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GENETICALLY MODIFIED ORGANISMS ACT 2001

Chapter 13

Arrangement of sections

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AN ACT

to restrict the import, acquisition, keeping, release and marketing in the Isle of Man of genetically modified organisms.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

1. Meaning of "genetically modified organism" etc.

- (1) In this Act "organism" —
 - (a) means any acellular, unicellular or multicellular entity (in any form), other than human beings or human embryos; and
 - (b) unless the context otherwise requires, also includes any article or substance consisting of or including biological matter.
- (2) For the purpose of subsection (1)(b) "biological matter" means anything (other than an entity mentioned in subsection (1)(a)) 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.

- (3) For the purposes of this Act an organism is "genetically modified" if any of the genes or other genetic material in the organism —

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- (a) have been modified by means of an prescribed artificial technique; 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.
- (4) The techniques which may be prescribed for the purposes of subsection (3) 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 Department would produce organisms which should for the purposes of this Act 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).

(5) It is immaterial for the purposes of subsections (3) and (4) 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).

2. Prohibition on import etc. of GMOs

- (1) No person shall —
 - (a) import,
 - (b) acquire,
 - (c) release,
 - (d) permit to escape,
 - (e) propagate,
 - (f) sell or supply,
 - (g) possess, or
 - (h) offer, expose or advertise for sale or supply,
- any genetically modified organism.

(2) It is an offence for a person to do anything in contravention of subsection (1) in relation to something which is a genetically modified organism.

(3) It is a defence for a person charged with an offence under subsection (1) to show that he did not know, and had no reasonable cause to believe, that the organism in question was a genetically modified organism.

(4) It is a defence for a person charged with an offence under subsection (1) to show that the organism in question is one the marketing of which is permitted, by virtue of any Community instrument, within any member State of the European Communities.

(5) It is a defence for a person charged with an offence under subsection (1)(g) to show that he possessed the organism otherwise than with a view to propagating, selling or supplying it.

(6) A person guilty of an offence under subsection (1) shall be liable —

(a) on summary conviction, to a fine not exceeding £20,000 or to custody for a term not exceeding 6 months, or to both;

(b) on conviction on information, to a fine or to custody for a term not exceeding 5 years, or to both.

(7) Proceedings for an offence under this section shall not be instituted except by the Department or by or with the consent of the Attorney General.

(7) Regulations may —

(a) provide for exemptions, or for the granting by the Department of exemptions to particular persons or classes of person, from the requirements of subsection (1) in such cases or circumstances, and to such extent, as may be prescribed;

(b) provide that organisms of prescribed classes or descriptions are to be treated for the purposes of subsection (4) as organisms the marketing of which is permitted as mentioned in that subsection.

3. Powers of entry, inspection etc.

The Schedule shall have effect for the purpose of conferring rights of entry, testing, inspection, seizure and destruction for the purpose of enforcing section 2, and for the related purposes therein mentioned.

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

(1) Where a person is convicted of an offence under section 2 in respect of any matters which appear to the court by which he is convicted 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) 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) to remedy any matters, that person shall not be liable under section 2 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).

5. Offences by bodies corporate

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In subsection (1) "director", in relation to any body corporate whose affairs are managed by its members, means a member of that body corporate.

6. Interpretation: general

(1) In this Act —

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

"the Department" means the Department of Agriculture, Fisheries and Forestry;

"the environment" consists of land, air and water or any of those media;

"escape" shall be construed in accordance with subsection (3);

"import" means import into the Island (including removal or remove from the United Kingdom to the Island);

"premises" includes any land;

"regulations" means regulations made by the Department;

"release" shall be construed in accordance with subsection (3).

(2) In this Act a reference to "reproduction", in relation to an organism, includes a reference to its replication or its transferring genetic material.

(3) An organism under a person's control —

- (a) 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

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- (b) 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.

7. Short title etc.

(1) This Act may be cited as the Genetically Modified Organisms Act 2001.

(2) This Act shall come into operation on such day or days as the Department may by order appoint.

