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WELSH STATUTORY INSTRUMENTS

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**2002 No. 3188**

**The Genetically Modified Organisms  
(Deliberate Release) (Wales) Regulations 2002**

**Part I** **E+W**

**General**

**Citation, commencement and application** **E+W**

1.—(1) These Regulations may be cited as the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 and shall come into force on 31st December 2002.

(2) These Regulations apply in relation to Wales.

**Interpretation** **E+W**

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Environmental Protection Act 1990;

“the Advisory Committee on Releases to the Environment” (“*y Pwyllgor Ymgynghorol ar Ollyngiadau i’r Amgylchedd*”) means the Committee appointed by the National Assembly for Wales under section 124 of the Act;

“antibiotic resistance markers” (“*marcwyr ymwrthedd gwrthfotig*”) means genes employed in the modification of an organism to make that organism express resistance to a particular antibiotic or antibiotics;

“application for consent to release” (“*cais am ganiatâd i ollwng*”) shall include any notification made under the First Simplified Procedure (crop plants) Decision;

[<sup>F1</sup>“approved product” (“*cynnyrch wedi’i gymeradwyo*”) means—

(a) a product permitted to be marketed in Wales by—

- (i) a consent granted by the Welsh Ministers under section 111(1) of the Act,
- (ii) an authorisation under Council Regulation (EC) No 1829/2003 on genetically modified food and feed, or

(b) a pre-exit approved product;]

F2  
...

F3  
...

[<sup>F4</sup>“the Deliberate Release Directive” (“*y Gyfarwyddeb Gollyngiadau Bwriadol*”) means Council Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms [<sup>F5</sup>as last amended by Directive (EU)] [<sup>F6</sup>2018/350 amending Directive 2001/18/EC of the European Parliament and of the Council as regards the environmental risk assessment of genetically modified organisms];]

“the 1990 Directive” (“*Cyfarwyddeb 1990*”) means Council Directive [90/220/EEC](#)<sup>M1</sup> on the deliberate release into the environment of genetically modified organisms as amended by Commission Directive [1994/15/EC](#)<sup>M2</sup> and Commission Directive [1997/35/EC](#)<sup>M3</sup>;

“electronic communication” (“*cyfathrebiad electronig*”) means the same as in the Electronic Communications Act 2000<sup>M4</sup>;

“environmental risk assessment” (“*asesiad risg amgylcheddol*”) means the environmental risk assessment required to be contained in an application for consent to release or market genetically modified organisms by regulation 12(1)(c) and regulation 17(2)(c) respectively;

“the First Simplified Procedure (crop plants) Decision” means Commission Decision [94/730/EC](#)<sup>M5</sup>;

F7 F8 ...

“genetically modified feed” (“*bwyd anifeiliaid a addaswyd yn enetig*”) means —

- (a) feed containing, consisting of or produced from genetically modified organisms; or
- (b) genetically modified organisms for feed use;

“genetically modified food” (“*bwyd a addaswyd yn enetig*”) means —

- (a) food containing or consisting of genetically modified organisms;
- (b) food produced from, or containing ingredients produced from, genetically modified organisms; or
- (c) genetically modified organisms for food use;]

“genetically modified organisms” (“*organeddau a addaswyd yn enetig*”) means a genetically modified organism or a combination of genetically modified organisms;

“higher plant” (“*uwchblanhigyn*”) means a plant belonging to the taxonomic group *Spermatophytae* (*Gymnospermae* or *Angiospermae*);

“local authority” (“*awdurdod lleol*”) means the council of a county or county borough;

“monitoring plan” (“*cynllun monitro*”) means the plan required by regulation 17(2)(g);

[<sup>F9</sup>“pre-exit approved product” (“*cynnyrch wedi’i gymeradwyo cyn y diwrnod ymadael*”) means a product which, immediately before exit day, was permitted to be marketed in Wales by—

- (a) a consent granted in accordance with Article 15(3), 17(6) or 18(2) of the Deliberate Release Directive or Article 13(2) or (4) of the 1990 Directive, or
- (b) an authorisation under Council Regulation [\(EC\) No 1829/2003](#) on genetically modified food and feed,

and in respect of which the relevant consent or authorisation has not been withdrawn or otherwise become invalid;]

“the register” (“*y gofrestr*”) means the public register kept by the National Assembly for Wales under section 122 of the Act;

“the 1992 Regulations” (“*Rheoliadau 1992*”) means the Genetically Modified Organisms (Deliberate Release) Regulations 1992<sup>M6</sup>.

(2) In these Regulations—

- (a) any reference to a numbered regulation or to a numbered Schedule is a reference to the regulation or Schedule in these Regulations so numbered; and
- (b) a reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which that reference occurs.

### Textual Amendments

- F1** Words in [reg. 2\(1\)](#) substituted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), [2\(2\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in [reg. 2\(1\)](#) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), [2\(2\)\(c\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in [reg. 2\(1\)](#) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), [2\(2\)\(d\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in [reg. 2](#) substituted (15.7.2005) by [The Genetically Modified Organisms \(Deliberate Release\) \(Wales\) \(Amendment\) Regulations 2005 \(S.I. 2005/1913\)](#), regs. 1, [2\(2\)\(a\)](#)
- F5** Words in [reg. 2\(1\)](#) substituted (28.3.2019) by [The Rural Affairs, Environment, Fisheries and Food \(Miscellaneous Amendments and Revocations\) \(Wales\) Regulations 2019 \(S.I. 2019/463\)](#), regs. 1(3), [17](#)
- F6** Words in [reg. 2](#) substituted (30.10.2019) by [The Genetically Modified Organisms \(Deliberate Release\) \(Amendment\) \(Wales\) Regulations 2019 \(S.I. 2019/1316\)](#), regs. 1(2), [3](#)
- F7** Words in [reg. 2\(1\)](#) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), [2\(2\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in [reg. 2](#) inserted (15.7.2005) by [The Genetically Modified Organisms \(Deliberate Release\) \(Wales\) \(Amendment\) Regulations 2005 \(S.I. 2005/1913\)](#), regs. 1, [2\(2\)\(b\)](#)
- F9** Words in [reg. 2\(1\)](#) inserted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), [2\(2\)\(e\)](#); 2020 c. 1, Sch. 5 para. 1(1)

### Marginal Citations

- M1** OJ No. L117, 8.5.90, p.15.
- M2** OJ No. L103, 22.4.94, p.20.
- M3** OJ No. L169, 27.6.97, p.72.
- M4** [2000 c.7](#).
- M5** OJ No. L292, 12.11.1994, p.31.
- M6** [S.I. 1992/3280](#). The functions of the Secretary of State under these regulations were transferred to the National Assembly for Wales under Article 3 and Schedule 1 to the [National Assembly for Wales \(Transfer of Functions\) Order 2000 \(S.I. 2000/253\)](#).

### Designation of competent authority **E+W**

3. The National Assembly for Wales shall be the competent authority in relation to Wales for the purposes of the Deliberate Release Directive.

