
STATUTORY INSTRUMENTS

1991 No. 1714 (N.I. 19)

**The Genetically Modified Organisms
(Northern Ireland) Order 1991**

- - - - - 24th July 1991

Preliminary

Title and commencement

1.—(1) This Order may be cited as the Genetically Modified Organisms (Northern Ireland) Order 1991.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint^{F1}.

F1 partly exercised SR 1994/141

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F2} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“acquire”, in relation to genetically modified organisms, includes any method by which such organisms may come to be in a person's possession, other than by their being imported;

“consent” means a consent granted under Article 8, and a reference to the limitations or conditions to which a consent is subject is a reference to the limitations or conditions subject to which the consent for the time being has effect;

“the Department” means^{F3} (subject to Article 22)^{F3} the Department of the Environment;

“descendant”, in relation to a genetically modified organism, means any other organism whose genes or other genetic material is derived, through any number of generations, from that organism by any process of reproduction;

“import” means import into Northern Ireland (except from Great Britain);

“premises” includes any land;

“prohibition notice” means a notice under Article 7.

F2 1954 c. 33 (N.I.)

F3 1999 c.28

Status: Point in time view as at 01/01/2006.

Changes to legislation: There are currently no known outstanding effects for the The Genetically Modified Organisms (Northern Ireland) Order 1991. (See end of Document for details)

Purpose of Order and meaning of “genetically modified organisms” and related expressions

3.—^{F4}(1) This Order has effect for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the escape or release from human control of genetically modified organisms.]

^{F4}(2) In this Order the term “organism” means any acellular, unicellular or multicellular entity (in any form), other than humans or human embryos; and the term also includes any article or substance consisting of or including biological matter.

(3) For the purpose of paragraph (2) “biological matter” means anything (other than an entity mentioned in that paragraph) which consists of or includes—

- (a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material, or
- (b) genes or other genetic material, in any form, which are so capable,

and it is immaterial, in determining if something is or is not an organism or biological matter, whether it is the product of natural or artificial processes of reproduction and, in the case of biological matter, whether it has ever been part of a whole organism.

(4) For the purposes of this Order an organism is “genetically modified” if any of the genes or other genetic material in the organism—

- ^{F4}(a) have been artificially modified, or]
- ^{F4}(b) are inherited or otherwise derived, through any number of replications, from genes or other genetic material (from any source) which were so modified.

^{F4}(4A) Genes or other genetic material in an organism are “artificially modified” for the purposes of paragraph (4) if they are altered otherwise than by a process which occurs naturally in mating or natural recombination.

This paragraph is subject to paragraphs (4B) and (4C).

(4B) For the purposes of paragraph (4)—

- (a) genes or other genetic material shall be taken to be artificially modified if they are altered using such techniques as may be prescribed for the purposes of this sub-paragraph;
- (b) genes or other genetic material shall not be regarded as artificially modified by reason only of being altered by the use of such techniques as may be prescribed for the purposes of this sub-paragraph.

(4C) An organism shall be taken not to be a genetically modified organism for the purposes of this Order if it is an organism of a prescribed description.

(4D) In paragraphs (4B) and (4C) “prescribed” means prescribed by regulations made by the Department.]

^{F4}Paras. (5), (6) rep. by SR 2003/167

(7) In this Order, a reference to “reproduction”, in relation to an organism, includes a reference to its replication or its transferring genetic material.

F4 SR 2003/167

Meaning of “damage to the environment”, “control” and related expressions

4.—(1) Paragraphs (2) to (11) have effect for the interpretation of this Order.

^{F5}(2) The “environment” includes land, air and water and living organisms supported by any of those media.]

^{F5}(3) “Damage to the environment” is caused by the presence in the environment of genetically modified organisms which have (or of a single such organism which has) escaped or been released from a person's control and are (or is) capable of causing harm^{F5}....

(4) An organism shall be regarded as present in the environment notwithstanding that it is present in or on any human or other organism, or any other thing, which is itself present in the environment.

(5) Genetically modified organisms present in the environment are capable of causing harm if—

- (a) they are individually capable, or are present in numbers such that together they are capable, of causing harm; or
- (b) they are able to produce descendants which will be capable, or which will be present in numbers such that together they will be capable, of causing harm;

and a single organism is capable of causing harm either if it is itself capable of causing harm or if it is able to produce descendants which will be so capable.

[^{F5}(6) “Harm” means any adverse effects as regards the health of humans or the environment.]

^{F5}(7) “Harmful” and “harmless” mean respectively, in relation to genetically modified organisms, their being capable or their being incapable of causing harm.

