

Scottish Statutory Instrument 2004 No. 438

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

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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^[1] and all other powers enabling them in that behalf, hereby make the following Regulations:

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-

"the Council Regulation" means Regulation (EC) No. 1830/2003^[2] 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^[3];

"electronic communications" has the same meaning as in the Electronic Communications Act 2000^[4];

"food" has the same meaning as in section 1 of the Food Safety Act 1990^[5];

"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^[6];

"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.

Enforcement

3. - (1) Subject to paragraph (2), each local authority shall, in its area, enforce and execute these Regulations and the Council Regulation.

(2) The Scottish Ministers may, in relation to any case or to cases of a particular description, direct that the duty of a local authority under paragraph (1) be discharged,

(a) by the Scottish Ministers instead of the local authority, or

(b) by the Scottish Ministers and the local authority 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-

(a) an inspector under section 67(3) of the Agriculture Act 1970[7];

(b) an authorised officer under section 5(6) of the Food Safety Act 1990[8]; or

(c) an inspector under Part VI of the Environmental Protection Act 1990[9],

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.

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. - (1) For the purpose of the enforcement and execution of these Regulations and the Council Regulation, the local authority or the Scottish Ministers may, by notice in writing served on any person who appears to it or them-

(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 the person 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.

(3) Nothing in paragraph (1) authorises the local authority 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.

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 or the Scottish Ministers (as the case may be) as a debt due by the person on whom the notice was served.

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.

ALLAN WILSON

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House, Edinburgh
6th October 2004

SCHEDULE 1

Regulation 2(1)

Specified Community Provisions

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Council Regulation</i>	<i>Subject Matter</i>
Article 4(1)	Requirement to ensure, at the first stage of placing on the market of a product consisting of or containing GMOs, that specified information is transmitted in writing to the operator receiving the product.
Article 4(2)	Requirement to ensure, at subsequent stages of placing on the market, that the information specified in article 4(1) of the Council Regulation is transmitted in writing to the operator receiving the product.
Article 4(3)	Requirement to ensure that products consisting of or containing GMOs to be used as food or feed or for processing are accompanied by a declaration of use, along with a list of the unique identifiers for all those GMOs used to constitute the mixture.
Article 4(4)	Requirement to keep records of the information referred to in paragraphs (1), (2) and (3) of article 4 for the specified period.
Article 4(6)	Requirement to ensure that the specified information appears on the labels of products consisting of or containing GMOs.
Article 5(1)	Requirement to ensure, when placing products produced from GMOs on the market, that the specified information is transmitted in writing to the operator receiving the product.
Article 5(2)	Requirement to keep records of the information referred to in article 5(1) for the specified period.

SCHEDULE 2

Regulation 4(1)

Powers of Inspectors

1. At any reasonable time-

(a) to enter premises which the inspector has reason to believe it is necessary to enter and to take with the inspector any person duly authorised by a local authority or the Scottish Ministers and, if the inspector has reasonable cause to apprehend the risk of obstruction, a constable; and

(b) to take any equipment or materials required for any purpose for which the power of entry is being exercised.

2. To carry out such tests and inspections (and to make such recordings), as may in any circumstances be necessary.

3. To direct that any, or any part of, premises which the inspector 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.

4. To take samples of any organisms, articles or substances found in or on any premises which the inspector has power to enter.

5. In the case of any product found on premises which the inspector has power to enter which appears-

(a) to consist of or contain genetically modified organisms and which the inspector has reasonable cause to believe is not labelled in accordance with the Council Regulation, or

(b) if food or feed, to be produced from genetically modified organisms and in relation to 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-

(i) to examine it;

(ii) to ensure that it is not tampered with before any 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.

6. To require any person whom the inspector has reasonable cause to believe to be able to give any information relevant to any test or inspection under this Schedule to answer (in the absence of persons other than a person nominated by the first named person to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask.

7. 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 of the specified Community provisions or it is necessary for the inspector to see for the purposes of any test or inspection under this Schedule and to inspect, and take copies of, or of any entry in, the records.

8. To require any person to afford the inspector such facilities and assistance with respect to any matters or things within the control of that person or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred by this regulation.

9. Where under the power conferred by paragraph 5 an inspector takes possession of anything found on any premises, the inspector 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 has been seized and stating that the inspector 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 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.

10. Nothing in paragraph 6 authorises the inspector 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as respects Scotland, for the execution and enforcement of 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, which is directly applicable.

The Council Regulation seeks to ensure that consumers are fully and reliably informed about genetically modified organisms and the products, food and feed produced therefrom, so as to enable them to make an informed choice of product. The Council Regulation therefore provides a framework for the traceability of products consisting of or containing genetically modified organisms and food and feed produced from genetically modified organisms. The Council Regulation has as its objective the facilitation of accurate labelling, the monitoring of the effects on the environment and, where appropriate, on health, and the implementation of the appropriate risk management measures including, if necessary, withdrawal of products.

Regulation 3 makes provision for enforcement of the Regulations and of the Council Regulation, and for the appointment of inspectors. Regulation 4 and Schedule 2 sets out the powers of the inspectors including the power to carry out tests and inspections, to take samples, and to require the provision of information. Regulation 5 makes provision for local authorities and Scottish Ministers to obtain information.

Regulation 6 provides for the service by inspectors of notices dealing with incorrectly labelled products.

Regulation 7 makes it an offence to contravene specified Community provisions; to obstruct inspectors in the exercise of powers under these Regulations; to fail to comply with any requirement of the inspectors and to give false information. Regulation 8 makes provision in respect of offences

committed by third parties. Regulation 9 provides for offences committed by corporate bodies.

Regulation 10 specifies time limits for bringing prosecutions.

Regulation 11 prescribes penalties for the offences contained in regulation 7.

Regulation 12 makes provision for service of notices under these Regulations.

A Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Executive Environment and Rural Affairs Department, GM Team, Victoria Quay, Edinburgh EH6 6QQ.

Notes:

[1] 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.[back](#)

[2] O.J. No. L 268, 18.10.2003, p.24.[back](#)

[3] O.J. No. L 106, 17.4.2001, p.1.[back](#)

[4] 2000 c.7.[back](#)

[5] 1990 c.16.[back](#)

[6] 1994 c.39.[back](#)

[7] 1970 c.40.[back](#)

[8] 1990 c.16.[back](#)

[9] 1990 c.43.[back](#)

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