

Subsidiary Legislation made under s.180X.

## **Public Health (Transboundary Movements of Genetically Modified Organisms) Regulations 2013**

**LN.2013/040**

*Commencement*                      **21.2.2013**

**Transposing:**  
Regulation (EC) No 1946/2003

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### **ARRANGEMENT OF REGULATIONS**

#### Regulation

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### **THE SCHEDULE** Specified Community Provisions

**1950-07**

**Public Health**

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*In the exercise of the powers conferred on it by section 180X of the Public Health Act, and of all other enabling powers, and for the purpose of transposing into the laws of Gibraltar Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms, the Government has made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Public Health (Transboundary Movements of Genetically Modified Organisms) Regulations 2013 and come into operation on the day of publication.

**Interpretation.**

2.(1) In these Regulations—

“costs” shall include charges, fees and disbursements”;

“the Council Regulation” means Regulation 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms;

“DEFRA” means the Department for Environment, Food and Rural Affairs in the United Kingdom;

“Environmental Agency” means Environmental Agency Limited;

“inspector” means a person appointed as such under regulation 5; and

“specified Community provision” means a provision of the Council Regulation specified in column 1 of the Schedule to these Regulations.

(2) Expressions in these Regulations which are not defined in subregulation (1) and which appear in or are referred to in the Council Regulation have the same meaning in these Regulations as they have for the purposes of the Council Regulation.

**Focal Point and Competent Authority.**

3.(1) DEFRA is designated as Focal Point for the purpose of the Council Regulation.

(2) The Environmental Agency is designated as Competent Authority for the purpose of the Council Regulation.

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**Enforcement.**

4.(1) Except as provided in subregulation (2), the Environmental Agency shall enforce and execute the provisions of these Regulations and the specified Community provisions.

(2) The Environmental Agency may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed by this regulation shall be discharged by—

- (a) the Government and not by the Environmental Agency; or
- (b) the Government and the Environmental Agency acting jointly.

**Appointment of inspectors.**

5.(1) The Environmental Agency, or in any case to which a direction of the Environmental Agency under regulation 4(2) applies, the Government, may appoint as inspectors such persons as the Environmental Agency or the Government respectively considers necessary for the purpose of enforcing these Regulations and the specified Community provisions.

(2) Any appointment of an inspector under Part IVA of the Public Health Act having effect at the coming into force of these Regulations shall have effect as if it were an appointment of that inspector as an inspector for the purpose of these Regulations.

**Rights of entry.**

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

(2) For these purposes, those powers are exercisable in relation to any premises other than premises used wholly or mainly for domestic purposes.

(3) The powers of an inspector are—

- (a) at any reasonable time—
  - (i) to enter premises which he has reason to believe it is necessary for him to enter and to take with him any person duly authorised by the Environmental Agency 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;
- (e) in the case of anything found on premises which he has power to enter which appears to be a genetically modified organism, or to consist of or include genetically modified organisms, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely-
  - (i) to examine it;
  - (ii) to ensure that it is not tampered with before his examination of it is completed; and
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
- (f) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any test or inspection under this subregulation to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
- (g) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept for the purpose of complying with any specified Community provisions or it is necessary for him to see for the purposes of any test or inspection under this subregulation and to inspect, and take copies of, or of any entry in, the records; and

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- (h) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this regulation.

(4) Where under the power conferred by subregulation (3)(e) an inspector takes possession of anything found on the 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 it to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

**Obtaining information from persons.**

7.(1) For any purpose of the enforcement and execution of these Regulations and the specified Community provisions, the Environmental Agency may, by notice in writing served on any person who appears to it—

- (a) to be involved in the exportation of genetically modified organisms; or
- (b) to be about to become, or to have been, involved in that activity,

require that person to furnish such relevant information available to him as is specified in the notice, in such form and within such period following service of the notice as is so specified.

(2) For the purposes of this regulation “relevant information” means information concerning any aspects of the activities in question.

**Offences.**

8.(1) It shall be an offence for a person—

- (a) to contravene, or to fail to comply with, any specified Community provision;
- (b) to obstruct an inspector in the exercise of a power conferred by regulation 6;

- (c) without reasonable excuse to fail to comply with any requirement imposed under regulation 6;
- (d) without reasonable excuse to fail to comply with a request made under regulation 6(3)(g) or regulation 7;
- (e) knowingly or recklessly to make a statement or furnish any information that is false or misleading in a material particular where the statement is made or the information is furnished in purported compliance with—
  - (i) any requirement imposed by a specified Community provision; or
  - (ii) a request of an inspector made for a purpose in connection with the enforcement or execution of these Regulations; and
- (f) intentionally to make a false entry in any record required to be kept under a specified Community provision.