(8) The Department may by regulations provide, in relation to genetically modified organisms of any description specified in the regulations, that—

- (a) the capacity of those organisms for causing harm of any description so specified, or
- (b) harm of any description so specified,

shall be disregarded for such purposes of this Order as may be so specified.

[^{F5}(9) Organisms of any description are under the “control” of a person where he keeps them contained by measures designed to limit their contact with humans and the environment and to prevent or minimise the risk of harm.]

^{F5}(10) An organism under a person's control is “released” if he deliberately causes or permits it to cease to be under his control or the control of any other person and to enter the environment; and such an organism “escapes” if, otherwise than by being released, it ceases to be under his control or that of any other person and enters the environment.

[^{F5}(11) Genetically modified organisms of any description are “marketed” by a person when products consisting of or including such organisms are placed on the market by being made available to other persons, whether or not for consideration.^{F5}]

F5 SR 2003/167

General controls

Risk assessment and notification requirements

5.—(1) Subject to paragraphs (2) and (7), no person shall import or acquire, release or market any genetically modified organisms unless, before doing that act—

- (a) he has carried out an assessment of any risks there are (by reference to the nature of the organisms and the manner in which he intends to keep them after their importation or acquisition or, as the case may be, to release or market them) of damage to the environment being caused as a result of doing that act; and
- (b) in such cases as may be prescribed, he has given the Department such notice of his intention of doing that act and such information as may be prescribed.

Status: Point in time view as at 01/01/2006.

Changes to legislation: There are currently no known outstanding effects for the The Genetically Modified Organisms (Northern Ireland) Order 1991. (See end of Document for details)

(2) Paragraph (1) does not apply to a person proposing to do an act mentioned in that paragraph who is required under Article 8(1)(a) to have a consent before doing that act.

(3) Subject to paragraphs (4) and (7), a person who is keeping genetically modified organisms shall, in such cases and at such times or intervals as may be prescribed—

- (a) carry out an assessment of any risks there are of damage to the environment being caused as a result of his continuing to keep them;
- (b) give the Department notice of the fact that he is keeping the organisms and such information as may be prescribed.

(4) Paragraph (3) does not apply to a person who is keeping genetically modified organisms and is required under Article 8(2) to have a consent authorising him to continue to keep the organisms.

(5) It shall be the duty of a person who carries out an assessment under paragraph (1)(a) or (3) (a) to keep, for the prescribed period, such a record of the assessment as may be prescribed.

(6) A person required by paragraph (1)(b) or (3)(b) to give notice to the Department shall give the Department such further information as the Department may by notice in writing require.

(7) Regulations under this Article may provide for exemptions, or for the granting by the Department^{F6}, or by the Department and the Food Standards Agency acting jointly,^{F6} of exemptions to particular persons or classes of person, from the requirements of paragraph (1) or (3).

(8) The Department may at any time—

- (a) give directions to a person falling within paragraph (1) requiring that person to apply for a consent before doing the act in question; or
- (b) give directions to a person falling within paragraph (3) requiring that person, before such date as may be specified in the direction, to apply for a consent authorising him to continue keeping the organisms in question;

and a person given directions under sub-paragraph (a) shall then, and a person given directions under sub-paragraph (b) shall from the specified date, be subject to Article 8 in place of the requirements of this Article.

(9) Regulations under this Article may—

- (a) prescribe the manner in which assessments under paragraph (1) or (3) are to be carried out and the matters which must be investigated and assessed;
- (b) prescribe minimum periods of notice between the giving of a notice under paragraph (1) (b) and the doing of the act in question;
- (c) make provision allowing the Department to shorten or to extend any such period;
- (d) prescribe maximum intervals at which assessments under paragraph (3)(a) must be carried out.

(10) In this Article “prescribed” means prescribed by the Department in regulations under this Article.

F6 1999 c.28

General duties relating to importation, acquisition, keeping, release or marketing of organisms

6.—(1) A person who—

- (a) is proposing to import or acquire any genetically modified organisms, or
- (b) is keeping any such organisms, or

(c) is proposing to release or market any such organisms, shall, subject to paragraph (5), be subject to the duties specified in paragraph (2), (3) or (4), as the case may be.