### Purpose of Part VI of the Act and meaning of “genetically modified organisms” etc. **E+W**

4.—(1) The amendments of section 106 of the Act (purpose of Part VI of the Act and meaning of “genetically modified organism” etc.) made by the [Genetically Modified Organisms \(Deliberate Release\) Regulations 2002](#) have effect in relation to Wales as follows:

(2) The amendment made by regulation 3(2) of those Regulations, which substitutes for subsection (1) the following—

“(1) This Part has effect for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the escape or release from human control of genetically modified organisms.”,  
also has effect in relation to Wales.

(3) The amendment of subsection (4) made by regulation 3(3) of those Regulations, which substitutes for paragraph (a) the following—

“(a) have been artificially modified, or”,  
also has effect in relation to Wales.

(4) The amendment made by regulation 3(4) of those Regulations (which inserts subsections (4A) to (4D)) is modified by paragraph (5) and, as so modified, also has effect in relation to Wales.

(5) In subsection (4D), as inserted by that regulation, after “the Secretary of State” insert “ or, in relation to Wales, the National Assembly for Wales ”.

(6) The text of subsections (4A) to (4D), as inserted by that regulation and modified by paragraph (5), is—

“(4A) Genes or other genetic material in an organism are “artificially modified” for the purposes of subsection (4) above if they are altered otherwise than by a process which occurs naturally in mating or natural recombination.

This subsection is subject to subsections (4B) and (4C) below.

(4B) For the purposes of subsection (4) above—

- (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 paragraph;
- (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 paragraph.

(4C) An organism shall be taken not to be a genetically modified organism for the purposes of this Part if it is an organism of a prescribed description.

(4D) In subsections (4B) and (4C) above “prescribed” means prescribed by regulations made by the Secretary of State or, in relation to Wales, the National Assembly for Wales.”.

(7) The amendment made by regulation 3(5) of those Regulations (which omits subsections (5) and (6)) also has effect in relation to Wales.

### **Meaning of “damage to the environment” etc. E+W**

**5.**—(1) The amendments of section 107 of the Act (meaning of “damage to the environment” etc.) made by regulation 4 of the Genetically Modified Organisms (Deliberate Release) Regulations 2002, as described in paragraph (2), also have effect in relation to Wales.

(2) The amendments referred to in paragraph (1)—

(a) substitute for subsection (2) (meaning of “environment”)—

“(2) The “environment” includes land, air and water and living organisms supported by any of those media.”,

(b) in subsection (3) (meaning of “damage to the environment”) omit “to the living organisms supported by the environment”,

(c) substitute for subsection (6) (meaning of “harm”)—

“(6) “Harm” means adverse effects as regards the health of humans or the environment.”,

- (d) substitute for subsection (9) (meaning of organism being under a person’s “control”)—  
“ (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.”,  
and
- (e) substitute for subsection (11) (meaning of organism being “marketed”)—  
“ (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.”.

### Techniques of genetic modification **E+W**

6.—(1) Until the coming into force of the first regulations under section 106(4B)(a)<sup>M7</sup> of the Act, genes or other genetic material shall be taken, for the purposes of subsection (4) of that section, to be artificially modified if they are altered using any of the following techniques:

- (a) recombinant nucleic acid techniques involving the formation of new combinations of genetic material by the insertion of nucleic acid molecules produced by whatever means outside an organism, into any virus, bacterial plasmid or other vector system and their incorporation into a host organism in which they do not naturally occur but in which they are capable of continued propagation;
- (b) techniques involving the direct introduction into an organism of heritable material prepared outside the organism including micro-injection, macro-injection and micro-encapsulation;
- (c) cell fusion (including protoplast fusion) or hybridisation techniques where live cells with new combinations of heritable genetic material are formed through the fusion of two or more cells by means of methods that do not occur naturally.

(2) Until the coming into force of the first regulations under section 106(4B)(b) of the Act, genes or other genetic material shall not be regarded, for the purposes of subsection (4) of that section, as artificially modified by reason only of being altered by the use of any of the following techniques:

- (a) in vitro fertilisation;
- (b) natural processes such as conjugation, transduction and transformation; and
- (c) polyploidy induction,

provided that such techniques do not involve the use of recombinant nucleic acid molecules or genetically modified organisms made by techniques or methods other than—

- (i) mutagenesis; or
- (ii) cell fusion (including protoplast fusion) of plant cells or organisms which can exchange genetic material through traditional breeding methods.

(3) Until the coming into force of the first regulations under section 106(4C) of the Act, an organism shall be taken, for the purposes of Part VI of the Act, not to be a genetically modified organism if it is yielded from the techniques or methods listed in paragraphs (2)(i) or (ii) provided that those techniques or methods did not involve the use of recombinant nucleic acid molecules or genetically modified organisms other than those made by techniques or methods listed in that paragraph.

### Marginal Citations

**M7** Section 106(4) is amended by regulation 3(3) and section 106(4A) to 106(4D) is inserted by regulation 3(4) of the Genetically Modified Organisms (Deliberate Release) Regulations 2002, and are given effect in Wales subject to further modification by regulation 4 of these Regulations.

### Environmental risk assessment **E+W**

7.—(1) An environmental risk assessment contained in an application for consent to release or market genetically modified organisms shall—

- (a) identify and evaluate the potential damage to the environment, whether direct or indirect, immediate or delayed, which may arise from the release or marketing of genetically modified organisms;
- (b) be carried out in accordance with Annex II of the Deliberate Release Directive and contain the conclusions required in section D of that Annex; and
- (c) include any bibliographic reference and indications of the methods used where applicable.

(2) Where the genetically modified organisms contain antibiotic resistance markers, the environmental risk assessment shall include an examination of the particular risks of damage to the environment which may be posed by the deliberate release or marketing of those genetically modified organisms.

### Communication with applicant for consent **E+W**

8.—(1) Wherever an applicant for a consent or renewal of a consent to which these Regulations apply or a holder of such consent is required under these Regulations to submit any document in writing, whether before or after consent is granted, he or she is required to submit that document in both a paper and in a commonly used electronic form.

(2) Wherever these Regulations require any communication from the National Assembly for Wales to the applicant for a consent or renewal of a consent to be in writing, “writing” shall include an electronic communication.

(3) Any documents required by these Regulations to be in writing which do not fall within the provisions of paragraph (1) or (2) above must be in paper form.

## Part II **E+W**

### DELIBERATE RELEASE OF ORGANISMS FOR ANY OTHER PURPOSE THAN FOR PLACING ON THE MARKET

#### Requirement for consent to release **E+W**

9. The cases and circumstances prescribed for the purposes of section 111(1)(a) of the Act in relation to the release of any genetically modified organisms are all cases and circumstances in which genetically modified organisms are intended to be released.

#### Exempt activities **E+W**

10. The cases and circumstances prescribed for the purposes of section 111(7) of the Act in which persons are exempt from the requirements of section 111(1)(a) of the Act, insofar as those requirements apply to the release of genetically modified organisms, are all cases and circumstances

in which <sup>F10</sup>... an approved product is released in accordance with the conditions and limitations to which the use of the product is subject.

