



Environmental Protection Act 1990

1990 CHAPTER 43

PART VI

GENETICALLY MODIFIED ORGANISMS

Extent Information

E1 Pt VI: for extent of this Part see s. 164(4) below.

Modifications etc. (not altering text)

C1 Pt. VI (ss. 106-127): transfer of functions (16.2.2000) by S.I. 2000/253, art. 2, **Sch. 1**

C2 Pt. VI (ss. 106-127) modified (E.) (temp. from 17.10.2002) by Genetically Modified Organisms (Deliberate Release) Regulations 2002 (S.I. 2002/2443), regs. 1(2)(3), **5(3)**, 39

Pt. VI (ss. 106-127) modified (S.) (temp. from 5.12.2002) by Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (S.S.I. 2002/541), **reg. 5(3)**

Pt. VI (ss. 106-127) modified (W.) (temp. from 31.12.2002) by Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188), **reg. 6(3)**

Preliminary

106 Purpose of Part VI and meaning of “genetically modified organisms” and related expressions.

- (1) This Part has effect for the purpose of preventing or minimising any damage to the environment which may arise from the escape or release from human control of genetically modified organisms.
- (2) In this Part the term “organism” means any acellular, unicellular or multicellular entity (in any form), other than humans or human embryos; and, unless the context otherwise requires, the term also includes any article or substance consisting of or including biological matter.

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- (3) For the purpose of subsection (2) above “biological matter” means anything (other than an entity mentioned in that subsection) 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 Part an organism is “genetically modified” if any of the genes or other genetic material in the organism—
- (a) have been modified by means of an artificial technique prescribed in regulations by the Secretary of State; or
 - (b) are inherited or otherwise derived, through any number of replications, from genes or other genetic material (from any source) which were so modified.
- (5) The techniques which may be prescribed for the purposes of subsection (4) above include—
- (a) any technique for the modification of any genes or other genetic material by the recombination, insertion or deletion of, or of any component parts of, that material from its previously occurring state, and
 - (b) any other technique for modifying genes or other genetic material which in the opinion of the Secretary of State would produce organisms which should for the purposes of this Part be treated as having been genetically modified,
- but do not include techniques which involve no more than, or no more than the assistance of, naturally occurring processes of reproduction (including selective breeding techniques or *in vitro* fertilisation).
- (6) It is immaterial for the purposes of subsections (4) and (5) above whether the modifications of genes or other genetic material effected by a prescribed technique are produced by direct operations on that genetic material or are induced by indirect means (including in particular the use of viruses, microbial plasmids or other vector systems or of mutation inducing agents).
- (7) In this Part, where the context permits, a reference to “reproduction”, in relation to an organism, includes a reference to its replication or its transferring genetic material.

Commencement Information

- II** [S. 106](#) wholly in force at 1.2.1993; [s. 106](#) not in force at Royal Assent see [s. 164\(2\)\(3\)](#); [s. 106\(4\)\(5\)](#) in force 1.4.1991 see [S.I. 1991/1042](#), art. 2; [s. 106\(1\)-\(3\)\(6\)\(7\)](#) in force at 1.2.1993 see [S.I. 1992/3253](#), art. 3.

107 Meaning of “damage to the environment”, “control” and related expressions in Part VI.

- (1) The following provisions have effect for the interpretation of this Part.
- (2) The “environment” consists of land, air and water or any of those media.
- (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)

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- escaped or been released from a person’s control and are (or is) capable of causing harm to the living organisms supported by the environment.
- (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.
- (6) “Harm” means harm to the health of humans or other living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property.
- (7) “Harmful” and “harmless” mean respectively, in relation to genetically modified organisms, their being capable or their being incapable of causing harm.
- (8) The Secretary of State 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 Part as may be so specified.
- (9) Organisms of any description are under the “control” of a person where he keeps them contained by any system of physical, chemical or biological barriers (or combination of such barriers) used for either or both of the following purposes, namely—
- (a) for ensuring that the organisms do not enter the environment or produce descendants which are not so contained; or
 - (b) for ensuring that any of the organisms which do enter the environment, or any descendants of the organisms which are not so contained, are harmless.
- (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.
- (11) Genetically modified organisms of any description are “marketed” when products consisting of or including such organisms are placed on the market.