- (2) A person who proposes to import or acquire genetically modified organisms—
- (a) shall take all reasonable steps to identify, by reference to the nature of the organisms and the manner in which he intends to keep them (including any precautions to be taken against their escaping or causing damage to the environment), what risks there are of damage to the environment being caused as a result of their importation or acquisition; and
 - (b) shall not import or acquire the organisms if it appears that, despite any precautions which can be taken, there is a risk of damage to the environment being caused as a result of their importation or acquisition.
- (3) A person who is keeping genetically modified organisms—
- (a) shall take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and to identify what risks there are of damage to the environment being caused as a result of his continuing to keep them;
 - (b) shall cease keeping the organisms if, despite any additional precautions which can be taken, it appears, at any time, that there is a risk of damage to the environment being caused as a result of his continuing to keep them; and
 - (c) shall use the best available techniques not entailing excessive cost for keeping the organisms under his control and for preventing any damage to the environment being caused as a result of his continuing to keep the organisms;

and where a person is required by sub-paragraph (b) to cease keeping the organisms he shall dispose of them as safely and as quickly as practicable and sub-paragraph (c) shall continue to apply until he has done so.

- (4) A person who proposes to release genetically modified organisms—
- (a) shall take all reasonable steps to keep himself informed, by reference to the nature of the organisms and the extent and manner of the release (including any precautions to be taken against their causing damage to the environment), what risks there are of damage to the environment being caused as a result of their being released;
 - (b) shall not release the organisms if it appears that, despite the precautions which can be taken, there is a risk of damage to the environment being caused as a result of their being released; and
 - (c) subject to sub-paragraph (b), shall use the best available techniques not entailing excessive cost for preventing any damage to the environment being caused as a result of their being released;

and this paragraph applies, with the necessary modifications, to a person proposing to market organisms as it applies to a person proposing to release organisms.

- (5) This Article does not apply—
- (a) to persons proposing to import or acquire, to release or to market any genetically modified organisms, in cases where, under Article 5, they are not required to carry out a risk assessment before doing that act;
 - (b) to persons who are keeping any genetically modified organisms and who—
 - (i) were not required under Article 5 to carry out a risk assessment before importing or acquiring them;

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- (ii) have not been required under that Article to carry out a risk assessment in respect of the keeping of those organisms since importing or acquiring them; or
- (c) to holders of consents, in the case of acts authorised by those consents.

Prohibition notices

7.—(1) The Department may serve a notice under this Article (a “prohibition notice”) on any person it has reason to believe—

- (a) is proposing to import or acquire, release or market any genetically modified organisms; or
- (b) is keeping any such organisms;

if it is of the opinion that doing any such act in relation to those organisms or continuing to keep them, as the case may be, would involve a risk of causing damage to the environment.

(2) A prohibition notice may prohibit a person from doing an act mentioned in paragraph (1)(a) in relation to any genetically modified organisms or from continuing to keep them.

(3) A prohibition notice shall—

- (a) state that the Department is, in relation to the person on whom it is served, of the opinion mentioned in paragraph (1);
- (b) specify what is, or is to be, prohibited by the notice; and
- (c) if the prohibition is not to be effective on being served, specify the date on which the prohibition is to take effect;

and a notice may be served on a person notwithstanding that he may have a consent authorising any act which is, or is to be, prohibited by the notice.

(4) Where a person is prohibited by a prohibition notice from continuing to keep any genetically modified organisms, he shall dispose of them as quickly and safely as practicable or, if the notice so provides, as may be specified in the notice.

(5) The Department may at any time withdraw a prohibition notice served on any person by notice given to that person.

Consents

Consents required by certain persons

8.—(1) Subject to paragraph (7), no person shall import or acquire, release or market any genetically modified organisms—

- (a) in such cases as may be prescribed in relation to that act, or
- (b) in any case where he has been given directions under Article 5(8)(a),

except in pursuance of a consent granted by the Department and in accordance with any limitations and conditions to which the consent is subject.

(2) Subject to paragraph (7), no person who has imported or acquired any genetically modified organisms (whether under a consent or not) shall continue to keep the organisms—

- (a) in such cases as may be prescribed, after the end of the prescribed period, or
- (b) if he has been given directions under Article 5(8)(b), after the date specified in the directions,

except in pursuance of a consent granted by the Department and in accordance with any limitations or conditions to which the consent is subject.

(3) A person who is required under paragraph (2) to cease keeping any genetically modified organisms shall dispose of them as quickly and safely as practicable.

(4) An application for a consent must contain such information and be made and advertised in such manner as may be prescribed and shall be accompanied by the fee required under Article 10.

(5) The applicant shall, in prescribed circumstances, give such notice of his application to such persons as may be prescribed.

(6) The Department may by notice to the applicant require him to furnish such further information specified in the notice, within such period as may be so specified, as it may require for the purpose of determining the application; and if the applicant fails to furnish the information within the specified period the Department may refuse to proceed with the application.

