

POLICY NOTE

THE GENETICALLY MODIFIED ORGANISMS (DELIBERATE RELEASE ETC.) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2019

SSI 2019/86

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to affirmative procedure.

Purpose of the instrument. To provide Scottish Ministers with the powers to opt out of growing future EU approved genetically modified (GM) crops and powers of enforcement in this respect. In addition, to update out-of-date references and remove obsolete provisions in a number of domestic GM regulations.

Policy Objectives

The main purpose of the instrument is to transpose EU Directive 2015/412 and amend the Genetically modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (SSI 2002 No. 541) – the principal regulations. This will be the first amendment to the instrument for a number of years and it has been delayed somewhat by work around EU Exit.

EU Directive 2015/412 (the amending Directive) amends Directive 2001/18/EC as regards the possibility for Member States to restrict or prohibit the cultivation of EU approved genetically modified (GM) crops. Transposition of the Directive is discretionary and therefore there is no transposition deadline.

The Scottish Government has taken a long-standing precautionary approach to GM and, in particular, is opposed to the cultivation of GM crops in the open environment. The Scottish Government has already taken advantage of transitional provisions in the amending Directive to opt out of the cultivation of one EU approved GM maize crop (MON 810) and a number of other GM maize crops where EU approval was (and still is) pending. However, in order to give the Scottish Government powers to opt out of cultivating future EU approved GM crops, it is necessary to transpose the Directive.

The instrument includes new provisions to allow for limits to be applied to the geographic scope of EU marketing consents for the cultivation of GM crops, if so demanded by Scottish Ministers or another Member State, and introduces appropriate investigatory powers, offences and penalties to enforce limits on the geographical scope in Scotland.

It includes some technical amendments to Schedule 2 of the principal regulations to bring them in line with amending Directive 2018/350. It also updates out of date references and/or removes obsolete provisions in the principal regulations, the Environmental Protection Act 1990 and the Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996, the Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004 and the Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005.

Consultation

We carried out a 12 week consultation as part of a Business Regulatory Impact Assessment (BRIA) during 2016/17. We posted a consultation notice, which set out our rationale for

transposition and invited comments, on our GM Website between 1 November 2016 and 24 January 2017. At the time, we brought the consultation notice to the attention of our CAP Stakeholder Group which includes representatives from across the industry. We received 6 responses (4 organisations* and 2 individuals) to the consultation. All those that responded supported the Scottish Government's plans to transpose EU Directive 2015/412.

*** Organisations that responded to consultation**

- Scottish Organic Producers Association
- GeneWatch UK
- Soil Association
- Nourish Scotland

We also conducted one-to-one interviews with business representatives from a range of sectors – farming, seed merchants, consumer groups, research institutes and trials companies. After initially contacting 24 businesses inviting them to take part in a BRIA interview, 6 interviews were carried out between August and November 2016**. Most interviewees said the transposition would have little or no impact on their business in the short-term. One mentioned there were currently no GM crops available that were relevant for Scottish growing conditions. Some spoke of potential positives i.e. if Scotland were to build a strong reputation as a GM-free country and therefore appeal to a particular market.

All interviewees had concerns about the longer term if the Scottish Government decided to use the powers to opt out of future GM crops that had commercial benefits for Scottish growers. Some held stronger views than others. In general, interviewees said that Scottish farmers, suppliers, consumers and others in the industry would be, or could be, disadvantaged with use of the powers potentially limiting opportunities, market choice, making the industry less competitive and adding to costs (of seed and end products). Some had concerns it could adversely impact upon Scotland as a place to do research and development.

However, as use of the powers to opt out is discretionary, not mandatory, these views do not alter the objective and rationale for transposing the EU Directive which is “To transpose the new provisions in the amending Directive so that Scotland can, if it wishes, opt out of cultivating future EU approved GM crops.” The rationale includes, “SG supports the general principle of Member States having more national discretion in relation to EU decisions – it would therefore not be appropriate to forego transposition of the discretionary powers available in this case.”

****Businesses represented at interview**

- Scottish Rural University College
- Scottish Agronomy Ltd
- Scotland Food and Drink
- Supply Chain Initiative on Modified Agricultural Crops
- British Society of Plant Breeders
- DLF Seed Ltd

Impact Assessments

A Business Regulatory impact assessment has been completed on The Genetically Modified Organisms (Deliberate Release) (Scotland) Amendment Regulations 2019 and is attached. There are no equality/children's/privacy etc impact issues due to the nature of the provisions being transposed.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business, i.e. the effect of either growing or not growing GM crops, is difficult to estimate due to the number of variables involved and insufficient evidence – this is explained in detail in the BRIA. However, the provisions themselves are discretionary giving Scottish Ministers the necessary powers to opt out of GM crops if they so choose.

Scottish Government
Agriculture and Rural Economy Directorate

9 January 2019