Commencement Information

- I2** S. 107 wholly in force at 1.2.1993; s. 107 not in force at Royal Assent see s. 164(2)(3); s. 107(8) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 107(1)-(7)(9)-(11) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

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General controls

108 Risk assessment and notification requirements.

- (1) Subject to subsections (2) and (7) below, 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 and circumstances as may be prescribed, he has given the Secretary of State such notice of his intention of doing that act and such information as may be prescribed.
- (2) Subsection (1) above does not apply to a person proposing to do an act mentioned in that subsection who is required under section 111(1)(a) below to have a consent before doing that act.
- (3) Subject to subsections (4) and (7) below, a person who is keeping genetically modified organisms shall, in such cases or circumstances 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 Secretary of State notice of the fact that he is keeping the organisms and such information as may be prescribed.
- (4) Subsection (3) above does not apply to a person who is keeping genetically modified organisms and is required under section 111(2) below 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 subsection (1) (a) or (3)(a) above to keep, for the prescribed period, such a record of the assessment as may be prescribed.
- (6) A person required by subsection (1)(b) or (3)(b) above to give notice to the Secretary of State shall give the Secretary of State such further information as the Secretary of State may by notice in writing require.
- (7) Regulations under this section may provide for exemptions, or for the granting by the Secretary of State of exemptions to particular persons or classes of person, from the requirements of subsection (1) or (3) above in such cases or circumstances, and to such extent, as may be prescribed.
- (8) The Secretary of State may at any time—
 - (a) give directions to a person falling within subsection (1) above requiring that person to apply for a consent before doing the act in question; or
 - (b) give directions to a person falling within subsection (3) above 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 paragraph (a) above shall then, and a person given directions under paragraph (b) above shall from the specified date, be subject to section 111 below in place of the requirements of this section.

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- (9) Regulations under this section may—
- (a) prescribe the manner in which assessments under subsection (1) or (3) above 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 subsection (1)(b) above and the doing of the act in question;
 - (c) make provision allowing the Secretary of State to shorten or to extend any such period;
 - (d) prescribe maximum intervals at which assessments under subsection (3)(a) above must be carried out;
- and the regulations may make different provision for different cases and different circumstances.
- (10) In this section “prescribed” means prescribed by the Secretary of State in regulations under this section.

Commencement Information

- I3** S. 108 partly in force; s. 108 not in force at Royal Assent see s. 164(2)(3); s. 108(1)(b)(3)(b)(5)(7)(9) in force 1.4.1991 see S.I. 1991/1042, art. 2; s. 108(10) in force at 1.1.1993 and s. 108(1) in force for certain purposes at 1.2.1993 see S.I. 1992/3253, arts. 2, 3.

VALID FROM 01/04/2000

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

- (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 subsection (5) below, be subject to the duties specified in subsection (2), (3) or (4) below, 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;

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- (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 paragraph (b) above to cease keeping the organisms he shall dispose of them as safely and as quickly as practicable and paragraph (c) above 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 paragraph (b) above, 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 subsection applies, with the necessary modifications, to a person proposing to market organisms as it applies to a person proposing to release organisms.

(5) This section does not apply—

- (a) to persons proposing to import or acquire, to release or to market any genetically modified organisms, in cases or circumstances where, under section 108 above, 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 section 108 above to carry out a risk assessment before importing or acquiring them;
 - (ii) have not been required under that section 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.

Modifications etc. (not altering text)

C3 Ss. 108-110 extended (Isles of Scilly) (with modifications) (4.8.2006) by [The Environmental Protection Act 1990 \(Isles of Scilly\) Order 2006 \(S.I. 2006/1381\)](#), **art. 3**

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VALID FROM 01/02/1993

110 Prohibition notices.

- (1) The Secretary of State may serve a notice under this section (a “prohibition notice”) on any person he 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 he 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 subsection (1)(a) above in relation to any genetically modified organisms or from continuing to keep them; and the prohibition may apply in all cases or circumstances or in such cases or circumstances as may be specified in the notice.
- (3) A prohibition notice shall—
 - (a) state that the Secretary of State is, in relation to the person on whom it is served, of the opinion mentioned in subsection (1) above;
 - (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 Secretary of State may at any time withdraw a prohibition notice served on any person by notice given to that person.

Modifications etc. (not altering text)

- C4** Ss. 108-110 extended (Isles of Scilly) (with modifications) (4.8.2006) by [The Environmental Protection Act 1990 \(Isles of Scilly\) Order 2006 \(S.I. 2006/1381\)](#), [art. 3](#)

Commencement Information

- I4** S. 110 partly in force; s. 110 not in force at Royal Assent see [s. 164](#); s. 110 in force for certain purposes at 1.2.1993 see [s. 164\(2\)\(3\)](#) and [S.I. 1992/3253](#), [art. 3](#).

