

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5066 GIBRALTAR Thursday 6th July 2023

B. 19/23

GENETICALLY MODIFIED ORGANISMS BILL 2023

ARRANGEMENT OF CLAUSES

Clause

Part 1 **Title and interpretation**

1. Short title and commencement.
2. Interpretation.
3. Meaning of “damage to the environment”, “control’ and related expressions in this Act.

Part 2 **Regulatory Regime Relating to Genetically Modified Organisms**

4. Risk assessment and notification requirements.
5. General duties relating to importation, acquisition, keeping, release or marketing of 6. organisms.
6. Prohibition notices.
7. Consents required by certain persons.
8. Consents: limitations and conditions.
9. Fees and charges.

Part 3 **Enforcement**

10. Appointment etc of inspectors.
11. Rights of entry and inspection.
12. Obtaining information from persons.
13. Power to deal with cause of imminent danger of damage to the environment.
14. Offences.
15. Onus of proof as regards techniques and evidence.
16. Power of court to order cause of offence to be remedied.
17. Power of competent authority to remedy harm.
18. The competent authority.
19. Offences by bodies corporate.
20. Offences under this Act due to fault of others.

Part 4
Final Provisions

21. Public register.
22. Service of notices.
23. Recovery of expenses.
24. Amendment of Act to give effect to retained EU obligations and international obligations.
25. Regulations.
26. Powers of Act to be cumulative
27. Repeal and savings.
28. Consequential provision.

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5066 GIBRALTAR Thursday 6th July 2023

B. 19/2023

BILL

FOR

AN ACT to restate the law relating to genetically modified organisms, with modifications; and matters connected thereto.

ENACTED by the Legislature of Gibraltar.

PART 1 TITLE AND INTERPRETATION

Short title and commencement.

1. This Act may be cited as the Genetically Modified Organisms Act 2023 and comes into operation on the day of publication.

Interpretation.

2.(1) In this Act, unless the context shall otherwise require—

“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;

“competent authority” means the person or body designated by the Government from time to time by notice in the Gazette;

“consent” means a consent granted under section 7 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 Gibraltar;

“Minister” means the Minister with responsibility for the Environment;

“premises” includes any land;

“prescribed” means prescribed in regulations made under this Act;

“inspector” in sections 11 and 13 includes any inspector appointed by the competent authority in accordance with section 10;

“modifications” includes additions, alterations and omissions;

“prohibition notice” means a notice under section 6;

“related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

(2) In this Act 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.

(3) For the purpose of subsection (2) “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 Act, and subject to subsection (7), an organism is “genetically modified” if any of the genes or other genetic material in the organism –

- (a) have been artificially modified; 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) Subject to subsections (6) and (7), genes or other genetic material in an organism are “artificially modified” for the purposes of subsection (4) if they are altered otherwise than by a process which occurs naturally in mating or natural recombination.

(6) For the purposes of subsection (4)-

- (a) genes or other genetic material shall be taken to be artificially modified if they are altered using such techniques as may be prescribed for the purposes of this section;
- (b) genes or other genetic material shall not be regarded as artificially modified by reason only of being altered by the use of such techniques as may be prescribed for the purposes of this section.

(7) An organism shall be taken not to be a genetically modified for the purposes of this Part if it is an organism of a prescribed description.

(8) In this Act, where the context permits, a reference to “reproduction”, in relation to an organism, includes a reference to its replication or its transferring genetic material.

(9) This Act, except in so far as it relates to the importation of genetically modified organisms, applies to British Gibraltar Territorial Waters.

Meaning of “damage to the environment”, “control” and related expressions in this Act.

3.(1) The provisions of subsections (2) to (11) have effect for the interpretation of this Act.

(2) The “environment” consists of land, air and water and living organisms supported by 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) escaped or been released from a person's control and are (or is) capable of causing harm.

(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 adverse effects as regards the health of humans or the environment.

(7) “Harmful” and “harmless” mean respectively, in relation to genetically modified organisms, their being capable or their being incapable of causing harm.

(8) The Minister 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 Act as may be so specified.

(9) Organisms of any description are under the “control” of a person where he keeps them contained by measures designed to limit their contact with humans and the environment and to prevent or minimise the risk of harm.

(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” by a person when products consisting of or including such organisms are placed on the market by being made available to other persons, whether or not for consideration.

PART 2

REGULATORY REGIME RELATING TO GENETICALLY MODIFIED ORGANISMS

Risk Assessment and notification requirements.

4.(1) Subject to subsections (2) and (7), 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 competent authority such notice of his intention of doing that act and such information as may be prescribed.

