

STATUTORY INSTRUMENTS

1991 No. 1714

The Genetically Modified Organisms (Northern Ireland) Order 1991

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 ^{F1}... any international agreement [^{F2}or [^{F3}assimilated] law] 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.

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| F1 | Words in art. 13(2) omitted (31.12.2020) by virtue of The Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/584) , regs. 1, 4(a) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F2 | Words in art. 13(2) inserted (31.12.2020) by The Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/584) , regs. 1, 4(b) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F3 | Word in art. 13(2) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424) , reg. 1(2), Sch. para. 32 |

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)^{F4} or Article 8(6A);
- ^{F4}(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—

- (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.

F4 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^{F5} the matters described in paragraph (1A).]

[^{F5F5}(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.]

^{F5}(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.

F5 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.

Changes to legislation:

There are currently no known outstanding effects for the The Genetically Modified Organisms (Northern Ireland) Order 1991, Enforcement powers and offences.