

Legislative Consent Memorandum

Genetic Technology (Precision Breeding) Bill

Background

1. This memorandum has been lodged by Mairi Gougeon, Cabinet Secretary for Rural Affairs and Islands, under Rule 9B.3.1(a) of the Parliament's standing orders, and is supported by the Minister for Environment and Land Reform. The Genetic Technology (Precision Breeding) Bill was introduced in the House of Commons on 25 May 2022. The Bill can be found at <https://bills.parliament.uk/bills/3167>.

Content of the Genetic Technology (Precision Breeding) Bill

2. The Bill removes the plants and animals produced using modern biotechnologies, and the food and feed derived from them, from Genetically Modified Organisms (GMO) regulations if every feature of its genome could have occurred naturally or been produced by traditional methods. The substantive provisions of the Bill do not extend to Scotland. The Bill includes provisions to:

- Remove precision bred organisms (PBOs) from the authorisation requirements under GMO legislation and instead bring in two mandatory notification systems for PBOs, one for non-marketing purposes (research and development) and one for marketing purposes;
- Create new powers to introduce on-going obligations to report information relating to the health and welfare of precision-bred vertebrate animals, and to prescribe the processes and powers the Secretary of State can use to take the necessary action in response to this post-marketing animal welfare information;
- Place a duty on the Secretary of State to create and maintain a new public register of notified information. The register is to be kept in electronic form and accessible on gov.uk;
- Create powers to put in place a new regulatory framework for food and feed derived from PBOs, ensuring that appropriate regulation is in place before placing these products on the market. This framework will include a procedure for making precision-bred food and feed marketing authorisations including a new proportionate risk assessment. The framework will also set out the requirements to be satisfied before the Secretary of State could issue a food and feed marketing authorisation;
- Create powers for the Food Standards Agency (FSA) to establish, publish and update a public register for PBOs authorised for food and feed use. An entry on this register would indicate that the Secretary of State has made a

determination to authorise the PBO, and products derived from it to enter the market for food and feed uses based on the recommendation of the FSA; and

- Create powers to create an inspection and enforcement regime, including civil sanctions, in order to secure compliance with the obligations under the Bill.

3. The UK Government does not agree that a legislative consent motion is required.

Provisions which relate to Scotland

4. Clause 42, which extends to Scotland, enables the Secretary of State for Environment, Food, and Rural Affairs to make “supplementary, incidental or consequential provision in connection with any provision of or made under this Act” (Clause 42(1)).

5. There are further provisions of the Bill which extend to Scotland, but are not considered to require the legislative consent of the Scottish Parliament. These are:

(a) Part 1 (clauses 1 and 2) which contain the definitions of “precision bred organism” and the related definitions of “plant” and “animal”. These are linked to definitions in the Environmental Protection Act 1990 and the position is explained in b. below;

(b) Clause 41 which makes amendments to the Environmental Protection Act 1990. This is a UK-wide Act, but the amendments in the Bill apply only in relation to England; and

(c) Clauses 43-48 which make provision in respect of the operation of the Bill, its interpretation and enabling powers contained in the Bill.

Reasons consent is not recommended

6. Clause 42 of the Bill would permit the amendment of legislation, including devolved legislation, which is related to the main purpose of the Bill. The regulation in Scotland of GMOs and a number of related policy areas, such as agriculture and food, is devolved. To the extent that Clause 42 permits the making of regulations which may amend existing legislation – or otherwise make provision – in a devolved policy area, it is a provision within the legislative competence of the Scottish Parliament and applying to Scotland for devolved purposes.

7. As currently drafted there is no requirement for Scottish Ministers to consent to secondary legislation relating to Scotland made under this power. Also there is unlikely to be any opportunity for the Scottish Parliament to scrutinise regulations made under this power where they contain devolved provision. This is therefore a constitutional impingement which represents an erosion of devolved competence. It represents a near-term risk to Scottish policymaking in areas such as GMOs; food labelling; food production; seed and plant varieties; and animal health and welfare,

as the UK Government is expected to introduce secondary legislation related to these areas in the near future.

8. Clause 42 therefore undermines devolution and presents a risk to policy outcomes because it would allow UK Ministers to legislate in devolved areas without the consent of Scottish Ministers, and so the Scottish Government does not recommend consent.

9. There was no prior discussion with the Scottish Ministers with regard to the details of the Bill including Clause 42.

10. Should any amendment be made to Clause 42 during consideration of the Bill in the UK Parliament such that the clause would avoid impacts on devolved areas without the consent of Scottish Ministers, a supplementary LCM will be brought forward.

Consultation

11. Defra conducted a consultation on the regulation of genetic technologies in England between 7 January and 17 March 2021, and responded on 11 June 2021.¹ It did not set out that powers would be taken that extend to Scotland.

Financial implications

12. There are no financial implications.

Conclusion

13. The Scottish Government does not recommend giving consent to the UK Genetic Technology (Precision Breeding) Bill in relation to Clause 42. Under Rule 9B.3.3(d) of the Parliament's Standing Orders, if a member of the Scottish Government does not propose to include a draft motion in the Memorandum, the Memorandum must explain why not. Paragraphs 6 to 8 set out the Scottish Government's reasons for not including a draft motion in this Memorandum for the purposes of that rule.

Scottish Government
December 2022

This Legislative Consent Memorandum relates to the Genetic Technology (Precision Breeding) Bill (UK legislation) and was lodged with the Scottish Parliament on 12 December 2022

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