(2) Subsection (1) does not apply to a person proposing to do an act mentioned in that subsection who is required under section 7(1)(a) to have a consent before doing that act.

(3) Subject to subsection (4) and (7), 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 competent authority notice of the fact that he is keeping the organisms and such information as may be prescribed.

(4) Subsection (3) does not apply to a person who is keeping genetically modified organisms and is required under section 7(2) 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) 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) to give notice to the competent authority shall give the competent authority such further information as the competent authority may by notice in writing require.

(7) The Minister may by regulations provide for exemptions, or for the granting by the competent authority of exemptions to particular persons or classes of person, from the requirements of subsection (1) or (3) in such cases or circumstances, and to such extent, as may be prescribed.

(8) The competent authority may at any time -

- (a) give directions to a person falling within subsection (1) 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) 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) or (b) shall, from the specified date, be subject to section 7 in place of the requirements of this section.

(9) The Minister may by regulations—

- (a) prescribe the manner in which assessments under subsection (1) or (3) are to be carried out and the matters which shall be investigated and assessed;
- (b) prescribe minimum periods of notice between the giving of a notice under subsection (1)(b) and the doing of the act in question;
- (c) make provision allowing the competent authority to shorten or to extend any such period;
- (d) prescribe maximum intervals at which assessments under subsection (3)(a) shall be carried out;

(e) prescribe the period for the purposes of subsection (5),

and the regulations may make different provision for different cases and different circumstances.

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

5.(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), be subject to the duties specified in subsections (2), (3) or (4), 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 may 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;
- (b) shall cease keeping the organisms if, despite any additional precautions which may 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) to cease keeping the organisms he shall dispose of them as safely and as quickly as practicable and paragraph (c) 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 may 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), 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 4, 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 4 to carry out a risk assessment before importing or acquiring them;
 - (ii) have not been required under that regulation 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.

Prohibition notices.

6.(1) The competent authority may serve a notice under this Act (a “prohibition notice”) on any person it 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 it 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) 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 competent authority is, in relation to the person on whom it is served, of the opinion mentioned in subsection (1);
- (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 competent authority may at any time withdraw a prohibition notice served on any person by notice given to that person.

Consents required by certain persons.

7.(1) Subject to subsection (8), no person shall import or acquire, release or market any genetically modified organisms –

- (a) in such cases or circumstances as may be prescribed in relation to this act; or
- (b) in any case where he has been given directions under section 4(8)(a);

except in pursuance of a consent granted by the competent authority and in accordance with any limitations and conditions to which the consent is subject.

(2) Subject to subsection (8), 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 subsection 4(8)(b), after the date specified in the directions;

except in pursuance of a consent granted by the competent authority and in accordance with any limitations or conditions to which the consent is subject.

(3) A person who is required under subsection (2) to cease keeping any genetically modified organisms shall dispose of them as quickly and safely as practicable.

(4) An application for a consent shall 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 9.

(5) The applicant shall, in prescribed circumstances, give such notice of his application to such persons as may be prescribed.

(6) The competent authority may by notice to the applicant require him to furnish such further information specified in the notice, within such period and in such form and manner 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 and in the specified form and manner the competent authority may refuse to proceed with the application.

(7) Where an applicant for consent for releasing or marketing genetically modified organisms becomes aware, before his application is either granted or rejected, of any new information with regard to any risks there are of damage to the environment being caused as a result of the organisms being released or marketed, he shall notify the competent authority of that new information forthwith.

(8) The Minister may by regulations provide for exemptions, or for the granting by the competent authority of exemptions to particular persons or classes of person, from -

- (a) any requirement under subsections (1) or (2) 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.

(9) Where an application for a consent is duly made to it, the competent authority may grant the consent subject to such limitations and conditions as may be imposed under section 8 or it may refuse the application.

(10) 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.

(11) The competent authority 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).

(12) Regulations under this section may make different provision for different cases and different circumstances.

Consents: limitations and conditions.

8.(1) The competent authority may include in a consent such limitations and conditions as it may think fit.

(2) Without prejudice to the generality of subsection (1), the conditions included in a consent may -

- (a) require the giving of notice of any fact to the competent authority; 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, in any manner specified in the conditions, as quickly and safely as practicable.

(3) Subject to subsection (6), 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 competent authority forthwith.