[^{F7}A notice under this paragraph must state the reasons for requiring the further information specified in the notice.]

[^{F8F7}(6A) Where an applicant for consent for releasing or marketing genetically modified organisms becomes aware, before his application is either granted or rejected, of any new information with regard to any risks there are of damage to the environment being caused as a result of the organisms being released or marketed, he shall notify the Department of that new information forthwith.]

^{F8}(7) Regulations under this Article may provide for exemptions, or for the granting by the Department [^{F9}, or by the Department and the Food Standards Agency acting jointly,] ^{F9} of exemptions to particular persons or classes of person, from—

- (a) any requirement under paragraph (1) or (2) to have a consent, or
- (b) any of the requirements to be fulfilled under the regulations by an applicant for a consent.

(8) Where an application for a consent is duly made to it, the Department may grant the consent subject to such limitations and conditions as may be imposed under Article 9 or it may refuse the application.

(9) The conditions attached to a consent may include conditions which are to continue to have effect notwithstanding that the holder has completed or ceased the act or acts authorised by the consent.

(10) The Department may at any time, by notice given to the holder of a consent, revoke the consent or vary the consent (whether by attaching new limitations and conditions or by revoking or varying any limitations and conditions to which it is at that time subject).

(11) In this Article “prescribed” means prescribed in regulations under this Article.

F7	SR 2003/167
F8	SR 1994/144
F9	1999 c.28

Consents: limitations and conditions

9.—(1) The Department may include in a consent such limitations and conditions ^{F10} ... [^{F11} for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the activity permitted by the consent.] ^{F11}; but no limitations or conditions shall be imposed for the purpose only of securing the health of persons at work (within the meaning of Part II of the Health and Safety at Work (Northern Ireland) Order 1978 ^{F12}).

(2) Without prejudice to the generality of paragraph (1), the conditions included in a consent may—

- (a) require the giving of notice of any fact to the Department; or

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- (b) prohibit or restrict the keeping, releasing or marketing of genetically modified organisms under the consent in specified cases or circumstances;

and where, under any condition, the holder of a consent is required to cease keeping any genetically modified organisms, he shall dispose of them, in any manner specified in the conditions, as quickly and safely as practicable.

(3) Subject to paragraph (6), there is implied in every consent for the importation or acquisition of genetically modified organisms a general condition that the holder of the consent shall—

- (a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the manner in which he intends to keep them after the importation or acquisition) of any risks there are of damage to the environment being caused as a result of their importation or acquisition; and
- (b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Department forthwith.

(4) Subject to paragraph (6), there is implied in every consent for keeping genetically modified organisms a general condition that the holder of the consent shall—

- (a) take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and of any risks there are of such damage being caused as a result of his continuing to keep them;
- (b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Department forthwith; and
- (c) use the best available techniques not entailing excessive cost for keeping the organisms under his control and for preventing any damage to the environment being caused as a result of his continuing to keep them.

(5) Subject to paragraph (6), there is implied in every consent for releasing or marketing genetically modified organisms a general condition that the holder of the consent shall—

- (a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the extent and manner of the release or marketing) of any risks there are of damage to the environment being caused as a result of their being released or, as the case may be, marketed;

[^{F13}(b) notify the Department[^{F11} forthwith]^{F11} of—

- (i) any new information which becomes available with regard to any risks there are of damage to the environment being so caused, and

Head (ii) rep. by SR 2003/167

[any unforeseen event, occurring in connection with a release by him, which might ^{F11}(iii) affect the risks there are of damage to the environment being caused as a result of their being released.]]

[^{F11F11F13}(c) take such measures as are necessary to prevent any damage to the environment being caused as a result of the release or, as the case may be, the placing on the market of the organisms;]

[^{F11F11}(d) notify the Department of the measures (if any) taken as a result of new information becoming available or an unforeseen event occurring as described in sub-paragraph (b) (iii); and

- (e) in a case where new information becomes available or an unforeseen event so occurs, revise the information contained in his application for a consent accordingly and supply the revised information to the Department.]

^{F11}(6) The general condition implied into a consent under paragraph (3), (4) or (5) has effect subject to any conditions imposed under paragraph (1); and the obligations imposed by virtue of

paragraph (4)(c) or (5)(c) shall not apply to any aspect of an act authorised by a consent which is regulated by such a condition.

(7) There shall be implied in every consent for keeping, releasing or marketing genetically modified organisms of any description a general condition that the holder of the consent—

- (a) shall take all reasonable steps to keep himself informed of developments in the techniques which may be available in his case for preventing damage to the environment being caused as a result of the doing of the act authorised by the consent in relation to organisms of that description; and
- (b) if it appears at any time that any better techniques are available to him than is required by any condition included in the consent under paragraph (1), shall notify the Department of that fact forthwith.