(2) It shall be a defence for a person charged with an offence under regulation 8(1)(a) to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

**Offences due to fault of another person.**

9. Where the commission by any person of an offence under regulation 8 is due to the act or default of some other person, that other person shall commit an offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

**Offences by bodies corporate.**

10.(1) Where an offence under these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall commit an offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding subregulation shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**Penalties.**

11.(1) Any person who contravenes or fails to comply with any of the specified Community provisions in Part I of the Schedule to these Regulations commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding £5,000 or to imprisonment for a term not exceeding three months, or to both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.

(2) Any person who contravenes or fails to comply with any of the specified Community provisions in Part II of the Schedule to these Regulations commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding £5,000; or
- (b) to imprisonment for a term not exceeding three months, or to both.

(3) A person guilty of an offence under regulation 8(1), (b), (c), (d), (e) or (f) shall be liable—

- (a) on summary conviction to a fine not exceeding £5,000; or
- (b) to imprisonment for a term not exceeding three months, or to both.

**Time limits.**

12.(1) Proceedings for an offence under regulation 8 may, subject to subregulation (2), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings comes to his knowledge.

(2) No such proceedings shall be commenced by virtue of this regulation more than three years after the commission of the offence.

(3) For the purpose of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

**Service of notices.**

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

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

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

(3) Where a notice is to be served on the occupier of any premises and it is not practicable after reasonable enquiry to ascertain the name and address of the person on whom it should be served, or the premises are unoccupied, the document may be served by addressing it to the person concerned by the description of “occupier” of the premises (naming them) and—

- (a) by delivering it to some person on the premises; or
- (b) if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

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



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**Costs.**

14.(1) Any costs incurred by the the Environmental Agency for the purposes of obtaining any expert advice when carrying out its functions under these Regulations shall be borne by the prospective importer or exporter, as the case may be, of genetically modified organisms.

(2) The costs referred to in subregulation (1) shall be made payable by the prospective importer or exporter, as the case may be, to the Environmental Agency on demand and on presentation of an invoice by the Environmental Agency.

(3) Subject to subregulation (4), the Environmental Agency shall reimburse the prospective importer or exporter with any costs paid by the prospective importer or exporter under subregulation (2), in the event that—

- (a) the Environmental Agency fails to instruct any expert; or
- (b) the Environmental Agency instructs an expert and the expert fails to provide the expert advice to the Environmental Agency.

(4) The Environmental Agency may retain any costs which it has reasonably incurred for any preparatory work undertaken for the purposes of instructing the expert.

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**THE SCHEDULE**

Regulation 2(1)

**Specified Community Provisions**

**Part I**

*Provision of the Council  
Regulation*

*Subject Matter*

Article 5(3)	Proceeding with first intentional transboundary movement of a genetically modified organism intended for deliberate release otherwise than in accordance with the relevant procedures.
Article 10(1)	Failure to respect any decision on the import of genetically modified organisms intended for direct use as food or feed or for processing.
Article 10(2)	Proceeding with first export of genetically modified organisms intended for direct use as food or feed or for processing otherwise than in accordance with the relevant procedure.
Article 10(3)	Exporting genetically modified organisms subject to transboundary movements for direct use as food or feed or for processing without authorisation to the import having been expressly agreed within the Community or by the competent authority of a third country as required under Article 12 of Regulation (EC) No 178/2002.

**PART II**

*Provision of the Council  
Regulation*

*Subject Matter*

Article 4	Failure to provide in the notification the minimum information, as specified in Annex I to the Council Regulation; and  Failure to ensure that the information contained in the notification is accurate.
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Article 6	Failure to keep for a minimum of 5 years records of notification under Article 4 of the Council Regulation; acknowledgements of receipt of notifications; and decisions of the Party or non-Party of import; and  Failure to send copies of these documents to the Competent Authority and to the Commission.
Article 7(2)	Failure to copy to the Secretariat any reminder sent to Parties or non-Parties of import.
Article 12(1)	Failure to ensure that specified information is contained in a document accompanying the GMO; and  Failure to ensure that this information is transmitted to the importer.
Article 12(2)	Failure to supply the specified supplemental information in relation to GMO's intended for direct use as food or feed or for processing.
Article 12(3)	Failure to supply the specified supplemental information in relation to GMO's intended for contained use.
Article 12(4)	Failure to supply the specified supplemental information in relation to GMO's intended for deliberate release and any other GMO's to which the Council Regulation applies.
Article 13	Failure to notify Parties of the transit of genetically modified organisms through their territory.