Consents

111 Consents required by certain persons.

- (1) Subject to subsection (7) below, no person shall import or acquire, release or market any genetically modified organisms—

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- (a) in such cases or circumstances as may be prescribed in relation to that act, or
 - (b) in any case where he has been given directions under section 108(8)(a) above, except in pursuance of a consent granted by the Secretary of State and in accordance with any limitations and conditions to which the consent is subject.
- (2) Subject to subsection (7) below, 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 or circumstances as may be prescribed, after the end of the prescribed period, or
 - (b) if he has been given directions under section 108(8)(b) above, after the date specified in the directions,except in pursuance of a consent granted by the Secretary of State and in accordance with any limitations or conditions to which the consent is subject.
- (3) A person who is required under subsection (2) above 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 section 113 below.
- (5) The applicant shall, in prescribed circumstances, give such notice of his application to such persons as may be prescribed.
- (6) The Secretary of State 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 he may require for the purpose of determining the application; and if the applicant fails to furnish the information within the specified period the Secretary of State may refuse to proceed with the application.
- (7) Regulations under this section may provide for exemptions, or for the granting by the Secretary of State of exemptions to particular persons or classes of person, from—
 - (a) any requirement under subsection (1) or (2) above to have a consent, or
 - (b) any of the requirements to be fulfilled under the regulations by an applicant for a consent,in such cases or circumstances as may be prescribed.
- (8) Where an application for a consent is duly made to him, the Secretary of State may grant the consent subject to such limitations and conditions as may be imposed under section 112 below or he 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 Secretary of State 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) Regulations under this section may make different provision for different cases and different circumstances; and in this section “prescribed” means prescribed in regulations under this section.

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Commencement Information

- I5** S. 111 partly in force; not in force at Royal Assent see s. 164(2); s. 111(1)(2)(4)(5)(7)(11) in force 1.4.1991 see s. 164(3) and S.I. 1991/1042, art. 2

112 Consents: limitations and conditions.

- (1) The Secretary of State may include in a consent such limitations and conditions as he may think fit; 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 I of the^{M1}Health and Safety at Work etc. Act 1974 or, in relation to Northern Ireland, Part II of the^{M2}Health and Safety at Work (Northern Ireland) Order 1978).
- (2) Without prejudice to the generality of subsection (1) above, the conditions included in a consent may—
 - (a) require the giving of notice of any fact to the Secretary of State; or
 - (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, if no manner is specified in the conditions, as quickly and safely as practicable.
- (3) Subject to subsection (6) below, 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 their 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 Secretary of State forthwith.
- (4) Subject to subsection (6) below, 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 Secretary of State 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 subsection (6) below, 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

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- 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;
- (b) if any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith; and
 - (c) 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 or, as the case may be, marketed.
- (6) The general condition implied into a consent under subsection (3), (4) or (5) above has effect subject to any conditions imposed under subsection (1) above; and the obligations imposed by virtue of subsection (4)(c) or (5)(c) above 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 subsection (1) above, shall notify the Secretary of State of that fact forthwith.

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

Marginal Citations

M1 1974 c. 37.

M2 S.I. 1978/1039 (N.I. 9).

113 Fees and charges.

- (1) The Secretary of State may, with the approval of the Treasury, make and from time to time 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 section may, in particular—
- (a) provide for different fees or charges to be payable in different cases or circumstances;
 - (b) provide for the times at which and the manner in which payments are to be made; and
 - (c) make such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate.
- (3) The Secretary of State shall so frame a scheme under this section as to secure, so far as practicable, that the amounts payable under it will be sufficient, taking one financial

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year with another, to cover the expenditure of the Secretary of State in discharging his functions under this Part in relation to consents.

- (4) The Secretary of State shall, on making or revising a scheme under this section, lay a copy of the scheme or of the scheme as revised before each House of Parliament.

Commencement Information

I6 S. 113 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, art. 2

Inspectors

114 Appointment etc of inspectors.

- (1) The Secretary of State may appoint as inspectors, for carrying this Part into effect, such number of persons appearing to him to be qualified for the purpose as he may consider necessary.
- (2) The Secretary of State may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as he may with the approval of the Treasury 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 section 115 or 117 below if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (4) In England and Wales an inspector, if authorised to do so by the Secretary of State, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under section 118(1) below.
- (5) In this Part "inspector" means, subject to section 125 below, a person appointed as an inspector under subsection (1) above.