But this general condition shall have effect subject to any conditions imposed under paragraph (1).

F10	SR 1994/142
F11	SR 2003/167
F12	1978 NI 9
F13	SR 1994/144

Fees and charges

10.—(1) The Department may, with the approval of the Department of Finance and Personnel, make and revise a scheme prescribing—

- (a) fees payable in respect of applications for consents; and
- (b) charges payable by persons holding consents in respect of the subsistence of their consents;

and it shall be a condition of any such consent that any applicable prescribed charge is paid in accordance with that scheme.

(2) A scheme under this Article may, in particular—

- (a) provide for the times at which and the manner in which payments are to be made; and
- (b) make such incidental, supplementary and transitional provision as appears to the Department to be appropriate.

(3) The Department shall so frame a scheme under this Article as to secure, so far as practicable, that the amounts payable under it will be sufficient, taking one financial year with another, to cover the expenditure of the Department in discharging its functions under this Order in relation to consents.

(4) The Department shall, on making or revising a scheme under this Article, lay a copy of the scheme or of the scheme as revised before the Assembly.

Inspectors

Appointment, etc., of inspectors

11.—(1) The Department may appoint as inspectors, for carrying this Order into effect, such number of persons appearing to it to be qualified for the purpose as it may consider necessary.

(2) The Department may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as it may with the approval of the Department of Finance and Personnel determine.

(3) An inspector shall not be personally liable in any civil or criminal proceedings for anything done in the purported exercise of any power under Article 12 or 14, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(4) An inspector, if authorised to do so by the Department, may, although not of counsel or a solicitor, prosecute before a court of summary jurisdiction proceedings for an offence under Article 15.

(5) In this Order “inspector” means, subject to Article 21, a person appointed as an inspector under paragraph (1).

Rights of entry and inspection

12.—(1) An inspector may, on production (if so required) of his authority, exercise any of the powers specified in paragraph (3) for the purposes of the discharge of the functions of the Department under this Order.

(2) Those powers are exercisable—

(a) in relation to premises—

(i) on which the inspector has reason to believe a person is keeping or has kept any genetically modified organisms, or

(ii) from which he has reason to believe any such organisms have been released or have escaped; and

(b) in relation to premises on which the inspector has reason to believe there may be harmful genetically modified organisms or evidence of damage to the environment caused by genetically modified organisms;

but they are not exercisable in relation to premises used wholly or mainly for domestic purposes.

(3) The powers of an inspector are—

(a) at any reasonable time (or, in a situation in which in his opinion there is an immediate risk of damage to the environment, at any 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;

(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, and of the air, water or land in, on, or in the vicinity of, the premises;

(e) in the case of anything found in or on any premises which he has power to enter, which appears to him to contain or to have contained genetically modified organisms which have caused or are likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);

(f) in the case of anything mentioned in sub-paragraph (e) or 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 and do to it anything which he has power to do under that sub-paragraph;
 - (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 Article 15;
- (g) 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;
- (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 under this Order or it is necessary for him 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;
- (i) 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 Article;
- (j) any other power for the purpose mentioned in paragraph (1) which is conferred by regulations made by the Department.

(4) The Department may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (3)(d).

(5) Where an inspector proposes to exercise the power conferred by paragraph (3)(e), he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(6) Before exercising the power conferred by paragraph (3)(e), an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.

(7) Where under the power conferred by paragraph (3)(f) 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.

(8) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(g) shall be admissible in evidence in any proceedings against that person.

(9) The powers conferred by paragraph (3)(a), (b), (c), (d), (e) and (h) shall also be exercisable (subject to paragraphs (4) to (6)) by any person authorised for the purpose in writing by the Department.

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(10) Nothing in this Article shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

Enforcement powers and offences

Obtaining of information from persons

13.—(1) For the purposes of the discharge of its functions under this Order, the Department may, by notice in writing served on any person who appears to it—

- (a) to be involved in the importation, acquisition, keeping, release or marketing of genetically modified organisms; or
- (b) to be about to become, or to have been, involved in any of those activities;

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 Article “relevant information” means information concerning any aspects of the activities in question, including any damage to the environment which may be or have been caused thereby; and the discharge by the Department of an obligation of the United Kingdom under the Community Treaties or any international agreement concerning the protection of the environment from harm caused by genetically modified organisms shall be treated as a function of the Department under this Order.

