Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

2005 No. 1914 (W.157)

ENVIRONMENTAL PROTECTION, WALES

The Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005

Made - - - -	*12 July 2005*
Coming into force - -	*15 July 2005*

The National Assembly for Wales, being designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to the control and regulation of the deliberate release, placing on the market and transboundary movement of genetically modified organisms, in exercise of the powers conferred on it by that section, makes the following Regulations:

F1 S.I. 2003/2901.
F2 1972 c. 68.

Title, commencement and application

1. The title of these Regulations is the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, they come into force on 15 July 2005 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the Assembly" ("*y Cynulliad*") means the National Assembly for Wales;

"the Council Regulation" ("*Rheoliad y Cyngor*") means Regulation (EC) No. 1830/2003[F3] 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 communication" ("*cyfathrebiad electronig*") has the same meaning as in the Electronic Communications Act 2000 [F4];

"inspector" ("*arolygydd*") means a person appointed as such under regulation 4;

"local authority" ("awdurdod lleol") means—

(a) a county or county borough council, and

(b) where there is a Port Health Authority, that authority in addition to the authority specified in (a) above.

"specified Community provision" ("*darpariaeth Gymunedol benodedig*") 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.

(3) A requirement imposed on a person by these Regulations to do or to refrain from doing an act and which is conditional upon some notice having been given or requirement having been communicated to that person by an inspector, by a local authority or by the Assembly is also to be imposed if such notice was given or requirement communicated by a person having the power to do so under regulations applying to any other part of the United Kingdom which give effect to the Council Regulation.

F3 OJ No. L268, 18.10.2003 p.24.
F4 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.

Enforcement

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

(2) The Assembly 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 is to be discharged—

(a) by the Assembly and not by the local authority; or

(b) by the Assembly and the local authority acting jointly.

Appointment of inspectors

4.—(1) Each local authority, or in any case to which a direction of the Assembly under regulation 3(2) applies, the Assembly, may appoint as inspectors such persons as the local authority or the Assembly 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 [F5], or

(b) an inspector under—

(i) section 67(3) of the Agriculture Act 1970 [F6], or

(ii) 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 officer or inspector as an inspector for the purpose of these Regulations.

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

Rights of Entry

5.—(1) An inspector may, if so required, on production of documentary evidence showing his or her authority, 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 any part of premises used wholly or mainly for domestic purposes.

(3) The powers of an inspector are—

(a) at any reasonable time—

(i) to enter premises which he or she has reason to believe it is necessary for him or her to enter and to take with him or her any person duly authorised by the local authority by which the inspector was appointed or, in any case to which a direction of the Assembly under regulation 3(2) applies, by the Assembly and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his or her duty, a constable; and

(ii) to take with him or her 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 or she has power to enter, or anything in or on such premises, 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 or she has power to enter;

(e) in the case of any product found on premises which he or she 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 or her 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 or she has reasonable cause to believe to be able to give any information relevant to any test or inspection under this paragraph to answer such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his or her answers;

(g) for the purposes of paragraph (f), the inspector may require that person to answer such questions in the absence of any other persons, other than a person nominated by the first mentioned person and any persons whom the inspector may allow to be present;

(h) 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 which it is necessary for him or her to see for the purposes of any test or inspection under this paragraph;

(i) to inspect, and take copies of, or of any entry in, such records; and

(j) to require any person to afford him or her 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 or her by this regulation.

(4) Where under the power conferred by paragraph (3)(e) above an inspector takes possession of anything found on any premises, he or she must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars sufficient to identify the inspector, what he or she has seized and stating that he or she 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 must, if it is practical and safe for him or her 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 any purpose of the execution and enforcement of these Regulations and the specified Community provisions, the local authority or the Assembly 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 or her 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 or she 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 any product has been placed on the market prior to the date of the notice, require the withdrawal of any products described in the notice that have not been labelled in accordance with the Council Regulation 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 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 must 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 taking such steps are recoverable by the local authority or by the Assembly as a debt from the person on whom the notice was served.

Offences

8.—(1) It is 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 or regulation 6;

(d) without reasonable excuse to fail to comply with the terms of a notice issued under regulation 7;

(e) 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

(f) intentionally to make a false entry in any record required to be kept under a specified Community provision.

(2) It is a defence for a person charged with an offence under regulation 8(1)(a) to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or herself or by a person under his or her 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 is 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, that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.