Commencement Information

I7 S. 114 wholly in force; s. 114 not in force at Royal Assent see s. 164(2)(3); s. 114(1)-(3) in force at 1.4.1991 see S.I. 1991/1042, art. 2; s. 114(4)(5) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

115 Rights of entry and inspection.

- (1) An inspector may, on production (if so required) of his authority, exercise any of the powers specified in subsection (3) below for the purposes of the discharge of the functions of the Secretary of State under this Part.
- (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

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- (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 Secretary of State 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 paragraph (e) above 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 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 section 118 below;
- (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 subsection 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 Part or it is necessary for him to see for the

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- purposes of any test or inspection under this subsection 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 section;
 - (j) any other power for the purpose mentioned in subsection (1) above which is conferred by regulations made by the Secretary of State.
- (4) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (3)(d) above.
- (5) Where an inspector proposes to exercise the power conferred by subsection (3)(e) above, 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 subsection (3)(e) above, 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 subsection (3)(f) above 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 subsection (3)(g) above shall be admissible in evidence—
- (a) in any proceedings in England and Wales against that person; or
 - (b) in any criminal proceedings in Scotland against that person.
- (9) The powers conferred by subsection (3)(a), (b), (c), (d), (e) and (h) above shall also be exercisable (subject to subsections (4), (5) and (6) above) by any person authorised for the purpose in writing by the Secretary of State.
- (10) Nothing in this section 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 or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

Commencement Information

18 S. 115 wholly in force; not in force at Royal Assent see s. 164(2); s. 115(4) in force 1.4.1991 see s. 164(3) and S.I. 1991/1042, art. 2; s. 115(1)-(3)(5)-(10) in force at 1.2.1993 see S.I. 1992/3253, art. 3.

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Enforcement powers and offences

VALID FROM 01/02/1993

116 Obtaining of information from persons.

- (1) For the purposes of the discharge of his functions under this Part, the Secretary of State may, by notice in writing served on any person who appears to him—
 - (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 section “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 Secretary of State 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 his under this Part.

Commencement Information

- I9** [S. 116](#) partly in force; [s. 116](#) in force for certain purposes at 1.2.1993 see [s. 164\(2\)\(3\)](#) and [S.I. 1992/3253, art. 3](#)

VALID FROM 01/02/1993

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

- (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 section—
 - (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 section, 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—

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- (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 paragraph (b) above 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 paragraph (a) above.

Commencement Information

I10 S. 117 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 192/3253, art. 3.

118 Offences.

(1) It is an offence for a person—

- (a) to do anything in contravention of section 108(1) above 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 section 108(3) above 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 section 111(1) or (2) above 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 subsection (2), (3)(a), (b) or (c) or (4) of section 109 above 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 section 108(5) or (6) above;
- (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 section 115 above;
- (h) to prevent any other person from appearing before or from answering any question to which an inspector may, by virtue of section 115(3) above, 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 section 117 above;
- (j) intentionally to obstruct an inspector in the exercise of his powers or duties under section 117 above;
- (k) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under section 116 above;
- (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 Part; or
 - (ii) for the purpose of obtaining the grant of a consent to himself or any other person or the variation of a consent;

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- (m) intentionally to make a false entry in any record required to be kept under section 108 or 111 above;
 - (n) with intent to deceive, to forge or use a document purporting to be issued under section 111 above 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 (a), (b), (c), (d) or (f) of subsection (1) above 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 (c) or (d) of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.
- (4) A person guilty of an offence under paragraph (f) of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (5) A person guilty of an offence under paragraph (a) or (b) of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.
- (6) A person guilty of an offence under paragraph (e), (j), (k), (l), (m) or (n) of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (7) A person guilty of an offence under paragraph (g), (h) or (i) of subsection (1) above shall be liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both.
- (8) A person guilty of an offence under paragraph (o) of subsection (1) above 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 (b) of subsection (1) above 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.

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- (10) Proceedings in respect of an offence under this section shall not be instituted in England and Wales except by the Secretary of State or with the consent of the Director of Public Prosecutions or in Northern Ireland except with the consent of the Director of Public Prosecutions for Northern Ireland.