Power to deal with cause of imminent danger of damage to the environment

14.—(1) Where, in the case of anything found by him on any premises which he has power to enter, an inspector has reason to believe that it is a genetically modified organism or that it consists of or includes genetically modified organisms and that, in the circumstances in which he finds it, it is a cause of imminent danger of damage to the environment, he may seize it and cause it to be rendered harmless (whether by destruction, by bringing it under proper control or otherwise).

(2) Before there is rendered harmless under this Article—

- (a) any thing that forms part of a batch of similar things, or
- (b) any substance,

the inspector shall, if it is practicable 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.

(3) As soon as may be after anything has been seized and rendered harmless under this Article, the inspector shall prepare and sign a written report giving particulars of the circumstances in which it was seized and so dealt with by him, and shall—

- (a) give a signed copy of the report to a responsible person at the premises where it was found by him; and
- (b) unless that person is the owner of it, also serve a signed copy of the report on the owner;

and if, where sub-paragraph (b) applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under sub-paragraph (a).

Offences

15.—(1) It is an offence for a person—

- (a) to do anything in contravention of Article 5(1) in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;

- (b) to fail to comply with Article 5(3) when keeping something which is, and which he knows or has reason to believe is, a genetically modified organism;
 - (c) to do anything in contravention of Article 8(1) or (2) in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;
 - (d) to fail to comply with any requirement of Article 6(2), (3)(a), (b) or (c) or (4) in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism;
 - (e) to fail, without reasonable excuse, to comply with Article 5(5) or (6)^{F14} or Article 8(6A);
 - ^{F14}(f) to contravene any prohibition imposed on him by a prohibition notice;
 - (g) without reasonable excuse, to fail to comply with any requirement imposed under Article 12;
 - (h) to prevent any other person from appearing before or from answering any question to which an inspector may, by virtue of Article 12(3), require an answer;
 - (i) intentionally to obstruct an inspector in the exercise or performance of his powers or duties, other than his powers or duties under Article 14;
 - (j) intentionally to obstruct an inspector in the exercise of his powers or duties under Article 14;
 - (k) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under Article 13;
 - (l) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
 - (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of this Order; or
 - (ii) for the purpose of obtaining the grant of a consent to himself or any other person or the variation of a consent;
 - (m) intentionally to make a false entry in any record required to be kept under Article 5 or 8;
 - (n) with intent to deceive, to forge or use a document purporting to be issued under Article 8 or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;
 - (o) falsely to pretend to be an inspector.
- (2) It shall be a defence for a person charged with an offence under paragraph (1)(a), (b), (c), (d) or (f) to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (3) A person guilty of an offence under paragraph (1)(c) or (d) shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding 6 months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or to both.
- (4) A person guilty of an offence under paragraph (1)(f) shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding 6 months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both.
- (5) A person guilty of an offence under paragraph (1)(a) or (b) shall be liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or to both.
- (6) A person guilty of an offence under paragraph (1)(e), (j), (k), (l), (m) or (n) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both.
- (7) A person guilty of an offence under paragraph (1)(g), (h) or (i) shall be liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 3 months, or to both.
- (8) A person guilty of an offence under paragraph (1)(o) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) Where a person is convicted of an offence under paragraph (1)(b) in respect of his keeping any genetically modified organism, then, if the contravention in respect of which he was convicted is continued after he was convicted he shall be guilty of a further offence and liable on summary conviction to a fine of one-fifth of level 5 on the standard scale for each day on which the contravention is so continued.
- (10) Where the commission of an offence under this Article is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this Article whether or not proceedings for the offence are taken against the first-mentioned person.
- (11) Proceedings in respect of an offence under this Article shall not be instituted except with the consent of the Director of Public Prosecutions for Northern Ireland.

F14 SR 1994/144

Onus of proof as regards techniques and evidence

16.—(1) In any proceedings for either of the following offences, that is to say—

- (a) an offence under Article 15(1)(c) consisting in a failure to comply with the general condition implied by Article 9(4)(c) or (5)(c); or
- (b) an offence under Article 15(1)(d) consisting in a failure to comply with Article 6(3)(c) or (4)(c);

it shall be for the accused to prove^{F15} the matters described in paragraph (1A).]

[^{F15F15}(1A) The matters referred to in paragraph (1) are—

- (a) in the case of an offence under Article 15(1)(c) consisting in a failure to comply with the general condition implied by Article 9(5)(c)—
 - (i) that no measures, other than the measures taken by him, were necessary to prevent damage being caused to the environment from the release or, as the case may be, placing on the market of the organisms, or
 - (ii) in a case where he took no measures, that no measures were necessary; and
- (b) in any other case,

that there was no better available technique not entailing excessive cost than was in fact used to satisfy the condition or comply with that Article.]

