
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

**The Genetically Modified Organisms (Deliberate Release etc.)
(Miscellaneous Amendments) (Scotland) Regulations 2019**

**Amendment to the Genetically Modified Organisms (Deliberate Release) (Scotland)
Regulations 2002**

16. After regulation 32, insert—

“PART VIA

Inspection powers, offences and service of notices

Powers of inspectors

32A.—(1) For the purpose of enforcing these Regulations, an inspector may exercise any of the powers specified in this regulation.

(2) An inspector may, on producing if so required a duly authenticated document showing their authority, at all reasonable hours enter any land (excluding any premises used wholly or mainly as a private dwelling).

(3) If a sheriff, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises by an inspector under this regulation and either that—

- (a) entry has been refused or a refusal is reasonably expected, and that person has given notice to the occupier of their intention to apply for an entry warrant, or
- (b) a request for entry, or the giving of such a notice, would frustrate the object of entry, or entry is urgently required, or the premises are unoccupied, or the occupier is temporarily absent and it would frustrate the object of entry to await the occupier’s return,

the sheriff, may, by signed warrant, valid for a period of no more than one month, authorise that person, together with any person who may accompany an inspector by virtue of paragraph (4)(a), to enter the premises, if need be by reasonable force.

(4) An inspector may—

- (a) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purpose of assisting the inspector to exercise the power,
- (b) do anything else which is reasonably required for that purpose,
- (c) take samples of things on the land,
- (d) mark anything on the land for identification purposes,
- (e) in the case of anything on the land which appears to contain or have contained a genetically modified organism—
 - (i) cause it to be dismantled or subjected to any process or test, or

- (ii) examine it,
 - (f) take a photograph or any other digital record of anything on the land,
 - (g) require access to, inspect and take copies of, or extracts from, any information on the land,
 - (h) take away any information to enable it to be copied or kept as evidence,
 - (i) require access to, inspect and check the operation of any computer and any associated apparatus or material and, for this purpose, require any person having charge of, or otherwise concerned with the operation of, any computer, apparatus or material to give the inspector such assistance as the inspector may reasonably require,
 - (j) where information is kept by means of a computer, require it to be produced in a form in which it can be taken away.
- (5) If an inspector causes damage in exercising the power, they must take reasonable steps to remedy the damage.
- (6) If an inspector enters unoccupied land in exercising the power, the inspector must leave the land as effectively secured against unauthorised entry as the inspector found it.
- (7) In this regulation, “inspector” means a person appointed by the Scottish Ministers.
- (8) In this regulation, “sheriff” includes a summary sheriff.

Offences and penalties

- 32B.**—(1) A person commits an offence if that person—
- (a) contravenes anything required of that person in a stop notice,
 - (b) obstructs an inspector (or a person accompanying an inspector and acting under the inspector’s instructions) in exercise of the power conferred by regulation 32A,
 - (c) supplies to an inspector (or a person accompanying an inspector and acting under the inspector’s instructions) any information knowing it to be false or misleading,
 - (d) cultivates a genetically modified organism in contravention of a limit included on the geographical scope of a consent to market under regulation 24(7) or a renewed consent to market under regulation 26(5),
 - (e) cultivates a genetically modified organism in contravention of a condition in a consent to limit its geographical scope under regulation 29A(3)(a), or
 - (f) cultivates a genetically modified organism or approved product in contravention of a suspension notice issued under regulation 29A(3)(b),(c) or (d).
- (2) It is a defence for a person charged with an offence under paragraph (1) to show that they took all reasonable precautions and exercised all due diligence to avoid committing that offence.
- (3) A person who commits an offence under paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months, or to both, or
 - (b) on conviction on indictment, to a fine or to imprisonment for a terms not exceeding 2 years or both.

Individual culpability for offending by an organisation

- 32C.**—(1) Paragraph (2) applies where—

- (a) an offence under these regulations is committed by a relevant organisation, and
- (b) the commission of the offence involves the consent or connivance of, or is attributable to the neglect of—
 - (i) a responsible official of the organisation, or
 - (ii) an individual purporting to act in the capacity of a responsible official.
- (2) The responsible official (or, as the case may be, the individual purporting to act in that capacity) as well as the organisation, commits the offence.
- (3) “Relevant organisation” means—
 - (a) a company,
 - (b) a partnership (including a limited liability partnership),
 - (c) another body or association.
- (4) “Responsible official” means—
 - (a) in the case of a company—
 - (i) a director, secretary, manager or similar officer, or
 - (i) where the affairs of the company are managed by its members, a member,
 - (b) in the case of a limited liability partnership, a member,
 - (c) in the case of a partnership other than a limited liability partnership, a partner,
 - (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

Service of notices

- 32D.**—(1) Any notice required to be given to any person by the Scottish Ministers by virtue of these Regulations may be given by—
- (a) delivering it to that person,
 - (b) leaving it at that person’s proper address,
 - (c) sending it by post or fax to that person’s proper address, or
 - (d) sending it by email to that person’s last known email address.
- (2) For the purposes of paragraph (1)(a), a notice is delivered to—
- (a) a body corporate where it is given to a relevant individual within that body,
 - (b) a partnership where it is given to a partner or a person having control or management of the partnership, and
 - (c) an unincorporated association where it is given to an officer or a member of the governing body of the association or any other person having management responsibilities in respect of the association.
- (3) For the purposes of paragraph (1)(b) and (c) and section 7 of the Interpretation Act 1978⁽¹⁾ (service of documents by post) in its application to this regulation, “proper address” means—
- (a) in the case of a body corporate, the registered office (if it is in the United Kingdom) or the principal office of the body in the United Kingdom,
 - (b) in the case of a partnership, the principal office of the partnership,
 - (c) in the case of an unincorporated association, the principal office of the association,

(1) 1978 c.30.

- (d) in any other case, a person's last known address.
- (4) For the purposes of paragraph (1)(d), a notice is sent to an email address of—
 - (a) a body corporate, where it is sent to an email address of—
 - (i) the body corporate, or
 - (ii) a relevant individual within that body,where that address is supplied by that body for the conduct of the affairs of that body,
 - (b) a partnership, where it is sent to an email address of—
 - (i) the partnership, or
 - (ii) a partner or person having control or management of that partnership,where that address is supplied by that partnership for the conduct of the affairs of the partnership,
 - (c) an unincorporated association, where it is sent to an email address of—
 - (i) an officer or member of the governing body of the association, or
 - (ii) any other person having management responsibilities in respect of the association,where that address is supplied by that association for the conduct of the affairs of that association, and
 - (d) a person other than a person mentioned in sub-paragraph (a), (b) or (c), where it is sent to an email address supplied by that person for the conduct of the affairs of that person.
- (5) In this regulation—
 - (a) “partnership” includes a Scottish partnership, and
 - (b) “relevant individual” means—
 - (i) a director, manager, secretary or other similar officer of the body corporate, or
 - (ii) where the affairs of the body corporate are managed by its members, a member.”.