VALID FROM 01/02/1993

119 Onus of proof as regards techniques and evidence.

- (1) In any proceedings for either of the following offences, that is to say—
- (a) an offence under section 118(1)(c) above consisting in a failure to comply with the general condition implied by section 112(4)(c) or (5)(c) above; or
 - (b) an offence under section 118(1)(d) above consisting in a failure to comply with section 109(3)(c) or (4)(c) above;
- it shall be for the accused to prove that there was no better available technique not entailing excessive cost than was in fact used to satisfy the condition or to comply with that section.
- (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.

Commencement Information

111 S. 119 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, art. 3.

VALID FROM 01/02/1993

120 Power of court to order cause of offence to be remedied.

- (1) Where a person is convicted of an offence under section 118(1)(a), (b), (c), (d), (e) or (f) above 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 an order under subsection (1) above 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 subsection, as the case may be.
- (3) Where a person is ordered under subsection (1) above to remedy any matters, that person shall not be liable under section 118 above in respect of those matters, in so far as they continue during the time fixed by the order or any further time allowed under subsection (2) above.

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Commencement Information

I12 S. 120 wholly in force at 1.2.1993 see s. 1674(2)(3) and S.I. 1992/3253, art. 3

VALID FROM 01/02/1993

121 Power of Secretary of State to remedy harm.

- (1) Where the commission of an offence under section 118(1)(a), (b), (c), (d), (e) or (f) above causes any harm which it is possible to remedy, the Secretary of State may, subject to subsection (2) below—
 - (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 Secretary of State shall not exercise his powers under this section, 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.

Commencement Information

I13 S. 121 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, art. 3.

Publicity

122 Public register of information.

- (1) The Secretary of State shall maintain a register (“the register”) containing prescribed particulars of or relating to—
 - (a) notices given or other information furnished under section 108 above;
 - (b) directions given under section 108(8) above;
 - (c) prohibition notices;
 - (d) applications for consents (and any further information furnished in connection with them) and any advice given by the committee appointed under section 124 below in relation to such applications;
 - (e) consents granted by the Secretary of State and any information furnished to him in pursuance of consent conditions;
 - (f) any other information obtained or furnished under any provision of this Part;
 - (g) convictions for such offences under section 118 above as may be prescribed;
 - (h) such other matters relating to this Part as may be prescribed;
 but that duty is subject to section 123 below.
- (2) It shall be the duty of the Secretary of State—
 - (a) to secure that the register is open to inspection by members of the public free of charge at all reasonable hours; and

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- (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 Secretary of State may make regulations with respect to the keeping of the register; and in this section “prescribed” means prescribed in regulations made by the Secretary of State.

Modifications etc. (not altering text)

- C5** S. 122(1)(2): functions of the Scottish Ministers specified (3.5.2002) by [The Scotland Act 1998 \(Agency Arrangements\) \(Specification\) \(No. 2\) Order 2002 \(S.I. 2002/800\)](#), art. 2, [Sch.](#)

Commencement Information

- I14** S. 122 partly in force; s. 122 not in force at Royal Assent, see s. 164(2)(3); s. 122(1) in force for certain purposes at 1.4.1991 and s. 122(4) in force at 1.4.1991, see [S.I. 1991/1042](#), art. 2; s. 122(1)(c)-(h)(2)(3) in force at 1.2.1993, see [S.I. 1992/3253](#), art. 3

123 Exclusion from register of certain information.

- (1) No information shall be included in the register under section 122 above 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 Secretary of State, 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 Secretary of State has determined that the information—
 - (a) is, in relation to him, commercially confidential; and
 - (b) is not information of a description to which subsection (7) below applies;unless the Secretary of State is of the opinion that the information is no longer commercially confidential in relation to him.
- (4) Nothing in subsection (3) above requires the Secretary of State 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 subsection (3) above, the Secretary of State shall make a determination and inform the applicant of it as soon as is practicable.
- (6) Where it appears to the Secretary of State 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 Part might be commercially confidential, the Secretary of State shall—

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- (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 subsection (3) above; 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 Secretary of State for the purpose of justifying any such objection;
 and the Secretary of State 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 section 122(1)(a), (d) and (e) above 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) the description of any genetically modified organisms to which the notice or other information relates;
 - (c) the location at any time of those organisms;
 - (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);
 - (e) results of any assessment of the risks of damage to the environment being caused by the doing of any of those acts;
 - (f) notices under section 112(3), (4), (5) or (7) above;
- and the Secretary of State 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 subsection (3) above shall be treated as ceasing to be commercially confidential for the purposes of that subsection at the expiry of a period of four years beginning with 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 Secretary of State for the information to remain excluded on the ground that it is still commercially confidential.
- (9) The Secretary of State may by order substitute for the period for the time being specified in subsection (8) above such other period as he considers appropriate.

