Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Genetically Modified Organisms (Transboundary Movement) (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. 1912 (W.155)

ENVIRONMENTAL PROTECTION, WALES

The Genetically Modified Organisms (Transboundary Movement) (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 movements 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 (Transboundary Movement) (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 1946/2003 [F3] of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms;

"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 5;

"local authority" ("*awdurdod lleol*") means County or County Borough Council;

"specified **[**[F5]EU**]** provision" ("*darpariaeth Gymunedol benodedig*") means a provision of the Council Regulation specified in the Schedule to these Regulations.

(2) Expressions in these Regulations which are not defined in paragraph (1) above 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. L 287 p.1, 5.11.2003.
F4 2000 c. 7; the definition of electronic communications in section 15(1) was amended by the Electronic Communications Act 2003 (c. 21), **section 406(1)** and Schedule 17, paragraph 158.
F5 Words in Regulations substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 3-6

Competent Authority

3. The National Assembly for Wales is designated as Competent Authority for the purpose of the Council Regulation.

Enforcement

4.—(1) Except as provided for in paragraph (2), the the Assembly must enforce and execute the provisions of these Regulations and the specified **[**F5EU**]** provisions.

(2) The Assembly may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed by this regulation is to be discharged—

(a) by each local authority within its area, and not by the Assembly; or

(b) by each local authority within its area, and by the Assembly acting jointly.

F5 Words in Regulations substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 3-6

Appointment of inspectors

5.—(1) The Assembly, or in any case to which a direction of the Assembly under regulation 4(2) applies, the local authority, may appoint as inspectors such persons as the Assembly or the local authority respectively considers necessary for the purpose of enforcing these Regulations and the specified **[**F5EU**]** provisions.

(2) Any appointment of an inspector under Part VI of the Environmental Protection Act 1990 F6 having effect at the coming into force of these Regulations has effect as if it were an appointment of the inspector as an inspector by the National Assembly for the purpose of these Regulations.

F5 Words in Regulations substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 3-6
F6 1990 c. 43.

Rights of Entry

6.—(1) An inspector may, if so required, on production of documentary evidence showing his or her authority, exercise any of the powers specified in sub-paragraph (3) below for the purposes of the enforcement and execution of these Regulations and the specified **[**[F5]EU**]** 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 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 to be a genetically modified organism, or to consist of or include genetically modified organisms, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it;

(ii) to ensure that it is not tampered with before his or her examination of it is completed; and

(iii) 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 **[**[F5]EU**]** 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.

F5 Words in Regulations substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 3-6

Obtaining information from persons

7.—(1) For any purpose of the enforcement and execution of the Council Regulation, the Assembly may, by notice in writing served on any person who appears to it-—

(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 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.

Offences

8.—(1) It is an offence for a person—

(a) to contravene, or to fail to comply with, any specified **[**F5EU**]** provision;

(b) to obstruct an inspector in the exercise of a power conferred by regulation 6 or regulation 7;

(c) without reasonable excuse to fail to comply with any requirement imposed 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) any requirement imposed by the specified **[**F5EU**]** provisions; or

(ii) a request of an inspector made for a purpose in connection with the administration or enforcement of these Regulations;

(e) intentionally to make a false entry in any record required to be kept under a specified **[**F5EU**]** 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.

F5 Words in Regulations substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 3-6

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.

Penalties

11.—(1) Any person who contravenes or fails to comply with any of the specified **[**F5EU**]** provisions in Part I of the Schedule to these Regulation is 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 indictement 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 **[**F5EU**]** provisions in Part II of the Schedule to these Regulations is 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 regulation 8(1)(b), (c), (d) or (e) above is 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.

F5 Words in Regulations substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 3-6

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 or her knowledge.

(2) No such proceedings may 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 or her opinion to warrant the proceedings came to his or her knowledge is conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.