#### Textual Amendments

**F10** Words in [reg. 10](#) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Applications for consent to release — general provisions **E+W**

**11.**—(1) An application for a consent to release genetically modified organisms must be made in writing to the National Assembly for Wales.

(2) Proposed releases of the same genetically modified organism or of a combination of genetically modified organisms on the same site or on different sites for the same purpose and within a defined period may be notified in a single application.

(3) Where an application for a consent to release genetically modified organisms is expressed to rely on the First Simplified Procedure (crop plants) Decision, in the event of any inconsistency in the requirements as to information to be provided under that Decision and the requirements as to information to be provided under these Regulations, the provisions of that Decision shall prevail.

#### Information to be contained in application for consent to release **E+W**

**12.**—(1) An application for a consent to release genetically modified organisms must contain—

- (a) [<sup>F11</sup>subject to paragraph (1A),] the information prescribed in—
- (i) Schedule 1 where the application is for consent to release any genetically modified higher plant, or
  - (ii) Schedule 2 in any other case,

<sup>F12</sup>  
...

- (b) information on data or results from any previous release of the organisms, or of the same combination of organisms, which has been carried out by the applicant, and information from any previous application for the release of the organisms, or of the same combination of organisms, which the applicant has made to the National Assembly for Wales pursuant to the Act or to another competent authority in accordance with Article 6 of the Deliberate Release Directive,
- (c) an environmental risk assessment prepared in accordance with regulation 7,
- (d) a summary<sup>F13</sup>... of the information contained in the application [<sup>F14</sup>in the relevant format set out in the Annex to Council [Decision 2002/813/EC](#)].

[<sup>F15</sup>(e) summaries and results of studies referred to in the application, including an explanation of their relevance to the environmental risk assessment, as appropriate.]

[<sup>F16</sup>(1A) The information specified in paragraph (1)(a) is only required to be provided if it is necessary for the completion of an environmental risk assessment in the context of a specific application, and the level of detail to be provided may vary according to the nature and the scale of the proposed deliberate release.]

(2) The application may contain—

- (a) data or results from an application for consent to release genetically modified organisms previously made by some other person, provided that a copy of that person's agreement in writing is contained in the application,
  - (b) an indication of the information submitted in the application, the disclosure of which might harm the competitive position of the applicant and which should therefore be treated as confidential, and
  - (c) any other information which the applicant considers is relevant.
- (3) Any indication in accordance with paragraph (2)(b) must be accompanied by verifiable justification.

#### Textual Amendments

- F11** Words in reg. 12(1)(a) inserted (30.10.2019) by [The Genetically Modified Organisms \(Deliberate Release\) \(Amendment\) \(Wales\) Regulations 2019 \(S.I. 2019/1316\)](#), regs. 1(2), **4(a)(i)**
- F12** Words in reg. 12(1)(a) omitted (30.10.2019) by virtue of [The Genetically Modified Organisms \(Deliberate Release\) \(Amendment\) \(Wales\) Regulations 2019 \(S.I. 2019/1316\)](#), regs. 1(2), **4(a)(ii)**
- F13** Words in reg. 12(1)(d) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in reg. 12(1)(d) inserted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F15** Reg. 12(1)(e) inserted (30.10.2019) by [The Genetically Modified Organisms \(Deliberate Release\) \(Amendment\) \(Wales\) Regulations 2019 \(S.I. 2019/1316\)](#), regs. 1(2), **4(b)**
- F16** Reg. 12(1A) inserted (30.10.2019) by [The Genetically Modified Organisms \(Deliberate Release\) \(Amendment\) \(Wales\) Regulations 2019 \(S.I. 2019/1316\)](#), regs. 1(2), **4(c)**

#### Advertisement of application for consent to release E+W

**13.**—(1) Subject to paragraphs (2) and (3), a person who makes an application for a consent to release genetically modified organisms shall, not more than ten days after he or she sends that application to the National Assembly for Wales, cause to be published in publications to be specified by the National Assembly for Wales a notice containing the following information—

- (a) the name and address of the applicant,
- (b) the general description of the organisms to be released,
- (c) the location and purpose of the release,
- (d) the intended date or dates of the release,
- (e) a statement that information about the application will be placed on the register by the National Assembly for Wales within twelve days of the receipt of the application,
- (f) the means by which that register can be inspected,
- (g) a statement that the National Assembly for Wales will consider any representations made to it relating to risks of damage to the environment posed by the release of the genetically modified organisms within a period which it shall specify in accordance with these Regulations,

and shall immediately send a copy of the publications containing the advertisement to the National Assembly for Wales.

(2) A notice published under paragraph (1) above need not contain the information referred to in sub-paragraphs (c) and (d) of that paragraph insofar as the First Simplified Procedure (crop plants)



Decision does not require that information to be submitted with the application and that information is not submitted with the application.

(3) An applicant for consent shall ascertain from the National Assembly for Wales the level of detail on the location of the release which will be placed on the register and shall include the same level of detail in the notice to be published under paragraph (1) above.

(4) A person who makes an application for a consent to release genetically modified organisms shall, not more than ten days after he or she sends that application to the National Assembly for Wales, give to the following persons notice in writing that he or she has made the application and shall include in such notice the information prescribed in paragraph (1)(a) to (g), save in so far as paragraph (2) permits such information to be excluded from the notice referred to in paragraph (1)—

- (a) the local authority and any community councils for the area or areas of each proposed release,
- (b) the owner or owners of the site or sites of each proposed release, if a person other than the applicant,
- [<sup>F17</sup>(c) any person, or member of a genetic modification safety committee, from whom advice must be obtained under regulation 8 of the Genetically Modified Organisms (Contained Use) Regulations 2014,]
- (d) the Association of National Park Authorities,
- (e) [<sup>F18</sup>the Natural Resources Body for Wales],
- <sup>F19</sup>(f) .....

and shall immediately send to the National Assembly for Wales copies of the notices.

#### Textual Amendments

- F17** Reg. 13(4)(c) substituted (17.12.2018) by [The Environment, Planning and Rural Affairs \(Miscellaneous Amendments\) \(Wales\) Regulations 2018 \(S.I. 2018/1216\)](#), regs. 1(3), **4(3)**
- F18** Words in reg. 13(4)(e) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 5 para. 16(2)** (with Sch. 7)
- F19** Reg. 13(4)(f) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 5 para. 16(3)** (with Sch. 7)

#### Transitional provisions for release **E+W**

**14.** Where the National Assembly for Wales has received an application for consent to release genetically modified organisms before 31st December 2002 pursuant to the 1992 Regulations and has not yet determined the application—

- (a) the application shall be subject to the provisions of these Regulations;
- (b) the applicant shall submit to the National Assembly for Wales such further information, additional to that already provided in connection with the application, as is necessary in order to comply with the requirements of these Regulations by 17th January 2003;
- (c) the application shall be treated as having been sent to the National Assembly for Wales for the purposes of regulations 13(1) and (4) and as having been received by the National Assembly for Wales for the purpose of regulation 21 on submission of the information required by paragraph (b); and
- (d) if the information required by paragraph (b) has not been submitted by 17th January 2003, the National Assembly for Wales may refuse to proceed with the application.

