

2005 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as respects Wales, for the execution and enforcement of Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 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 (OJ No. L 268, 18.10.2003, p.24), which is directly applicable.

The Regulations come into force on [].

Regulation 3 provides for the enforcement of the Regulations and the specified Community provisions.

Regulation 4 make provision for the appointment of inspectors.

Regulation 5 provides powers of entry, including the power to carry out tests and inspections and to take samples.

Regulation 6 enables inspectors to require the provision of information.

Regulation 7 provides for the service by inspectors of notices dealing with incorrectly labelled products.

Regulation 8 makes it an offence to contravene specified Community provisions; to obstruct inspectors in the exercise of powers under these Regulations; and to give false information; and sets out a due diligence

defence in respect of the contravention of specified Community provisions.

Regulation 9 makes provision for offences committed due to the fault of another person.

Regulation 10 makes provision for offences committed by corporate bodies.

Regulations 11 and 12 prescribe penalties and specify time limits for bringing prosecutions.

A Regulatory Impact Assessment has been prepared for these Regulations and a copy has been placed in []. Copies of the Regulatory Impact Assessment can be obtained from [].

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**ENVIRONMENTAL
PROTECTION, WALES**

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

Made 2005
Coming into force 2005

The National Assembly for Wales, being designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) 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:

Title, commencement and application

1. These Regulations—

- (a) may be cited as the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005,
- (b) come into force on [] 2005, and
- (c) apply in relation to Wales.

Interpretation

2.—(1) In these Regulations —

“the Assembly” means the National Assembly for Wales;

“the Council Regulation” means Regulation (EC) No. 1830/2003(c) of the European Parliament and of the Council concerning the traceability and labelling of genetically modified organisms and

(a) S.I. 2003/291.

(b) 1972 c. 68.

(c) OJ No. L268, 18.10.2003 p.24.

the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC;

“electronic communications” has the same meaning as in the Electronic Communications Act 2000(a);

“inspector” means a person appointed as such under regulation 4;

“local authority” 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” 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.

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(b), or

(a) 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.

(b) 1990 c.16.

- (b) an inspector under —
 - (i) section 67(3) of the Agriculture Act 1970^(a), or
 - (ii) part VI of the Environmental Protection Act 1990^(b),

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.

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 administration of 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 he 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;

(a) 1970 c. 40.
(b) 1990 c. 43.

- (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. For the purposes of this paragraph, 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;
 - (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 provision or it is necessary for him or her to see for the purposes of any test or inspection under this paragraph and to inspect, and take copies of, or of any entry in, the records; and
 - (h) 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 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.

(5) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(f) above is admissible in evidence in any proceedings in Wales against that person.

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 must 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. 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;
- (d) without reasonable excuse to fail to comply with a request made under regulation 5(3)(g) or regulation 6;
- (e) without reasonable excuse to fail to comply with the terms of a notice issued under regulation 7;
- (f) 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
- (g) 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.

Penalties

11. A person guilty of an offence under these Regulations 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.

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.

Service of Notices

13.—(1) Any notice to be served under these Regulations must be in writing.

(2) Any such notice may be served on a person—

- (a) by delivering it to that person, or by sending it by post to him or her at his or her usual or last known address;
- (b) in the case of an incorporated body, by delivering it to the secretary or clerk at the registered or principal office, or by sending it by post to him or her at that office;
- (c) in the case of a partnership (other than a limited liability partnership), by delivering it to a partner or person having the control or management of the partnership business, or by sending it by post to him or her at the registered or principal office of that partnership;
- (d) in the case of a limited liability partnership, by delivering it to a member of the limited liability partnership, or by sending it by post to him or her at the registered or principal office of that partnership;
- (e) in the case of any other person, by leaving it, or sending it by post to him or her, at his usual or last known address; or
- (f) where an address for service using electronic communications has been given by that person, sending it using electronic communications to that person at that address.

(3) Where a notice 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 notice 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.

(4) Where a notice is served using electronic communications, the service is deemed to be effected by properly addressing and transmitting the electronic communication.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(a)

[Date]

The Presiding Officer of the National Assembly

(a) 1998, c.38

THE SCHEDULE

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)	Failure 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)	Failure 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)	Failure 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)	Failure to keep records of the information referred to in paragraphs (1), (2) and (3) of article 4 for a period of five years.
Article 4(6)	Failure to ensure that the information specified in article 4(6) appears on the labels of products consisting of or containing GMOs.
Article 5(1)	Failure to ensure, when placing products produced from GMOs on the market, that specified information is transmitted in writing to the operator receiving the product.
Article 5(2)	Failure to keep records of the information referred to in article 5(1) for a period of five years.