



STATUTORY INSTRUMENTS.

S.I. No. 253 of 2019



EUROPEAN UNION (NAGOYA PROTOCOL ON ACCESS TO GENETIC
RESOURCES AND BENEFIT-SHARING) REGULATIONS 2019

S.I. No. 253 of 2019

European Union (Nagoya Protocol on Access to Genetic Resources and Benefit-Sharing) Regulations 2019

I, JOSEPHA MADIGAN, Minister for Culture, Heritage and the Gaeltacht, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Regulation (EU) 511/2014 of the European Parliament and of the Council of 16 April 2014¹, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Nagoya Protocol on Access to Genetic Resources and Benefit-Sharing) Regulations 2019.

2. (1) In these Regulations -

“authorised officer” means a person appointed under Regulation 5;

“competent authority” shall be construed in accordance with Regulation 3;

“EU Regulation” means Regulation (EU) 511/2014 of the European Parliament and of the Council of 16 April 2014¹ on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union;

“Minister” means the Minister for Culture, Heritage and the Gaeltacht.

(2) A word or expression which is used in these Regulations and which is also used in the EU Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EU Regulation.

3. The Minister is designated as the competent authority for the purposes of Article 6 of the EU Regulation and these Regulations.

4. The competent authority shall, upon request by a collection holder, consider the inclusion of a collection, or a part thereof, in the register referred to in Article 5(2) of the EU Regulation and the competent authority shall notify the Commission in accordance with that Article.

¹ OJ No. L 150, 20.5.2014, p.59

5. (1) The competent authority may appoint such and so many persons as it thinks fit to be authorised officers for the purposes of ensuring compliance with the EU Regulation and these Regulations.

(2) The competent authority shall furnish an authorised officer with a warrant of his or her appointment and when exercising a power conferred by these Regulations, the authorised officer shall, if requested by a person affected, produce the warrant or a copy of it to that person for inspection.

(3) The competent authority may terminate the appointment of an authorised officer appointed by it whether or not the appointment was for a fixed period.

(4) The appointment of an authorised officer ceases -

- (a) if it is terminated under paragraph (3),
- (b) if it is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.

(5) For the purposes of ensuring compliance with Articles 4, 5 and 7 of the EU Regulation, an authorised officer may do any of the following:

- (a) subject to paragraph (6), enter at all reasonable times any place at which the authorised officer has reasonable grounds for believing that books, records or other documents relating to the EU Regulation are kept;
- (b) at such place, inspect and take copies of any books, records or other documents (including books, records or documents stored in non-legible form) that the authorised officer finds in the course of his or her inspection;
- (c) remove any such books, records or other documents from such place and retain them for such period as he or she reasonably considers to be necessary for the purposes of this Regulation;
- (d) require any person at the place concerned to give the authorised officer such information and assistance as the authorised officer may reasonably require for the purposes of this Regulation;
- (e) require any person at the place concerned to produce to the authorised officer such books, records or other documents (and in the case of books, records or documents stored in non-legible form, a legible reproduction thereof) that are in that person's possession or procurement, or under that person's control, as the

authorised officer may reasonably require for the purposes of this Regulation.

(6) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (8) authorising such entry.

(7) Where an authorised officer in the exercise of his or her powers under this Regulation is prevented from entering any place, an application may be made to the District Court under paragraph (8) for a warrant authorising such entry.

(8) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that books, records or other documents required by an authorised officer for inspection under this Regulation are held in any place and that such inspection is likely to disclose evidence of a contravention of Article 4, 5 or 7 of the EU Regulation, the judge may issue a warrant authorising the authorised officer, accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times within one month from the date of issue of the warrant, on production of the warrant, if requested, to enter (if necessary by the use of reasonable force) the place concerned and perform the functions conferred on an authorised officer under this Regulation.

(9) In this Regulation, “place” includes -

- (a) a dwelling or a part thereof,
- (b) a building or a part thereof, and
- (c) any other premises or part thereof.

6. (1) An authorised officer who is of the opinion that a person is contravening or has contravened Article 4, 5 or 7 of the EU Regulation may serve a notice (in these Regulations referred to as a “contravention notice”) on the person.