## Part III **E+W**

### PLACING ON THE MARKET OF ORGANISMS AS OR IN PRODUCTS

#### Requirement for consent to market **E+W**

15. The cases and circumstances prescribed for the purposes of section 111(1)(a) of the Act in relation to marketing genetically modified organisms are all cases and circumstances in relation to the marketing of genetically modified organisms.

#### Exempt activities **E+W**

16. The cases and circumstances prescribed for the purposes of sections 108(7) and 111(7) of the Act in which persons are exempt from the requirements of section 108(1)(a) of the Act (to carry out a risk assessment) and of section 111(1)(a) of the Act (to obtain consent), respectively, insofar as they relate to marketing genetically modified organisms, are all cases and circumstances in which—

- (a) an approved product is marketed for a use for which it has approval <sup>F20</sup>and in accordance with the limitations and conditions to which the use of that product is subject];
- <sup>F21</sup>(b) genetically modified organisms are made available for activities regulated under the Genetically Modified Organisms (Contained Use) Regulations 2014;]
- <sup>F22</sup>(c) . . . . .
- (d) genetically modified organisms are made available to be used exclusively for deliberate releases complying with the requirements laid down in Part II <sup>F23</sup>; or]
- <sup>F24</sup>(e) a genetically modified organism, which is contained in a medicinal product authorised under the Human Medicines Regulations 2012 or the Veterinary Medicines Regulations 2013, is marketed.]
- <sup>F25</sup>(f) . . . . .
- <sup>F26</sup>(g) . . . . .

#### Textual Amendments

- F20** Words in reg. 16(a) inserted (15.7.2005) by The Genetically Modified Organisms (Deliberate Release) (Wales) (Amendment) Regulations 2005 (S.I. 2005/1913), regs. 1, **2(3)(a)**
- F21** Reg. 16(b) substituted (31.12.2020) by The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F22** Reg. 16(c) omitted (31.12.2020) by virtue of The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F23** Word in reg. 16(d) substituted (31.12.2020) by The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(5)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F24** Reg. 16(e) substituted (31.12.2020) by The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(5)(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F25** Reg. 16(f) omitted (20.3.2019) by virtue of The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/379), regs. 1(2), **2(2)**

**F26** Reg. 16(g) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(5)(e)**; 2020 c. 1, Sch. 5 para. 1(1)

## Application for consent to market **E+W**

17.—(1) An application for consent under section 111(1) of the Act must be made in writing to the National Assembly for Wales.

(2) An application for a consent to market genetically modified organisms which is not an application for renewal of consent must contain the following information—

- (a) [<sup>F27</sup>subject to paragraph (2A),] the information prescribed in—
- (i) [<sup>F28</sup>Schedule 1A] where the application is for consent to market any genetically modified higher plant, or
  - (ii) Schedule 2 in any other case;

<sup>F29</sup> ...

- (b) information on data or results from any previous release of the organisms, or of the same combination of organisms which has been carried out by the applicant either inside or outside the [<sup>F30</sup>United Kingdom], and information from any previous application for consent to release the organisms, or the same combination of organisms, which the applicant has made to the National Assembly for Wales in accordance with the Act and these Regulations <sup>F31</sup> ...;
- (c) an environmental risk assessment prepared in accordance with regulation 7;
- (d) subject to paragraph (3), the information prescribed in Schedule 3;
- (e) the proposed conditions for the marketing of the product, including specific conditions of use and handling;
- (f) a proposed period for the consent which shall not exceed ten years;
- (g) a monitoring plan prepared in accordance with Annex VII of the Deliberate Release Directive [<sup>F32</sup>, as read with the guidance notes set out in Council [Decision 2002/811/EC](#),] which shall include a proposal for the time period of the plan which may differ from the proposed period for the consent;
- (h) a proposal for labelling which shall comply with the requirements laid down in Schedule 3;
- (i) a proposal for packaging;
- (j) a summary of the application in the format [<sup>F33</sup>set out in the Annex to Council [Decision 2002/812/EC](#)].

- [<sup>F34</sup>(k) in respect of each subset of information required in this paragraph—
- (i) summaries and results of studies referred to in the application, including an explanation of their relevance to the environmental risk assessment, as appropriate,
  - (ii) details of studies referred to in the application, including materials and methods used or reference to standardised or internationally recognised methods and the name of the body or bodies responsible for carrying out those studies.]

[<sup>F35</sup>(2A) The information specified in paragraph (2)(a) is only required to be provided if it is necessary for the completion of an environmental risk assessment in the context of a specific application, and the level of detail to be provided may vary according to the nature and the scale of the proposed release resulting from the marketing of a genetically modified higher plant.]

(3) The application may in addition contain—

- (a) data or results from an application for consent to release genetically modified organisms previously made by some other person, provided that a copy of that person's agreement in writing is contained in the application,
- (b) an indication of the information submitted in the application, the disclosure of which might harm the competitive position of the applicant and which should therefore be treated as confidential, and
- (c) any other information which the applicant considers relevant.
- (4) The information provided in accordance with sub-paragraphs (2)(a) and (d) shall take into account the diversity of sites of use of the genetically modified organism and shall include information on any results obtained from research and developmental releases concerning the impact of the release on human health and the environment.
- (5) Any indication in accordance with paragraph (3)(b) must be accompanied by verifiable justification.
- (6) Where the applicant can demonstrate in his or her application to the satisfaction of the National Assembly for Wales that, on the basis of the results of any release in pursuance of and in accordance with a consent granted under section 111(1) of the Act under Part B of either the Deliberate Release Directive or the 1990 Directive, or on other substantive, reasoned scientific grounds, that the marketing and use of the product does not pose a risk of damage to the environment, he or she may propose not to supply part or all of the information prescribed in Part II of Schedule 3.

#### Textual Amendments

- F27** Words in reg. 17(2)(a) inserted (30.10.2019) by The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019 (S.I. 2019/1316), regs. 1(2), **5(a)(i)**
- F28** Words in reg. 17(2)(a)(i) substituted (30.10.2019) by The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019 (S.I. 2019/1316), regs. 1(2), **5(a)(ii)**
- F29** Words in reg. 17(2)(a) omitted (30.10.2019) by virtue of The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019 (S.I. 2019/1316), regs. 1(2), **5(a)(iii)**
- F30** Words in reg. 17(2)(b) substituted (31.12.2020) by The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(6)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in reg. 17(2)(b) omitted (31.12.2020) by virtue of The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(6)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F32** Words in reg. 17(2)(g) inserted (31.12.2020) by The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(6)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F33** Words in reg. 17(2)(j) substituted (31.12.2020) by The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(6)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F34** Reg. 17(2)(k) inserted (30.10.2019) by The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019 (S.I. 2019/1316), regs. 1(2), **5(b)**
- F35** Reg. 17(2A) inserted (30.10.2019) by The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019 (S.I. 2019/1316), regs. 1(2), **5(e)**

#### Transitional provision for marketing **E+W**

<sup>F36</sup>18. ....

