's last known address;

(b) in the case of an body corporate, by delivering it or sending it by post to its secretary or clerk at its registered or principal office;

(c) in the case of a partnership, by delivering it or by sending it by post to the registered or principal office of the partnership;

(d) where that person has consented to receive such notices by electronic communications, by sending it by electronic communications to that person.

(2) 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 notice may be 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.

(3) Where a notice is served using electronic communications, the service is deemed to be effected by properly addressing and transmitting the electronic communication.

LEWIS MACDONALD

St Andrew's House, Edinburgh — Authorised to sign by the Scottish Ministers