SCOTTISH STATUTORY INSTRUMENTS

2004 No. 438

ENVIRONMENTAL PROTECTION

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

Made - - - -	*6th October 2004*
Laid before the Scottish Parliament - - - -	*7th October 2004*
Coming into force - -	*15th November 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1] and 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 upon 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 (Traceability and Labelling) (Scotland) Regulations 2004 and shall come into force on 15th November 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

[[F2]"the Council Regulation" means Regulation (EC) No 1830/2003 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 [F3];

[[F4]"feed" has the same meaning as in the Council Regulation;**]**

"food" has the same meaning as in section 1 of the Food Safety Act 1990 [F5];

"inspector" means a person appointed as such under regulation 3 of these Regulations;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 [F6];

"specified Community provision" means a provision of the Council Regulation specified in column 1 and described in column 2 of Schedule 1 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 and in these Regulations any reference to a numbered Article is a reference to the Article so numbered in the Council Regulation.

F2 Words in reg. 2(1) substituted (15.3.2019) by The Genetically Modified Organisms (Deliberate Release etc.) (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/86), regs. 1(1), **23**
F3 2000 c. 7.
F4 Words in reg. 2(1) inserted (1.4.2021) by The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (S.S.I. 2020/467), regs. 1(2), **4(2)**
F5 1990 c. 16.
F6 1994 c. 39.

Enforcement

3.—**[**[F7](1) Subject to paragraph (2)—

(a) each local authority must, in its area, enforce and execute these Regulations and the Council Regulation, in so far as it relates to food, and

(b) Food Standards Scotland must enforce and execute these Regulations and the Council Regulation, in so far as it relates to feed.**]**

[[F8](2) The Scottish Ministers may, in relation to any case of a particular description, direct that the duty of a local authority or Food Standards Scotland under paragraph (1) be discharged—

(a) in so far as it relates to food, by the Scottish Ministers instead of the local authority or by the Scottish Ministers and the local authority acting jointly,

(b) in so far as it relates to feed by the Scottish Ministers instead of Food Standards Scotland or by the Scottish Ministers and Food Standards Scotland acting jointly.**]**

(3) A local authority or the Scottish Ministers 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–

[F9](a) . . . . . .

(b) an authorised officer under section 5(6) of the Food Safety Act 1990 [F10]; or

(c) an inspector under Part VI of the Environmental Protection Act 1990 [F11],

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

F7 Reg. 3(1) substituted (1.4.2021) by The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (S.S.I. 2020/467), regs. 1(2), **4(3)(a)**
F8 Reg. 3(2) substituted (1.4.2021) by The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (S.S.I. 2020/467), regs. 1(2), **4(3)(b)**

F9 Reg. 3(4)(a) omitted (1.4.2021) by virtue of The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (S.S.I. 2020/467), regs. 1(2), **4(3)(c)**
F10 1990 c. 16.
F11 1990 c. 43.

Powers of inspectors

4.—(1) An inspector may, on producing (if so required) a duly authenticated document showing the authority of that inspector, exercise any of the powers specified in Schedule 2 to these Regulations for the purposes of the enforcement and execution of these Regulations and the Council Regulation.

(2) The powers in paragraph (1) 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

5.—**[**F12(1) Subject to regulation 3(1), for the purpose of the enforcement and execution of these Regulations and the Council Regulation, the local authority, Food Standards Scotland or the Scottish Ministers (as the case may be) may by notice in writing served on any person who falls within paragraph (1A), require that person to furnish such relevant information available to the person as is specified in the notice, in such form and within such period as is specified.

(1A) A person falls within this paragraph if the person appears to the local authority, Food Standards Scotland or the Scottish Ministers (as the case may be)—

(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.**]**

(2) For the purposes of this regulation "relevant information" means information concerning any aspects of the activities in question.

(3) Nothing in paragraph (1) authorises the local authority **[**F13, Food Standards Scotland**]** or the Scottish Ministers 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.

F12 Reg. 5(1)(1A) substituted for reg. 5(1) (1.4.2021) by The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (S.S.I. 2020/467), regs. 1(2), **4(4)(a)**
F13 Words in reg. 5(3) inserted (1.4.2021) by The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (S.S.I. 2020/467), regs. 1(2), **4(4)(b)**

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 the inspector shall 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;

(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 within the period specified in the notice, an inspector may arrange for it to be complied with and all reasonable costs of taking such action shall be recoverable by the local authority **[**F14, Food Standards Scotland**]** or the Scottish Ministers (as the case may be) as a debt due by the person on whom the notice was served.

F14 Words in reg. 6(4) inserted (1.4.2021) by The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (S.S.I. 2020/467), regs. 1(2), **4(5)**

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 and Schedule 2;

(c) without reasonable excuse, to fail to comply with–

(i) any requirement imposed under regulation 4 and Schedule 2, or regulation 5;

(ii) the terms of any notice issued under 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) a requirement imposed by the specified Community provisions;

(ii) a requirement or prohibition of 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)(a) 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 by any person under that person's 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 another person, that other person shall be guilty of the offence, and that other 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.—(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 other 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 partnership 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 was a director of the body corporate.

Time Limits

10.—(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 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. 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.

Service of Notices

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

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

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

(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 on whom it should be served, or the premises are unoccupied, the document 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 have been effected by properly addressing and transmitting the notice.