

The Welsh Government's Legislative Consent Memorandum on the Genetic Technology (Precision Breeding) Bill

January 2023



1. Background

The UK Government's Genetic Technology (Precision Breeding) Bill

1. The Genetic Technology (Precision Breeding) Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 25 May 2022. It is sponsored by the Department for Environment, Food and Rural Affairs.

2. The long title states that the Bill will:

"make provision about the release and marketing of, and risk assessments relating to, precision bred plants and animals, and the marketing of food and feed produced from such plants and animals; and for connected purposes."

3. According to its Explanatory Notes, the main policy objective of the Bill is to:

"reduce the regulatory burden and financial barriers in place for researchers and commercial breeders using precision breeding technologies".²

4. The Bill is currently at report stage in the House of Lords. At the time of writing this report, the date for the third reading in the Lords is set to take place on 25 January 2023.

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

6. On 27 June 2022, Julie James MS, the Minister for Climate Change, wrote to the Llywydd outlining concerns with the Bill. She stated that, because of the absence of meaningful engagement by the UK Government prior to introduction and the complexity of the issues raised in the Bill, a legislative consent memorandum had not been laid within the normal two week period identified in Standing Order 29.2(i). She added that it may be necessary to do so once the devolution consequences for Wales had been fully considered.³

¹ [Genetic Technology \(Precision Breeding\) Bill](#), as introduced (Bill 011 2022-23)

² [Genetic Technology \(Precision Breeding\) Bill, Explanatory Notes](#), May 2022

³ [Letter from the Minister to the Llywydd](#), 27 June 2022

7. On 8 December 2022, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

8. The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Economy, Trade and Rural Affairs Committee should report on the Memorandum by 16 January 2023.⁵

Provision for which the Senedd's consent is required

9. In the Memorandum, the Minister states that the Bill:

*"...removes the plants and animals produced using modern biotechnologies, and the food and feed derived from them, from Genetically Modified Organisms (GMO) regulation if those organisms could have occurred naturally or been produced by traditional methods. It replaces existing GMO controls with a lighter touch regulatory framework."*⁶

10. The Minister also states at paragraphs 9 and 10 of the Memorandum that:

"It is Welsh Government's view that the Bill is a relevant bill as it makes relevant provision in relation to Wales because of the UK Internal Market Act 2020 ("UKIMA"). The effect of the requirements in UKIMA mean that the provisions in this Bill will in essence allow the sale and marketing of PBOs in Wales, which currently Welsh legislation does not allow. It is therefore, WG view that the Bill, by virtue of UKIMA, makes provision in relation to Wales for a purpose which is within the legislative competence of the Senedd.

The Bill puts in place a new regulatory framework in England for precision bred organisms. It will have direct application only in England but as a result of UKIMA it will have significant implications in relation to Wales. As such, the effect of the Bill as a whole is to introduce a regulatory framework that will impact Wales. The Annex outlines clauses of particular relevance that Welsh Government considers provide the key features of the framework. GMOs,

⁴ Welsh Government, [Legislative Consent Memorandum, Genetic Technology \(Precision Breeding\) Bill](#), December 2022

⁵ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Genetic Technology \(Precision Breeding\) Bill](#), December 2022

⁶ Memorandum, paragraph 6

plants, animal health and welfare, food and feed, and agriculture are all within the scope of the Bill provisions and are provisions within the legislative competence of the Senedd."

11. Annex 1 of the Memorandum sets out the Welsh Government's assessment of the provisions in the Bill which require Senedd consent. It identifies the following clauses as requiring consent:

- clause 1 – Precision bred organism;
- clause 3 – Restrictions on release of precision bred organism in England;
- clause 4 – Release of precision bred organism: notification requirements;
- clause 5 – Restrictions on marketing of precision bred organism in England;
- clause 11 – Application for precision bred animal marketing authorisation;
- clause 20 – Monitoring and inspection of Part 2 obligations;
- clause 26 – Regulation of food and feed produced from precision bred organisms;
- clause 28 – Monitoring and inspection of Part 3 obligations;
- clause 31 – Meaning of "relevant breach" etc;
- clause 32 – Enforcement;
- clause 38 – Costs;
- clause 41 – Consequential amendments of the Environmental Protection Act 1990.