**Textual Amendments**

**F36** Reg. 18 omitted (20.3.2019) by virtue of *The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019* (S.I. 2019/379), regs. 1(2), **2(3)**

**Transitional measures for adventitious or technically unavoidable presence of genetically modified material which has benefited from a favourable risk evaluation** **E+W**

<sup>F37</sup> **18A.** . . . . .

**Textual Amendments**

**F37** Reg. 18A omitted (20.3.2019) by virtue of *The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019* (S.I. 2019/379), regs. 1(2), **2(3)**

**Applications for renewal of consent to market** **E+W**

**19.**—(1) Where the National Assembly for Wales has granted a consent to market genetically modified organisms, under section 111(1) of the Act, any application to renew that consent shall be made in writing to the National Assembly for Wales—

- (a) before 17th October 2006 where the consent was granted before 17th October 2002, and
- (b) no later than nine months before the expiry of the consent in all other cases.

(2) The application shall contain—

- (a) a copy of the consent to market the genetically modified organisms,
- (b) where applicable, a report on the results of the monitoring carried out in accordance with the requirements of regulation 29(f),
- (c) any other new information which has become available with regard to the risks of the product causing damage to the environment,
- (d) as appropriate, a proposal for amending or adding to the conditions of the original consent, including the conditions concerning future monitoring and the time limitation of the new consent.

(3) Any consent to market genetically modified organisms granted by the National Assembly for Wales under section 111(1) of the Act before 17th October 2002 for which no application for renewal under paragraph (1) above has been received before 17th October 2006 shall be treated as having expired on that date.

**Part IV** **E+W**

**DUTIES AFTER THE MAKING OF APPLICATIONS**

**Duty of the applicant after applying for consent to release or to market** **E+W**

**20.**—(1) The amendment of section 111 of the Act (consents required by certain persons) made by regulation 19(1) of the *Genetically Modified Organisms (Deliberate Release) Regulations 2002*, which inserts as a second sentence in subsection (6) the following—

“A notice under this subsection must state the reasons for requiring the further information specified in the notice.”,

also has effect in relation to Wales.

(2) An applicant for a consent to release or to market genetically modified organisms who notifies the National Assembly for Wales of any information in accordance with section 111(6A) of the Act (requirement for applicant to notify new information regarding risks of damage to the environment) shall submit in writing to the National Assembly for Wales a revised version of the original application for consent amended to take account of the new information.

**Duties of the National Assembly for Wales on receiving applications for consent to release** E  
+W

**21.** Following receipt of an application for consent to release genetically modified organisms the National Assembly for Wales shall—

- (a) inform the applicant in writing of the date of receipt of the application;
- (b) invite any person by means of a request placed on the register, to make representations to it relating to the release before the end of a period to be specified which shall not be less than sixty days from the date the application was received by it;
- <sup>F38</sup>(c) .....
- (d) examine the application for its conformity with the requirements of the Act and of these regulations;
- (e) evaluate the risks of damage being caused to the environment by the proposed release having regard to the environmental risk assessment; and
- (f) take into account any representations relating to risks of damage being caused to the environment by the release made to it before the end of the period specified in accordance with paragraph (b) <sup>F39</sup> ...

**Textual Amendments**

**F38** Reg. 21(c) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(7)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F39** Words in reg. 21(f) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(7)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**Decisions by the National Assembly for Wales on applications for consent to release** E+W

**22.—(1)** The National Assembly for Wales shall not grant a consent to release genetically modified organisms under section 111(1) of the Act as it relates to the protection of human health without the agreement of the Health and Safety Executive <sup>M8</sup>.

[<sup>F40</sup>(2) the National Assembly for Wales shall not grant or refuse consent to release genetically modified organisms before the end of the period specified for representations in accordance with regulations 21(b) and (f) above and, if any comments referred to in regulation 21(f) are received within that period, before it has considered those comments.]

(3) The National Assembly for Wales shall communicate its decision on an application for a consent to release genetically modified organisms to the applicant <sup>F41</sup> ... before the end of a period

of 90 days beginning with the day on which the application was received and shall include in any refusal of consent the reasons for the decision.

- (4) The period prescribed in paragraph (3) shall not include—
- (a) any period beginning with the day on which the National Assembly for Wales gives notice in writing under section 111(6) of the Act that further information in respect of the application is required and ending on the day on which that information is received by the National Assembly for Wales, or
  - (b) a period of time during which the National Assembly for Wales is considering representations submitted by any persons in accordance with regulation 21(b), provided that this consideration shall not prolong the 90 day period referred to in paragraph (3) by more than 30 days.

(5) A consent to release genetically modified organisms shall require the applicant to send any information which might be relevant to assessing the risk of damage being caused to the environment, with, where appropriate, particular reference to any product which it is intended to market in the future, to the National Assembly for Wales after completion of the release and thereafter, at such intervals as the National Assembly for Wales shall consider appropriate on the basis of the results of the environmental risk assessment.

[<sup>F42</sup>(6) Information submitted in accordance with paragraph (5) must be provided in the format set out in the Annex to Commission [Decision 2003/701/EC](#).]

#### Textual Amendments

- F40** Reg. 22(2) substituted (15.7.2005) by [The Genetically Modified Organisms \(Deliberate Release\) \(Wales\) \(Amendment\) Regulations 2005 \(S.I. 2005/1913\)](#), regs. 1, **2(5)**
- F41** Words in reg. 22(3) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(8)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F42** Reg. 22(6) substituted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(8)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M8** See section 10 of the Health and Safety at [Work etc. Act 1974 \(c.37\)](#).

### Variation or revocation of a consent to release genetically modified organisms **E+W**

**23.** The National Assembly for Wales shall only vary or revoke a consent to release genetically modified organisms under section 111(10) of the Act without the agreement of the holder of the consent where new information has become available to it which it considers would affect the assessment of the risk of damage being caused to the environment by the release.

### [<sup>F43</sup>**Duties of the Welsh Ministers in relation to applications for consent to market genetically modified organisms** **E+W**

**24.—(1)** Following the receipt of an application for consent to market genetically modified organisms under section 111(1) of the Act the Welsh Ministers must—

- (a) inform the applicant in writing of the date of receipt of the application;
- (b) examine the application for its conformity with the requirements of the Act and of these Regulations and, if necessary, request the applicant to supply additional information pursuant to section 111(6) of the Act;

- (c) before the end of a period of 90 days beginning with the day on which they received the application either—
- (i) send to the applicant an assessment report prepared in accordance with Schedule 4 which indicates that the genetically modified organisms should be permitted to be marketed and under which conditions, or
  - (ii) refuse the application, stating reasons for their decision, supported by an assessment report prepared in accordance with Schedule 4 which indicates that the genetically modified organisms should not be marketed.