(3) Regulations under this Act shall not have effect unless they are approved by Tynwald.

(4) This Act, except in so far as it relates to the import of genetically modified organisms, applies to the territorial sea adjacent to the Island as it applies in the Island.

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Section 3.

SCHEDULE

POWERS OF ENTRY, INSPECTION ETC.

Rights of entry and inspection

1. (1) A person authorised in writing by the Department for the purpose may, on production (if so required) of his authority, exercise any of the powers specified in subparagraph (2) —

- (a) in relation to premises —
 - (i) on which he has reason to believe a person is keeping or has kept any genetically modified organisms, or
 - (ii) from which he has reason to believe any such organisms have been released or have escaped; and
- (b) in relation to premises on which he has reason to believe there may be genetically modified organisms;

other than premises used wholly or mainly for domestic purposes.

(2) The powers of an authorised person 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 Department and, if the authorised person 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, 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 (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 —
 - (i) to examine it and do to it anything which he has power to do under (e) above;
 - (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 this Act;
- (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 subparagraph to answer (in the absence of persons other than a person

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nominated to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person 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 it is necessary for him to see for the purposes of any test or inspection under this sub-paragraph and to inspect, and take copies of, or of any entry in, the records;
- (i) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this paragraph.

(3) Regulations may make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under sub-paragraph (2)(d).

(4) Where an authorised person proposes to exercise the power conferred by sub-paragraph (2)(e), he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(5) Before exercising the power conferred by sub-paragraph (2)(e), an authorised person 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.

(6) Where under the power conferred by sub-paragraph (2)(f) an authorised person 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 authorised person 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.

(7) No answer given by a person in pursuance of a requirement imposed under sub-paragraph (2)(g) shall be admissible in evidence in any proceedings against that person.

(8) 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.

Obtaining of information from persons

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

- (a) to be involved in the import, acquisition, keeping, release, propagation, sale or supply 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 to the Department 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 paragraph "relevant information" means information concerning any aspects of the activities in question, including any effects on the environment which it may have or have had.

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Power to deal with GMOs

3. (1) Where, in the case of anything found by him on any premises which he has power to enter, an authorised person has reason to believe that it is a genetically modified organism or that it consists of or includes a genetically modified organism, he may seize it and cause it to be destroyed.

(2) Sub-paragraph (1) does not apply to a genetically modified organism the marketing of which is permitted, by virtue of any Community instrument, within any member State of the European Communities.

(3) As soon as may be after anything has been seized and destroyed under this paragraph, the authorised person 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 (b) above applies, the authorised person 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 (a) above.

(4) Where the presence on any premises of anything seized and destroyed under sub-paragraph (1) was caused by an intentional act by, or by neglect on the part of, any person, the Department may recover from that person the cost reasonably incurred by it in seizing and destroying the thing, unless he shows that he did not know and had no reasonable cause to believe that it was, or consisted of or included, a genetically modified organism.

Contraventions of paragraphs 1 to 3

4. (1) It is an offence for a person —
- (a) without reasonable excuse, to fail to comply with any requirement imposed under paragraph 1;
 - (b) to prevent any other person from appearing before or from answering any question to which an authorised person may, by virtue of paragraph 1(2)(g), require an answer;
 - (c) intentionally to obstruct an authorised person in the exercise or performance of his powers or duties;
 - (d) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under paragraph 2;
 - (e) 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 in purported compliance with a requirement to furnish any information imposed by or under any provision of this Act;
 - (f) falsely to pretend to be an authorised person.

(2) A person guilty of an offence under sub-paragraph (1)(a), (b), (c) or (d) shall be liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both.

(3) A person guilty of an offence under sub-paragraph (1)(e) or (f) shall be liable —

- (a) on summary conviction, to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on indictment, to a fine or to custody for a term not exceeding 2 years, or to both.

(4) Proceedings in respect of an offence under this paragraph shall not be instituted except by the Department or by or with the consent of the Attorney General.

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Interpretation

5. In this Schedule "authorised person" means a person authorised as mentioned in paragraph 1(1).