

Government response: The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Technical Points

Eleven technical points have been identified for reporting under Standing Order 21.2 in respect of the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(1) Regulation 3(10)(a), substituting new paragraphs (1) to (4) in regulation 25 of the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (“the 2002 Regulations”)

In relation to this point, the Welsh Government notes that the effect of the substitution by regulation 3(10)(a) of paragraphs (1) to (4) of regulation 25 of the 2002 Regulations, is inter alia, to remove the 10 year cap on consents by the Welsh Ministers for the marketing of genetically modified organisms in Wales. It is the policy of the Welsh Government to maintain the 10 year cap post exit from the EU. Consequently, a suitable amendment will be brought forward at the first available opportunity.

(2) Regulation 3(16)(b), inserting new paragraph (3A) into regulation 35 of the 2002 Regulations

This point relates to the new paragraph (3A) inserted by regulation 3(16)(b) into regulation 35 of the 2002 Regulations. New paragraph (3A) means that additional information will be placed on a public register when someone applies for permission to market a GMO. The Welsh Government considers that the amendments are within the European Union (Withdrawal) Act 2018 powers. New paragraph (3A)(a)-(d) and (f)-(g) make provision for the application summaries required by regulation 12(1)(d) and regulation 17(2)(j) of the 2002 Regulations to be included in the public register. This information is currently published by the Commission. The Welsh Government considers that the effect of the provisions is to maintain the same level of transparency for the public, and does not amount to a change in policy.

(3) Regulation 3(2)(a) and (f), amending definitions contained in regulation 2(1) of the 2002 Regulations

This technical point relates to regulation 3(2)(a) which changes the definition of “approved product” in regulation 2(1) of the 2002 Regulations, for the purposes of permission for genetically modified organisms to be marketed in Wales. The Welsh Government acknowledges the point that definition of a “pre-exit approved product” should include products approved under the food and feed regulations but should discount products for cultivation approved post-exit. An amendment will be made at the next available opportunity.

(4) Regulation 3(6)(b) and (c), amending regulation 17(2)(g) and (j) of the 2002 Regulations

This technical point relates to new provision inserted into regulation 17(2)(g) and (j) of the 2002 Regulations, by regulation 3(6)(b) and (c) respectively, to provide for information required pursuant to an application for consent to the Welsh Ministers to market genetically modified organisms..

With regard to the reference to Council Decision 2002/811/EC inserted by regulation 3(6)(b) into regulation 17(2)(g) of the 2002 Regulations. This Decision consists of guidelines for preparation of a monitoring plan to be included in any post EU exit application for consent to market genetically modified organisms. The Welsh Government are not aware of any application forms (paragraph 2.2.2 of the report) in the Annex to that Decision, and take the view that while the Decision will become retained EU law on exit, its primary effect is to provide guidance on the provision of a monitoring plan as part of a consent application.

With regard to the reference to Council Decision 2002/812/EC, inserted into regulation 17(2)(j) of the 2002 Regulations by regulation 3(6)(c). Operability amendments have been made to the Annex by the Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

(5) Regulation 3(8)(b), amending regulation 22(6) of the 2002 Regulations

The reference in regulation 3(8)(b) is to Commission Decision 2003/701/EC, and not 2003/71/EC. Operability amendments have been made to Decision 2003/701 by the Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

(6) Regulation 3(9)(a)(ii), amending regulation 24(1)(e) of the 2002 Deliberate Release Wales Regulations

This provision replaces regulation 24(1)(e) of the 2002 Deliberate Release Wales Regulations with a new provision. In terms of the citing of new 24(1)(e), the Welsh Government acknowledges the point appears that the new regulation 24(1)(e) should precede regulation 24(1)(d), not follow it. An amendment will be made at the next available opportunity.

(7) Regulation 3(16)(b) and (17), amending regulations 35 and 36 of the 2002 Deliberate Release (Wales) Regulations

Regulation 3(16)(b) imposes duties on the Welsh Ministers to publish additional information in the public register concerning GMOs. Regulation 3(17) does not amend regulation 36 of the 2002 Deliberate Release (Wales) Regulations so as to prescribe a deadline for the Welsh Ministers to do so. Further explanation of the absence of a deadline for publication of the relevant information is, therefore, requested. The technical point is noted. An amendment will be made at the next available opportunity.

(8) Throughout regulation 3

The report highlights (paragraph 2.6.1 to 2.6.3), that two different names to refer to what is now the same legal person, i.e. “the [former] National Assembly for Wales” and “the Welsh Ministers”.

The position of the Welsh Government is that while it might have been desirable to make amendments to update references to the National Assembly more comprehensively, given the considerable pressures to deliver the EU Exit legislation within exceptionally challenging timescales, the focus has of necessity, centred on making the necessary operability and deficiency amendments in the legislation. The Welsh Government is of the view that failure to update the references does not render the instrument defective.

The report also requests (paragraph 2.6.4 et seq) further explanation of the rationale behind amendments to the way in which some EU legislation is referred to in the regulations, with particular reference to regulation 3(2)(e) which amends the definition in regulation 2(1) of the 2002 Regulations, of “the First Simplified Procedure (crop plants) Decision” restating the definition as “a reference to that Decision as it applied immediately before exit day”.

In relation to the point raised in paragraph 2.6.5 concerning regulation 3(2)(e). The Welsh Government notes that the reference to the Food and Feed Regulation in regulation 2 of the 2002 Regulations is treated differently from the references to the “Deliberate Release Directive”, and the “First Simplified Procedure”. The Welsh Government also notes the proposed operation of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (in draft). It is accepted that there is an inconsistency and appropriate amendments will be made at the next available opportunity.

(9) Regulation 4 – amendments to the Schedule to the 2005 Transboundary Movements Wales Regulations (“the 2005 Regulations”)

In relation to the point concerning how the amendments to the 2005 Transboundary Movements (Wales) Regulations 2005 are effective in relation to “the specified Community provisions”, i.e. those provisions of Regulation (EC) No. 1946/2003 listed in the Schedule to the 2005 Regulations. Operability amendments have been made to Regulation (EC) No. 1946/2003 by the Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

(10) Regulation 3(6)(c)

It is accepted that the cross referencing in regulation 3(6)(c) is incorrect. These references will be updated by way of a correction slip following publication.

(11) Regulation 3(10)(b)(ii)

It is accepted that the cross referencing in regulation 3(10)(b)(ii) is incorrect. These references will be updated by way of a correction slip following publication.

(12) Regulation 3(2)(a) and (f), amending regulation 2(1) of the 2002 Regulations

In relation to the merit point that it is of political importance that marketing certificates for food and feed products made of, or including, genetically-modified ingredients, issued by an EU body, will continue to be recognised in Wales after Brexit, the Welsh Government confirms that only products intended for food and feed purposes, not for cultivation, would be recognised in Wales post-Brexit.

Welsh agriculture is reliant upon imports of animal feed, the majority of which would contain GM ingredients. New approvals of GM varieties for food and feed purposes will continue in the EU post-Brexit and in all likelihood these would be included in future imports of animal feed into Wales/UK. If these new authorisations are not recognised in Wales it could have a detrimental effect on animal feed imports as it would be impossible to detect which animal feed lots contained which GM varieties as they are usually a mixture of many types.

There is a clear distinction with the approval of varieties for cultivation which would only be approved by Welsh Ministers post-Brexit and new varieties for cultivation purposes approved by the EU would not have automatic authorisation in Wales.