(2) The 90 day period prescribed in paragraph (1)(c) does not include any period beginning with the day on which the Welsh Ministers give notice in writing under section 111(6) of the Act that further information in respect of the application is required and ending on the day on which that information is received by the Welsh Ministers.

(3) Where the assessment report referred to in paragraph (1)(c) indicates that the genetically modified organisms to which an application relates should be permitted to be marketed, the Welsh Ministers must invite any person, by means of a request placed on the register, to make representations on the assessment report, which must be received by the Welsh Ministers within a period of 30 days beginning with the day on which the request is placed on the register (which must not be earlier than the day on which the assessment report is placed on the registers under regulation 35(7A).]

#### Textual Amendments

**F43** Reg. 24 substituted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1492), regs. 1(3), **2(9)**; 2020 c. 1, Sch. 5 para. 1(1)

#### [<sup>F44</sup>Decisions by the Welsh Ministers on applications for consent to market genetically modified organisms **E+W**

**25.**—(1) The Welsh Ministers must not grant an application for consent to market genetically modified organisms under section 111(1) of the Act as it relates to the protection of human health without the agreement of the Health and Safety Executive.

(2) Where the Welsh Ministers invite representations on an assessment report relating to an application for consent to market genetically modified organisms—

- (a) the Welsh Ministers must not determine whether to grant or refuse the application before the period for making representations under regulation 24(3) has ended and the Welsh Ministers have considered any representations made in accordance with that regulation;
- (b) the Welsh Ministers must, within 105 days after the end of the period for making representations under regulation 24(3)—
  - (i) determine the application, and
  - (ii) notify the applicant in writing of the decision to grant or refuse the application, and the reasons for the decision.

(3) the period referred to in paragraph (2)(b) does not include any period beginning with the day on which the Welsh Ministers give notice in writing under section 111(6) of the Act that further information in respect of the application is required and ending on the day on which that information is received by the Welsh Ministers.



(4) Subject to paragraphs (5) and (6), a consent to market genetically modified organisms may be given for a maximum period of ten years beginning with the day on which the Welsh Ministers grant a consent under section 111 of the Act.

(5) The period of the first consent to market—

- (a) a genetically modified organism, or
- (b) a progeny of that genetically modified organism contained in a plant variety where the plant variety is intended only for the marketing of its seeds,

must end at the latest ten years after the date of the first inclusion of the first plant variety containing the genetically modified organism on a National List in accordance with regulation 3 of the Seeds (National Lists of Varieties) Regulations 2001.

(6) For the purpose of granting consent to market a genetically modified organism contained in forest reproductive material, the period of the first consent shall end at the latest ten years after the specified date.

(7) In paragraph (6), “the specified date” means the date of the first inclusion of basic material containing the genetically modified organism on the National Register in accordance with regulations 6 and 7 of the Forest Reproductive Material (Great Britain) Regulations 2002.]

**Textual Amendments**

**F44** Reg. 25 substituted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1492), regs. 1(3), **2(10)**; 2020 c. 1, Sch. 5 para. 1(1)

**Duties on the National Assembly for Wales on receiving applications for renewal of consent to market genetically modified organisms** **E+W**

**26.**—(1) Following receipt of an application for renewal of consent to market genetically modified organisms the National Assembly for Wales shall—

- (a) inform the applicant in writing of the date of receipt of the application;
- (b) examine the application for its conformity with the requirements of the Act and of these Regulations and, if necessary, request the applicant to supply additional information;
- (c) either—
  - (i) send to the applicant an assessment report prepared in accordance with Schedule 4 which indicates that the genetically modified organisms should continue to be marketed and under which conditions, or
  - (ii) refuse the application, stating reasons for its decision, supported by an assessment report which indicates that the genetically modified organisms should not continue to be marketed;

<sup>F45</sup>(d) .....

<sup>F46</sup>(2) .....

**Textual Amendments**

**F45** Reg. 26(1)(d) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1492), regs. 1(3), **2(11)**; 2020 c. 1, Sch. 5 para. 1(1)

**F46** Reg. 26(2) omitted (31.12.2020) by virtue of The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(11)**; 2020 c. 1, Sch. 5 para. 1(1)

### Decisions by the National Assembly for Wales on applications for renewals of consents to market genetically modified organisms **E+W**

27.—<sup>[F47]</sup>(1) The Welsh Ministers must not grant, under section 111(1), of the Act an application for the renewal of a consent to market genetically modified organisms as it relates to the protection of human health without the agreement of the Health and Safety Executive.]

<sup>[F48]</sup>(2) The Welsh Ministers must communicate a decision on an application to renew a consent to market genetically modified organisms to the applicant as soon as possible and must include in any refusal to renew a consent the reasons for that decision.]

(3) The renewed consent to market genetically modified organisms may be given for a maximum of 10 years unless the National Assembly for Wales considers that a shorter or longer period is justified, in which case it shall give its reasons in writing.

(4) The applicant may continue to market the genetically modified organisms under the conditions specified in the original consent until a final decision has been taken on the application.

#### Textual Amendments

**F47** Reg. 27(1) substituted (31.12.2020) by The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(12)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F48** Reg. 27(2) substituted (31.12.2020) by The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1492), regs. 1(3), **2(12)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

### Genetically modified organisms containing antibiotic resistance markers **E+W**

28.—(1) The National Assembly for Wales shall not grant a consent to an application for the release or marketing of genetically modified organisms containing antibiotic resistance markers which may have adverse effects on human health and the environment after—

- (i) 31st December 2004 in the case of marketing, and
- (ii) 31st December 2008 in the case of release.

(2) Where prior to 31st December 2004 in the case of marketing and 31st December 2008 in the case of release, an application is made for consent to release or market genetically modified organisms containing antibiotic resistance markers, the National Assembly for Wales shall evaluate the information in the environmental assessment accompanying the application, taking into particular consideration those antibiotic resistance markers in use for medical or veterinary treatment, with a view to identifying and phasing out the release or marketing of the genetically modified organisms referred to in paragraph (1) within the time limits specified in that paragraph.

## Part V **E+W**

### GENERAL PROVISIONS FOR CONSENTS

#### General provisions of consents to market genetically modified organisms **E+W**

**29.** A consent to market genetically modified organisms granted by the National Assembly for Wales under section 111(1) of the Act shall specify—

- (a) the scope of the consent, including the identity of the genetically modified organisms to be marketed, and their unique identifier;
- (b) the period of validity of the consent;
- (c) the conditions for the marketing of the product, including any specific conditions of use, handling and packaging of the genetically modified organisms, and conditions for the protection of particular ecosystems or environments or geographical areas as applicable;
- (d) that the applicant shall make control samples available to the National Assembly for Wales on request;
- (e) the labelling requirements, in accordance with paragraph 8 of Schedule 3, which shall include a requirement to notify the National Assembly for Wales of any new commercial name of the product after consent has been given;
- (f) monitoring requirements which shall be in accordance with the monitoring plan, and shall include the time period of the monitoring plan, an obligation that the applicant shall submit <sup>[F49]</sup> monitoring reports in the relevant format set out in the Annexes to Commission [Decision 2009/770/EC](#) and, where appropriate, any obligations on any person selling the product or any user to provide information at an appropriate level on the location of the genetically modified organisms.