(4) Subject to subsection (6), 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 competent authority 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), 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 organism and the extent and manner of the release or marketing) of 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) notify the competent authority of -
 - (i) any new information which becomes available with regard to any risks there are of damage to the environment being so caused;
 - (ii) any unforeseen event, occurring in connection with a release by him, which might affect the risks there are of damage to the environment being caused as a result of their being released;
- (c) take such measures as are necessary to prevent damage to the environment being caused as a result of the release or, as the case may be, the marketing of the organisms;
- (d) notify the competent authority of the measures (if any) taken as a result of new information becoming available or an unforeseen event occurring as described in paragraph (b)(ii); and
- (e) in a case where new information becomes available or an unforeseen event so occurs, revise the information contained in his application for a consent accordingly and supply the revised information to the competent authority.

(6) The general condition implied into a consent under subsections (3), (4) or (5) has effect subject to any conditions imposed under subsection (1) and the obligations imposed by virtue of subsection (4)(c) or (5)(c) shall not apply to any aspect of an act authorised by a consent which is regulated by such a condition.

(7) Subject to any conditions imposed under subsection (1), 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), shall notify the competent authority of that fact forthwith.

Fees and charges.

9.(1) The competent authority may 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 competent authority to be appropriate.

(3) The competent authority 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 year with another, to cover the expenditure of the competent authority in discharging its functions under this Act in relation to consents.

**PART 3
ENFORCEMENT**

Appointment etc. of inspectors.

10.(1) The competent authority may appoint as inspectors, for carrying this Act into effect, such number of persons appearing to it to be qualified for the purpose as it may consider necessary.

(2) The competent authority may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as it may 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 11 or 13 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(4) An inspector, if authorised to do so by the competent authority with the consent of the Government, may prosecute before the magistrates' court proceedings for an offence under section 14.

Rights of entry and inspection.

11.(1) An inspector may, on production (if so required) of his authority, exercise any of the powers specified in subsection (3) for the purposes of the discharge of the functions of the competent authority under this Act.

(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

(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 Government or the competent authority and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a police officer; 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 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, that is to say -
 - (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 14;
- (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 section 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 as to 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 Act or it is necessary for him to see for the purposes of any test or inspection under this section 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) which is conferred by regulations made by the Minister.

(4) The Minister 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).

(5) Where an inspector proposes to exercise the power conferred by subsection (3), 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), 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) 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) shall be admissible in evidence in any proceedings against that person.

(9) The powers conferred by subsections (3)(a), (b), (c), (d), (e) and (h) shall also be exercisable (subject to subsections (4), (5) and (6)) by any person authorised for the purpose in writing by the Government.

(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 Supreme Court.

(11) Every person being employed in the administration of this Act or any regulations made hereunder shall regard information obtained in the exercise of the powers contained in this Act as entirely confidential.

Obtaining of information from persons.

12.(1) For the purposes of the discharge of its functions under this Act, the competent authority 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 it 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 competent authority of a function under retained EU law or an obligation of Gibraltar under any international agreement concerning the protection of the environment from harm caused by genetically modified organisms shall be treated as a function of it under this Act.

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

13.(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 –

- (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) 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).

Offences.

14.(1) It is an offence for a person—

- (a) to do anything in contravention of section 4(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 section 4(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 section 7(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 subsection (2), (3) (a), (b) (c) or (4) of section 5 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 4(5) or (6) or section 7 (7);
- (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 11;
- (h) to prevent any other person from appearing before or from answering any question to which an inspector may, by virtue of section 11(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 section 13;
- (j) intentionally to obstruct an inspector in the exercise of his powers or duties under section 13;
- (k) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under section 12;
- (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 Act; 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 sections 4 or 7;
- (n) with intent to deceive, to forge or use a document purporting to be issued under section 7 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 subsection (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 convicted of an offence under subsection (1) or under any regulations made under this Act shall be liable, on summary conviction, to a fine not exceeding level 3 of the standard scale or to imprisonment for a term not exceeding 3 months, or to both.

(4) Where a person is convicted of an offence under subsection (1)(b) in respect of the keeping by him of any genetically modified organism the court shall, upon conviction, order that any such genetically modified organisms be forfeit.

(5) If the contravention in respect of which a person 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 the amount at level 3 on the standard scale for each day on which the contravention is so continued.

Onus of proof as regards techniques and evidence.

15.(1) In any proceedings for either of the following offences, that is to say –

- (a) an offence under section 14(1)(c) consisting in a failure to comply with the general condition implied by section 8(4)(c) or (5)(c); or
- (b) an offence under section 14(1)(d) consisting in a failure to comply with section 5 (3)(c) or 5 (4)(c);

it shall be a defence for the accused to prove the matters described in subsection (2).

(2) The matters referred to in subsection (1) are-

- (a) in the case of an offence under section 14(1)(c) consisting in a failure to comply with the general condition implied by section 8(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, marketing 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 to comply with that section.

