Changes to legislation: *The Nagoya Protocol (Compliance) Regulations 2015 is up to date with all changes known to be in force on or before 07 April 2019. 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)*

STATUTORY INSTRUMENTS

2015 No. 821

ENVIRONMENTAL PROTECTION

The Nagoya Protocol (Compliance) Regulations 2015

Made - - - -	*17th March 2015*
Laid before Parliament	*23rd March 2015*
Coming into force in accordance with regulation 1	

The Secretary of State, who is designated for the purposes of section 2(2) of the European Communities Act 1972 [F1] in relation to the environment [F2], makes these Regulations in exercise of the powers conferred by that section of that Act.

Annotations:

F1 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), **section 27(1)(a)**, and the European Union (Amendment) Act 2008 (c. 7), **Part 1** of the Schedule. Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to implementing obligations under EU law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales.

F2 S.I. 2008/301.

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 [F3];

"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 [F4];

"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.

Annotations:

F3 OJ No L 150, 20.5.2014, p. 59.

F4 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 of the member State under Article 5 of the EU Regulation.

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—

(a) carry out the functions of the member State under Article 13 of the EU Regulation;

(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.

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;