^{F15}(2) Where an entry is required by a condition in a consent to be made in any record as to the observance of any other condition and the entry has not been made, that fact shall be admissible as evidence that that other condition has not been observed.

F15 SR 2003/167

Power of court to order cause of offence to be remedied

17.—(1) Where a person is convicted of an offence under Article 15(1)(a), (b), (c), (d), (e) or (f) in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(2) The time fixed by a n order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under Article 15 in respect of those matters, in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

Power of Department to remedy harm

18.—(1) Where the commission of an offence under Article 15(1)(a), (b), (c), (d), (e) or (f) causes any harm which it is possible to remedy, the Department may, subject to paragraph (2)—

- (a) arrange for any reasonable steps to be taken towards remedying the harm; and
- (b) recover the cost of taking those steps from any person convicted of that offence.

(2) The Department shall not exercise its powers under this Article, where any of the steps are to be taken on or will affect land in the occupation of any person other than a person convicted of the offence in question, except with the permission of that person.

Publicity

Public register of information

19.—(1) The Department shall maintain a register (“the register”) containing prescribed particulars of or relating to—

- (a) notices given or other information furnished under Article 5;
- (b) directions given under Article 5(8);
- (c) prohibition notices;
- (d) applications for consents (and any further information furnished in connection with them);
- (e) consents granted by the Department and any information furnished to it in pursuance of consent conditions;
- (f) any other information obtained or furnished under any provision of this Order;
- (g) convictions for such offences under Article 15 as may be prescribed;
- (h) such other matters relating to this Order as may be prescribed;

but that duty is subject to Article 20.

(2) It shall be the duty of the Department—

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- (a) to secure that the register is open to inspection by members of the public free of charge at all reasonable hours; and
 - (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.
- (3) The register may be kept in any form.
- (4) The Department may make regulations with respect to the keeping of the register; and in this Article “prescribed” means prescribed in regulations made by the Department.

Exclusion from register of certain information

20.—(1) No information shall be included in the register under Article 19 if and so long as, in the opinion of the Secretary of State, the inclusion of the information would be contrary to the interests of national security.

(2) No information shall be included in the register if and so long as, in the opinion of the Department, it ought to be excluded on the ground that its inclusion might result in damage to the environment.

(3) No information relating to the affairs of any individual or business shall be included in the register without the consent of that individual or the person for the time being carrying on that business, if the Department has determined that the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not information of a description to which paragraph (7) applies;

unless the Department is of the opinion that the information is no longer commercially confidential in relation to him.

(4) Nothing in paragraph (3) requires the Department to determine whether any information is or is not commercially confidential except where the person furnishing the information applies to have it excluded on the ground that it is (in relation to himself or another person) commercially confidential.

(5) Where an application has been made for information to be excluded under paragraph (3), the Department shall make a determination and inform the applicant of it as soon as is practicable.

(6) Where it appears to the Department that any information (other than information furnished by the person to whom it relates) which has been obtained under or by virtue of any provision of this Order might be commercially confidential, the Department shall—

- (a) give to the person to whom or to whose business it relates notice that the information is required to be included in the register unless excluded under paragraph (3); and
- (b) give him a reasonable opportunity—
 - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
 - (ii) of making representations to the Department for the purpose of justifying any such objection;

and the Department shall take any representations into account before determining whether the information is or is not commercially confidential.

(7) The prescribed particulars of or relating to the matters mentioned in Article 19(1)(a),^{F16} (c)^{F16} (d) and (e) shall be included in the register notwithstanding that they may be commercially confidential if and so far as they are of any of the following descriptions, namely—

- (a) the name and address of the person giving the notice or furnishing the information;

- (b) [^{F16}the general description]^{F16} of any genetically modified organisms to which the notice or other information relates;

Sub-para. (c) rep. by SR 2003/167

- (d) the purpose for which those organisms are being imported, acquired, kept, released or marketed (according to whichever of those acts the notice or other information relates);

Sub-para. (e) rep. by SR 2003/167

- (f) notices under Article 9(3), (4), (5) or (7);

and the Department may by regulations prescribe any other description of information as information which the public interest requires to be included in the register notwithstanding that it may be commercially confidential.

(8) Information excluded from the register under paragraph (3) shall be treated as ceasing to be commercially confidential for the purposes of that paragraph at the expiry of a period of 4 years from the date of the determination by virtue of which it was excluded; but the person who furnished it or to whom or to whose business it relates may apply to the Department for the information to remain excluded on the ground that it is still commercially confidential.