(3) 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.

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

16.(1) Where a person is convicted of an offence under section 14 (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 shall, 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 14 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).

Power of competent authority to remedy harm.

17.(1) Where there is a failure by any person to fulfil an obligation under this Act and that failure causes any harm which it is possible to remedy, the competent authority may, subject to subsection (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 having that obligation.

(2) The competent authority shall not exercise its 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 the person having the obligation in question, except with the permission of that person.

The competent authority.

18.(1) Neither the competent authority nor any of its members, officers or servants shall be liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the competent authority by this Act or rules or regulations made hereunder.

(2) The Minister may prescribe fees to be charged by the competent authority in respect of the carrying out of its functions under this Act.

Offences by bodies corporate.

19.(1) Where an offence under any provision of this Act 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 be guilty of that 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, subsection (1) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

(4) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of or to have been attributable to any neglect on the part of a partner he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

Offences under this Act due to fault of others.

20. Where the commission by any person of an offence under this Act 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 section whether or not proceedings for the offence are taken against the first-mentioned person.

**PART 4
FINAL PROVISIONS**

Public Register.

21.(1) The competent authority shall keep a public record of all notifications made to it and of any consents or prohibitions issued by it under the provisions of this Act or any regulations made thereunder.

(2) The competent authority shall from time to time cause to be advertised by notice in the Gazette the time and place where the public record shall be open for inspection upon payment of a prescribed fee.

(3) Any information required to be notified to the competent authority will be removed from the public record and treated as confidential if the notifier indicates the information in the notification submitted by him contains information that might harm his competitive position.

(4) Verifiable justification shall be given in any case to which subsection (3) applies, and it shall be entirely a matter within the discretion of the competent authority, after consultation with the notifier, which information will be kept confidential.

(5) The competent authority shall inform the notifier of its decision made under subsection (4).

(6) The Minister may by regulations provide for information to be excluded from the register on such grounds and in such cases and circumstances as may be prescribed.

Service of notices.

22.(1) Any notice required or authorised to be served on or given to a person may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(2) Any such notice may-

- (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
- (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business.

(3) For the purposes of this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that-

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principle office of that body;
- (b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this subsection the principle office of a company registered outside Gibraltar or of a partnership carrying on business outside Gibraltar shall be their principal office in Gibraltar.

(4) If the person to be served with or given any such notice has specified an address in Gibraltar other than his proper address within the meaning of subsection (3) as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section as his proper address.

(5) The provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

Recovery of expenses.

23. Any sum which the competent authority is entitled to recover under this Act, may be recovered either summarily as a civil debt or as a simple contract debt in any court of competent jurisdiction.

Amendment of Act to give effect to retained EU obligations and international obligations.

24. The Minister may by regulations provide that the provisions of this Act shall have effect with such modifications as may be therein prescribed for the purpose of enabling the Government-

- (a) to give effect to any retained EU obligation or exercise any related right; or
- (b) to give effect to any obligation or exercise any related right under any international agreement to which Gibraltar is for the time being a party to.

Regulations.

25. The Minister may make regulations prescribing all matters which by this Act are required or permitted to be prescribed and generally to carry out and give effect to the provisions of this Act.

Powers of Act to be cumulative.

26. All powers and duties conferred or imposed by this Act shall be deemed to be in addition to, and not in derogation of, any other powers and duties conferred or imposed by any other enactment, and, subject to any repeal effected by, or other express provision of, this Act all such other powers and duties may be exercised, and shall be performed in the same manner as if this Act had not been passed.

Repeal and savings.

27.(1) Part VIA of the Public Health Act is repealed.

(2) The repeal of Part VIA of the Public Health Act shall not affect the continued validity of anything done or not done thereunder.

(3) The repeal of Part VIA shall not affect the continuity of the following regulations-

- (a) Public Health (Genetically Modified Organisms)(Contained Use) Regulations 2001;
- (b) Public Health (Genetically Modified Organisms)(Deliberate Release) Regulations 1995;
- (c) Public Health (Transboundary Movements of Genetically Modified Organisms) Regulations 2013.

(4) The Notice made under section 180A of the repealed Part VIA appointing the competent authority shall continue and have effect as if made under section 2 of this Act.

Consequential provision.

28. The Minister may by regulations make such consequential amendments as are necessary or appropriate in connection with the coming into force of this Act.

Explanatory Memorandum

This Bill re-enacts Part IVA of the Public Health Act with modifications and that Part is consequently repealed.

**Printed by the Gibraltar Chronicle Printing Limited
Unit 3, New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price. £1.10**