Modifications etc. (not altering text)

C6 S. 123(3)-(6)(8): functions of the Scottish Ministers specified (3.5.2002) by [The Scotland Act 1998 \(Agency Arrangements\) \(Specification\) \(No. 2\) Order 2002 \(S.I. 2002/800\)](#), art. 2, [Sch.](#)

Commencement Information

I15 S. 123 wholly in force; s. 123 not in force at Royal Assent, see [s. 164\(2\)\(3\)](#); [s. 123\(7\)\(9\)](#) in force at 1.4.1991, see [S.I. 1991/1042](#), art. 2; [s. 123\(1\)-\(6\)\(8\)](#) in force at 1.2.1993, see [S.I. 1992/3253](#), art. 3

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Supplementary

124 Advisory committee for purposes of Part VI.

- (1) The Secretary of State shall appoint a committee to provide him with advice—
 - (a) on the exercise of his powers under sections 111, 112 and 113 above;
 - (b) on the exercise of any power under this Part to make regulations;and on such other matters concerning his functions under this Part as he may from time to time direct.
- (2) The chairman and other members of the committee shall hold and vacate office in accordance with the terms of their appointment.
- (3) The Secretary of State shall pay to the members of the committee such remuneration (if any) and such allowances as he may, with the consent of the Treasury, determine.

Modifications etc. (not altering text)

- C7 S. 124 extended (Isles of Scilly) (with modifications) (4.8.2006) by [The Environmental Protection Act 1990 \(Isles of Scilly\) Order 2006 \(S.I. 2006/1381\)](#), [art. 3](#)

Commencement Information

- I16 S. 124 wholly in force at 1.4.1991 see [s. 164\(3\)](#) and [S.I. 1991/1042](#), [art. 2](#)

125 Delegation of enforcement functions.

- (1) The Secretary of State 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 his enforcement functions under this Part, subject to such restrictions and conditions as may be specified in the agreement.
- (2) For the purposes of this section the following are “enforcement functions” of the Secretary of State, that is to say, his functions under—
 - section 110;
 - section 114(1) and (4);
 - section 116;
 - section 118(10); and
 - section 121;and “inspector” in sections 115 and 117 includes, to the extent of the delegation, any inspector appointed by an authority other than the Secretary of State by virtue of an agreement under this section.
- (3) The Secretary of State shall, if and so far as an agreement under this section so provides, make payments to the authority to reimburse the authority the expenses incurred in the performance of functions delegated under this section; but no such agreement shall be made without the approval of the Treasury.

Commencement Information

- I17 S. 125 wholly in force at 1.4.1991 see [s. 164\(3\)](#) and [S.I. 1991/1042](#), [art. 2](#)

Status: Point in time view as at 01/04/1991. This version of this part contains provisions that are not valid for this point in time.

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126 Exercise of certain functions jointly by Secretary of State and Minister of Agriculture, Fisheries and Food.

- (1) Subject to subsection (2) below, any reference in this Part to a function exercisable by the Secretary of State shall, in any case where the function is to be exercised in relation to a matter with which the Minister of Agriculture, Fisheries and Food is concerned, be exercisable by the Secretary of State and that Minister acting jointly.
- (2) The validity of anything purporting to be done in pursuance of the exercise of any such function shall not be affected by any question whether that thing fell, by virtue of this section, to be done by the Secretary of State and the Minister of Agriculture, Fisheries and Food.

Commencement Information

I18 S. 126 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, art. 2

VALID FROM 01/02/1993

127 Definitions.

- (1) In this Part—

“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 section 111 above, 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;

“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 the United Kingdom;

“premises” includes any land;

“prohibition notice” means a notice under section 110 above.

- (2) This Part, except in so far as it relates to importations of genetically modified organisms, applies to the territorial sea adjacent to Great Britain, and to any area for the time being designated under section 1(7) of the ^{M3}Continental Shelf Act 1964, as it applies in Great Britain.

Commencement Information

I19 S. 127 wholly in force at 1.2.1993 see s. 164(2)(3) and S.I. 1992/3253, art. 3.

Marginal Citations

M3 1964 c. 29.

Status:

Point in time view as at 01/04/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

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