(9) The Department may by order substitute for the period for the time being specified in paragraph (8) such other period as it considers appropriate.

F16 SR 2003/167

Supplementary

Delegation of enforcement functions

21.—(1) The Department may, by an agreement made with any public authority, delegate to that authority or to any officer appointed by an authority exercising functions on behalf of that authority any of the Department's enforcement functions under this Order, subject to such restrictions and conditions as may be specified in the agreement.

(2) For the purposes of this Article the following are “enforcement functions” of the Department, that is to say, its functions under—

Article 7;

Article 11(1) and (4);

Article 13; and

Article 18;

and “inspector” in Articles 12 and 14 includes, to the extent of the delegation, any inspector appointed by an authority other than the Department by virtue of an agreement under this Article.

(3) The Department shall, if and so far as an agreement under this Article so provides, make payments to the authority to reimburse the authority the expenses incurred in the performance of functions delegated under this Article; but no such agreement shall be made without the approval of the Department of Finance and Personnel.

[^{F17}Mode of exercise of certain functions

22.—(1) Any power of the Department to make regulations under this Order (other than the power conferred by Article 10) is exercisable, where the regulations to be made relate to any matter with which the Department of Agriculture is concerned, by the Department and the Department of Agriculture acting jointly.

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(2) Any function of the Department under this Order (other than a power to make regulations) is exercisable, where the function is to be exercised in relation to a matter with which the Department of Agriculture is concerned, by the Department and the Department of Agriculture acting jointly (but subject to paragraph (3)).

(3) Any function of the Department under Articles 5(8) and 7 is exercisable, where the function is to be exercised in relation to a matter with which the Food Standards Agency is concerned —

- (a) if it is a matter with which the Department of Agriculture is also concerned, by the Department, the Department of Agriculture and the Food Standards Agency acting jointly;
- (b) otherwise, by the Department and the Food Standards Agency acting jointly.

(4) Accordingly, references in this Order to the Department shall, where paragraph (1), (2) or (3) applies, be treated as references to the authorities in question acting jointly.

(5) The Food Standards Agency shall be consulted before—

- (a) any regulations are made under this Order, other than under Article 10, or
- (b) any consent is granted or varied.

(6) The reference in Article 10 to expenditure of the Department in discharging functions under this Order in relation to consents shall be taken to include a reference to the corresponding expenditure of the Department of Agriculture in discharging those functions jointly with the Department.

(7) The validity of anything purporting to be done in pursuance of the exercise of a function of the Department under this Order shall not be affected by any question whether that thing fell, by virtue of this Article, to be done jointly with the Department of Agriculture or the Food Standards Agency (or both).^{F17]}

F17 1999 c.28

[^{F18} **Advisory Committee**

22A.—(1) The Department shall appoint a Committee to provide it with advice—

- (a) on the exercise of its powers under Articles 8, 9 and 10;
- (b) on the exercise of any power under this Order to make regulations,

and on such other matters concerning the Department's functions under this Order as the Department may from time to time direct.

(2) The Department shall pay to the members of the Committee such remuneration (if any) and such allowances as it may determine.

(3) The “Committee” means the Committee appointed by the Secretary of State under section 124 of the Environmental Protection Act 1990.^{F18]}

F18 SR 2003/167

Application to Crown

23.—(1) Subject to paragraphs (2) to (5), this Order and regulations and orders made under it shall bind the Crown.

(2) No contravention by the Crown of any provision of this Order or of any regulations or order made under it shall make the Crown criminally liable; but the High Court may, on the application

of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), this Order and regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to the premises, those powers shall not be exercisable in relation to those premises; and in this paragraph “Crown premises” means premises held or used by or on behalf of the Crown.

(5) Nothing in this Article shall be taken as in any way affecting Her Majesty in her private capacity; and this paragraph shall be construed as if section 38(3) of the Crown Proceedings Act 1947^{F19} (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Order.

(6) In this Article, any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in the United Kingdom.

F19 1947 c. 44

Regulations, orders and directions

24.—(1) Regulations and orders made by the Department under this Order shall be subject to negative resolution.

(2) Any power conferred by this Order to give a direction shall include power to vary or revoke the direction.

(3) Any direction given under this Order shall be in writing.

Repeal

25. In section 164(4) of the Environmental Protection Act 1990^{F20} (extent) the words from “Part VI” to “restriction” are hereby repealed.

F20 1990 c. 43

Status:

Point in time view as at 01/01/2006.

Changes to legislation:

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