STATUTORY RULES OF NORTHERN IRELAND

2005 No. 209

EUROPEAN COMMUNITIES ENVIRONMENTAL PROTECTION

The Genetically Modified Organisms (Transboundary Movements) Regulations (Northern Ireland) 2005

Made - - - -	*12th April 2005*
Coming into operation	*31st May 2005*

The Department of the Environment, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the control and regulation of genetically modified organisms, in exercise of the powers conferred on it by that section and of every other power in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Genetically Modified Organisms (Transboundary Movements) Regulations (Northern Ireland) 2005 and shall come into operation on 31st May 2005.

Interpretation

2.—(1) In these Regulations –

"the Council Regulation" means Regulation 1946/2003(**3**) of the European Parliament and of the Council on transboundary movements of genetically modified organisms;

"the Department" means the Department of the Environment;

"electronic communications" has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001(**4**);

"inspector" means a person appointed under regulation 5;

"specified Community provision" means a provision of the Council Regulation specified in column 1 of the Schedule;

(**1**) S.I.1991/755
(**2**) 1972 c. 68
(**3**) O.J. No. L287, 5.11.2003, p. 1
(**4**) 2001 c. 9 (N.I.); the definition of electronic communications in section 4(1) was amended by the Communications Act 2003 (c. 21) section 406(1) and Schedule 17, paragraph 170

(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) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to an Act of the Assembly.

Competent Authority

3. The Department is designated as Competent Authority for the purpose of the Council Regulation.

Enforcement

4.—(1) Subject to paragraph (2) each district council shall, in its district, enforce these Regulations and the specified Community provisions.

(2) The Department may, in relation to any case or to cases of a particular description, direct that the duty of a district council under paragraph (1) be discharged –

(a) by the Department instead of the district council, or

(b) by the Department and the district council acting jointly.

Appointment of Inspectors

5.—(1) A district council or the Department may appoint as inspectors such persons as it or they consider necessary for the purpose of enforcing these Regulations and the specified Community provisions.

(2) Any appointment of an inspector under Article 11 of the Genetically Modified Organisms (Northern Ireland) Order 1991(**6**) having effect at the coming into operation of these Regulations shall have effect as if it were an appointment of the inspector as an inspector for the purpose of these Regulations.

Rights of Entry and inspection

6.—(1) An inspector may, on production of his authority (if so required), exercise any of the powers specified in paragraph (3) for the purposes of the enforcement of these Regulations and the specified Community provisions.

(2) For these purposes, those powers are exercisable in relation to any premises other than those 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 has reason to believe it is necessary for him to enter and to take with him any person duly authorised by the Department and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and

(ii) to take with him 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;

(**5**) 1954 c. 33 (N.I.)
(**6**) S.I. 1991/1714 (N.I. 19)

(c) to direct that any, or any part of, premises which he has power to enter, or anything in or on such premises, shall 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 has power to enter;

(e) in the case of anything found on premises which he 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 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 has reasonable cause to believe to be able to give any information relevant to any test or inspection under this paragraph to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

(g) 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 provisions or it is necessary for him to see for the purposes of any test or inspection under this sub-paragraph and to inspect, and take copies of, or of any entry in, the records; and

(h) to require any person to afford him 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 by this regulation.

(4) Where under the power conferred by paragraph (3)(e) an inspector takes possession of anything found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars sufficient to identify what he has seized and stating that he 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 shall, if it is practical and safe for him 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

7.—(1) For any purpose of the enforcement and execution of these Regulations and the specified Community provisions, the Department 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 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 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 6;

(c) without reasonable excuse to fail to comply with a request made under regulation 6(3)(g) or regulation 7;

(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 a specified Community provision; or

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

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

(2) It shall be a defence for a person charged with an offence under paragraph 8(1)(a) to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his 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 shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph 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, he as well as the body corporate 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 preceding subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Penalties

11.—(1) Any person who contravenes or fails to comply with any of the specified Community provisions contained in Part 1 of the Schedule 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 11 of the Schedule 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.