#### Textual Amendments

- F49** Words in [reg. 29\(f\)](#) substituted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(13)**; 2020 c. 1, Sch. 5 para. 1(1)

#### General conditions in consents to release or market genetically modified organisms **E+W**

**30.**—(1) The amendments of section 112 of the Act (consents: limitations and conditions) made by the Genetically Modified Organisms (Deliberate Release) Regulations 2002 have effect in relation to Wales as follows.

(2) The amendment of subsection (1) made by regulation 29(2) of those Regulations, which inserts at the end of that subsection “ for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the activity permitted by the consent ”, also has effect in relation to Wales.

(3) The amendments of subsection (5) made by regulation 29(3)(a) and (b) of those Regulations, as described in paragraph (4), also have effect in relation to Wales.

(4) The amendments referred to in paragraph (3) are—

- (a) in subsection (5)(b)—
  - (i) after “Secretary of State” insert “ forthwith ”,
  - (ii) omit sub-paragraph (ii), and
  - (iii) after that sub-paragraph insert—

“(iii) 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;”,

and

(b) substitute for subsection (5)(c)—

“(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;”.

(5) The amendment of subsection (5) made by regulation 29(3)(c) of those Regulations, which inserts paragraphs (d) and (e), is modified by paragraph (6) and, as so modified, also has effect in relation to Wales.

(6) In paragraphs (d) and (e), as inserted by that regulation, after “the Secretary of State”, in both places where it occurs, insert “ or, in relation to Wales, the National Assembly for Wales ”.

(7) The text of paragraphs (d) and (e) of subsection (5), as inserted by that regulation and modified by paragraph (6), is—

“(d) notify the Secretary of State or, in relation to Wales, the National Assembly for Wales of the measures (if any) taken as a result of new information becoming available or an unforeseen event occurring as described in paragraph (b) (iii) above; 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 Secretary of State or, in relation to Wales, the National Assembly for Wales.”.

### **Proof of compliance with consent conditions** E+W

**31.** The amendment of section 119(1) of the Act (“Onus of proof as regards techniques and evidence”) made by regulation 30 of the Genetically Modified Organisms (Deliberate Release) Regulations 2002, which after “the accused to prove” inserts “the matters described in subsection (1A) below.

“(1A) The matters referred to in subsection (1) above are—

(a) in the case of an offence under section 118(1)(c) above consisting in a failure to comply with the general condition implied by section 112(5)(c) above—

(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,”

also has effect in relation to Wales.

### **[<sup>F50</sup>Variation or revocation of a consent to market** E+W

**32.—**(1) The Welsh Ministers may only vary or revoke a consent to market genetically modified organisms under section 111(10) of the Act without the agreement of the holder of the consent where new information has become available which the Welsh Ministers consider would affect the assessment of the risk of damage being caused to the environment by the release.

(2) The Welsh Ministers must not revoke or vary a consent to market genetically modified organisms under section 111(10) of the Act as it relates to the protection of human health without the agreement of the Health and Safety Executive.]

**Textual Amendments**

**F50** Reg. 32 substituted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1492), regs. 1(3), **2(14)**; 2020 c. 1, Sch. 5 para. 1(1)

**Part VI** **E+W**

**SAFEGUARD**

**Safeguard** **E+W**

**33.**—(1) The National Assembly for Wales may serve a prohibition notice under section 110 of the Act to prohibit an act which is authorised by a consent granted by it under section 111 of the Act or by a consent granted in respect of an approved product only if its opinion that doing such an act would involve a risk of causing damage to the environment is based on detailed grounds as the result of either—

- (a) new or additional information made available since the date of the consent which affects the environmental risk assessment in respect of that product; or
- (b) a reassessment of existing information in respect of that product on the basis of new or additional scientific information.

(2) Where, in the circumstances described in paragraph (1) above, the National Assembly for Wales considers that the risk of damage being caused to the environment is severe it shall serve a prohibition notice requiring such measures to be taken as it may consider appropriate and once any work required by the notice has been carried out it shall enter details of it on the register.

<sup>F51</sup>(3) .....

<sup>F51</sup>(4) .....

<sup>F51</sup>(5) .....

(6) References in this regulation to the National Assembly for Wales exercising a function under section 110 of the Act shall, in any case to which section 126(3) of the Act applies, be treated as references to the National Assembly for Wales and the Food Standards Agency <sup>M9</sup> acting jointly.

**Textual Amendments**

**F51** Reg. 33(3)-(5) omitted (31.12.2020) by virtue of [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1492), regs. 1(3), **2(15)**; 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

**M9** See section 1 of the [Food Standards Act 1999](#) (c.28).

## Part VII **E+W**

### CONFIDENTIALITY

#### Confidentiality **E+W**

**34.**—(1) For the purposes of section 123(7) of the Act, the following descriptions of information are also information which the public interest requires to be included in the register notwithstanding that it may be commercially confidential—

- (a) the location of the release of the genetically modified organism to which the information relates,
- (b) the intended use of the genetically modified organism to which the information relates,
- (c) the environmental risk assessment,
- (d) the methods and plans for monitoring and for responding to an emergency in relation to the genetically modified organism to which the information relates,
- (e) the name and address of the holder of a consent to which a prohibition notice or other information relates.

(2) The amendments of section 123(7) of the Act (exclusion from register of certain information: particulars included even if commercially confidential) made by regulation 33(2) of the Genetically Modified Organisms (Deliberate Release) Regulations 2002, which—

- (a) after “section 122(1)(a)”, inserts “ (c), ”,
- (b) in paragraph (b) for “the description” substitutes “ the general description ”, and
- (c) omits paragraphs (c) and (e),

also have effect in relation to Wales.

## Part VIII **E+W**

### REGISTER OF INFORMATION

#### Information to be included on the register **E+W**

**35.**—<sup>F52</sup>(1) The register must contain the particulars set out in paragraphs (2) to (10).

(2) In relation to a prohibition notice served by the Welsh Ministers under section 110 of the Act—

- (a) the name and address of the person on whom the notice is served;
- (b) the description of the genetically modified organisms in relation to which the notice is served;
- (c) the location at which the genetically modified organisms are proposed to be released;
- (d) the purpose for which the genetically modified organisms are proposed to be released or marketed;
- (e) the reason for the service of the notice;
- (f) any date specified in the notice as the date on which the prohibition is to take effect.