(2) A contravention notice shall -

- (a) state that the authorised officer is of the opinion that the person is contravening or has contravened Article 4, 5 or 7 of the EU Regulation and the reason for that opinion,
- (b) identify the relevant Article of the EU Regulation,

- (c) specify the remedial action or measures to be taken by the person on whom the notice is served in order to remedy the contravention by a date specified in the notice that shall not be earlier than the end of the period within which an appeal may be made under paragraph (5),
- (d) include information regarding the making of an appeal under paragraph (5),
- (e) state that if the person on whom it is served fails to comply with the notice the person shall be guilty of an offence, and
- (f) be signed and dated by the authorised officer.

(3) A person on whom a contravention notice has been served who is of the opinion that the contravention notice has been complied with shall confirm such compliance in writing to the authorised officer.

(4) Where a person on whom a contravention notice has been served confirms compliance in accordance with paragraph (3), the authorised officer, on being satisfied that the person has complied with the notice, shall within one month of receipt of such confirmation, give notice to the person concerned of compliance with the contravention notice.

(5) A person on whom a contravention notice has been served may, within 14 days of the service of the notice upon him or her, appeal to the judge of the District Court in whose district the notice was served.

(6) A person who appeals under paragraph (5) shall at the same time notify the competent authority of the appeal and the grounds for the appeal and the competent authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(7) Where an appeal under paragraph (5) is made, and the contravention notice is not cancelled, the notice as confirmed or varied shall take effect on the later of -

- (a) the day next following the day on which the notice is confirmed or varied on appeal or the appeal is withdrawn, and
- (b) the date specified in the notice.

(8) Where there is no appeal under paragraph (5), the contravention notice shall take effect on the later of -

- (a) the end of the period for making an appeal, and
- (b) the date specified in the notice.

(9) An authorised officer may -

- (a) withdraw a contravention notice at any time, or
- (b) where no appeal is made or pending under paragraph (5), extend the date specified under paragraph (2)(c).

7. (1) A notice or other document that is required to be served on or given to a person by these Regulations shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address; or
- (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.

(2) For the purpose of this Regulation, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

8. (1) A person who contravenes Article 4 or 7 of the EU Regulation shall be guilty of an offence.

(2) A person who fails to comply with a contravention notice under Regulation 6 shall be guilty of an offence.

(3) A person shall be guilty of an offence where he or she -

- (a) prevents, obstructs, impedes or delays an authorised officer in the performance of his or her functions under Regulation 5, or
- (b) gives to an authorised officer any information which is false or misleading in any material respect, knowing it to be so false or misleading.

(4) A person guilty of an offence under paragraph (1) or (2) shall be liable -

- (a) on summary conviction, to a class A fine, or to imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €100,000, or to imprisonment for a term not exceeding 2 years, or both.

(5) A person guilty of an offence under paragraph (3) shall be liable on summary conviction to a class A fine, or to imprisonment for a term not exceeding 6 months, or both.

(6) If a person is convicted of an offence under these Regulations the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the prosecutor the costs and expenses, measured by the court, reasonably incurred by the prosecutor in relation to the investigation, detection and prosecution of the offence, including costs incurred in the taking of samples, the carrying out of tests, examinations, assessments and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers.

(7) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary, or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(8) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the competent authority.



GIVEN under my Official Seal,
6 June, 2019.

JOSEPHA MADIGAN,
Minister for Culture, Heritage and the Gaeltacht.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations have been developed for the purposes of implementing aspects of Regulation (EU) 511/2014 of the European Parliament and Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union.

The EU Regulation and these Regulations apply to genetic resources over which States exercise sovereign rights, and to traditional knowledge associated with genetic resources, that are accessed after the entry into force of the Nagoya Protocol for the European Union.

These Regulations do not apply to genetic resources for which access and benefit-sharing is governed by specialised international instruments that are consistent with, and do not run counter to the objectives of the Convention on Biological Diversity and the Nagoya Protocol.

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