(3) Subject to paragraph (4), in relation to an application for a consent under section 111(1) of the Act—

- (a) the name and address of the applicant;

- (b) a general description of the genetically modified organisms in relation to which the application is being made;
  - (c) the location at which the genetically modified organisms are proposed to be released, to the extent that this information is notified to the Welsh Ministers;
  - (d) the purpose for which the genetically modified organisms are proposed to be released (including any future use to which they are intended to be put) or, in relation to a consent to market, the purpose for which they will be marketed;
  - (e) the intended dates of the release;
  - (f) the environment risk assessment;
  - (g) the methods and plans for monitoring the genetically modified organisms and for responding to an emergency;
  - (h) a summary of any advice the Welsh Ministers have received from the Advisory Committee on Releases to the Environment as to whether an application for release of, or to market, genetically modified organisms should be granted or rejected, and either—
    - (i) the conditions or limitations in accordance with which that Committee has advised that the consent should be granted, or
    - (ii) a summary of the reasons why that Committee has advised that the consent should not be granted;
  - (i) the summary of the information contained in the application required by regulation 12(1)(d) or as the case may be, of the application required by regulation 17(2)(j).
- (3A) Subject to paragraph (4) and to the information not being confidential, in relation to an application for a consent under section 111(1) of the Act to market genetically modified organisms—
- (a) the name and address of the person who is responsible for the marketing, whether manufacturer, importer or distributor;
  - (b) the proposed commercial name of the product;
  - (c) the names of the genetically modified organisms in the product, including the scientific and common names of, where appropriate, the parental, recipient and donor organisms;
  - (d) the unique identifiers of the genetically modified organisms in the product;
  - (e) an application reference code assigned by the Welsh Ministers;
  - (f) the information included in the application as specified at paragraphs 3 and 7 of Schedule 3;
  - (g) information about stored samples of the genetically modified organisms, including the type of material, its genetic characterisation and stability, the amount of repository material, and the conditions of appropriate storage and shelf-life.
- (4) Where the Welsh Ministers are or become aware that information regarding the genetically modified organisms or the purpose for which they will be released or marketed has been published which is more detailed than that which would satisfy the requirements of paragraph (3), they must enter so much of that more detailed information on the register as they consider appropriate.
- (5) In relation to consents granted under section 111(1) of the Act—
- (a) a copy of the consent, and a reference to the application in respect of which it was granted;
  - (b) any information supplied to the Welsh Ministers in accordance with conditions imposed on the consent;
  - (c) the fact that the consent has been varied or revoked, the contents of the notice by which the consent was varied or revoked, and a copy of the varied consent;

- (d) a summary of any advice the Welsh Ministers have received from the Advisory Committee on Releases to the Environment as to whether a consent to release genetically modified organisms should be varied or revoked.
- (6) The following information concerning the risk of damage being caused to the environment by genetically modified organisms—
- (a) any information provided to the Welsh Ministers in accordance with section 111(6A) or 112(5)(b)(i) of the Act;
  - (b) any information relating to an unforeseen event occurring in connection with a release of a genetically modified organism which might affect the risks there are of damage being caused to the environment notified to the Welsh Ministers in accordance with section 112(5)(b)(iii) of the Act.
- (7) A copy of any consent to market genetically modified organisms granted before exit day by a competent authority of a Member State.
- (7A) A copy of any assessment report produced in accordance with regulation 24(1)(c) or 26(1)(c).
- (8) The location of any genetically modified organisms grown in Wales pursuant to a consent to market insofar as that information is supplied to the Welsh Ministers in accordance with the monitoring requirements imposed on the consent.
- (9) Any decision adopted before exit day by the European Commission in accordance with Article 18 of the Deliberate Release Directive.]
- (10) In relation to convictions for any offence under section 118 of the Act—
- (a) the name and address of the person convicted,
  - (b) the description of any genetically modified organisms in relation to which the conviction was obtained,
  - (c) the offence which was committed,
  - (d) the penalty imposed and any order made by the court under section 120 of the Act.

#### Textual Amendments

**F52** Reg. 35(1)-(9) substituted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1492\)](#), regs. 1(3), **2(16)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Keeping the register **E+W**

[<sup>F53</sup>**36.**—(1) The information prescribed in regulation 35(2) shall be placed on the register within twelve days of the prohibition notice being served.

(2) The information prescribed in paragraphs (a) to (g) and (i) of regulation 35(3) shall be placed on the register within twelve days of the receipt by the Welsh Ministers of the application for consent to release or market.

(3) The information prescribed in regulation 35(3)(h) shall be placed on the register within twelve days of the consent being granted or refused.

(4) The information prescribed in regulation 35(3A) shall be placed on the register within twelve days of the receipt by the Welsh Ministers of the application for consent to market.

(5) The information prescribed in regulation 35(5)(a) shall be placed on the register within twelve days of the consent being granted.



(6) The information prescribed in regulation 35(5)(b) and (d) shall be placed on the register within twelve days of its receipt by the Welsh Ministers.

(7) The information prescribed in regulation 35(5)(c) shall be placed on the register within fourteen days of the consent being revoked or varied.

(8) The information prescribed in regulation 35(6) and (10) shall be placed on the register within fourteen days of its receipt by the Welsh Ministers.

(9) The information prescribed in regulation 35(7A) shall be placed on the register within twelve days of its production.

(10) The information prescribed in regulation 35(8) shall be placed on the register within fourteen days of its receipt by the Welsh Ministers.]

#### Textual Amendments

**F53** Reg. 36 substituted (31.12.2020) by [The Genetically Modified Organisms \(Deliberate Release and Transboundary Movement\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1492), regs. 1(3), **2(17)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Publication of representations **E+W**

**37.**—(1) The National Assembly for Wales shall, within a period of 28 days after granting consent to or rejecting an application for the release of genetically modified organisms, make available to the public by whatever means it shall consider appropriate details of where and when paper copies of representations received may be inspected.

(2) Paragraph (1) shall not require copies of representations to be made publicly available where they contain confidential information and the person making the representations has asked the National Assembly for Wales to treat that information as confidential.

## Part IX **E+W**

### MISCELLANEOUS

#### Precautionary principle **E+W**

**38.** In carrying out its functions under Part VI of the Act and these Regulations, the National Assembly for Wales is to take into account the precautionary principle.

#### Revocations **E+W**

**39.** The regulations set out in Schedule 5 are revoked in respect of Wales to the extent specified in that Schedule.

#### Application of Part VI of the Act to the territorial sea **E+W**

**40.**—(1) The amendment of section 127(2) of the Act (definitions etc: application to territorial sea) made by regulation 38(a) of the *Genetically Modified Organisms (Deliberate Release) Regulations 2002* also has effect in relation to Wales.

(2) In section 127(2), as so amended, after “as it applies in England” insert “and applies to the territorial sea adjacent to Wales as it applies in Wales”.

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**Changes to legislation:** There are currently no known outstanding effects for the The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002. (See end of Document for details)

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### Application of Part VI of the Act to Wales **E+W**

**41.** In consequence of the provision made by regulations 4, 5, 20(1), 30, 31, 34(2) and 40, section 163A of the Act ceases to have effect.

<sup>M10</sup> Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

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#### Marginal Citations

**M10** 1998 c.38.

**Changes to legislation:**

There are currently no known outstanding effects for the The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002.