12. The UK Government argues that there are no elements of the Bill which require consent. This is identified in Annex A of the Bill's Explanatory Notes.⁷

The Welsh Government's position

13. At paragraph 20 of the Memorandum the Minister sets out the reasons why she is unable to recommend that the Senedd should give consent to the UK Government:

⁷ Genetic Technology (Precision Breeding) Bill, Explanatory Notes, Annex A, May 2022

"a. The Welsh Government was not involved in the development of the Bill and the impacts of the Bill on Wales have not been properly considered. The current legal position in the UK stems from a ruling of the European Court of Justice in 2018, which stipulated that gene editing is considered a form of genetic modification. The Welsh Government has not completed its own assessment of the UK Government's scientific and economic rationale for deregulating precision bred organisms and so cannot yet agree with the position of the UK Government.

b. The effect of the Bill as a whole will have detrimental effects on the devolution settlement. It creates a whole new regulatory framework for precision bred organisms that will have implications for Wales. The effect of the Bill, by virtue of the UK Internal Market Act, is that Welsh law relating to GM will be irrelevant for certain precision bred organisms moved into Wales from England. Precision bred plants and animals from England will be marketable in Wales without the authorisation of Welsh Ministers.

c. The Bill does not require precision bred organisms to be labelled as such. This means Welsh consumers purchasing precision bred organisms and food derived from them will not necessarily know what they are purchasing. The Welsh Government wants to protect Welsh consumers' rights to choose whether to purchase food products which contain precision bred ingredients. Further, without a labelling or traceability requirement, Welsh Ministers' ability to monitor, control or prevent the marketing of precision bred organisms and products in Wales is greatly limited. It also makes it practically challenging to enforce Welsh Regulations, where they apply.

d. The Welsh Government is also concerned about the effect that the Bill will have on trade with key markets, like the EU, where PBOs [precision-bred organisms] are regulated as GM organisms. Although the EU is considering deregulation of gene edited organisms, indications are that this will be restricted to plants and there will be a labelling or traceability requirement. As such, there may be increased barriers to trade for Welsh businesses looking to export precision bred products, and these barriers could be compounded by a lack of labelling or traceability.

e. Key parts of the Bill, including Part 3 relating to the regulation of precision bred animals, are to be set out in secondary legislation. This makes it difficult

to ascertain how the powers will be exercised and the potential effects that the related provisions will have for Wales and our devolution settlement. For example, it is not yet known what welfare standards will be put in place for precision bred animals that will be marketable in Wales. Animal welfare is a devolved area of competence. As the regulatory framework will be set out in secondary legislation, we are also concerned with the lack of scrutiny they may be subject to."

14. The Minister concludes:

"...the overall effect of the Bill is of constitutional concern to the Welsh Government given the impact on the Welsh position on PBOs and enforcement of the same, by virtue of the provisions of UKIMA. In its present form the Welsh Ministers do not consider the Bill makes appropriate provision and would not recommend the Senedd provides consent."⁸

2. Committee consideration

15. We considered the Memorandum at our meeting on 9 January and reported after our meeting on 16 January.⁹

Our view

16. We have had very little time to consider the Memorandum, given that it was laid on 8 December 2022 and we have been asked to report by 16 January 2023. That period included only 11 days when the Senedd was sitting. We acknowledge the UK Government's lack of engagement with the Welsh Government on this Bill (including through the common frameworks process¹⁰) and are disappointed with that position.

17. Nevertheless, we do not believe that the lack of engagement excuses the near seven month delay in the Welsh Government laying a legislative consent memorandum before the Senedd, which has resulted in the time available for meaningful scrutiny to be severely restricted.

⁸ Memorandum, paragraph 24

⁹ Legislation, Justice and Constitution Committee, [9 January 2023](#), [16 January 2023](#)

¹⁰ Memorandum, paragraph 3

Conclusion 1. The delay in laying the Memorandum is unacceptable and regrettably prevents Members of the Senedd from undertaking their legitimate scrutiny functions in a reasonable period of time, including potentially taking evidence from the Minister and stakeholders.

18. We note the Welsh Government's view that the Bill makes relevant provision in relation to Wales as a result of the *United Kingdom Internal Market Act 2020* ("UKIMA") and specifically that its requirements mean that the provisions in the Bill will allow the sale and marketing of precision-bred organisms (PBOs) in Wales, which is currently prohibited by Welsh legislation. The Welsh Government concludes that, by virtue of UKIMA, the provisions of the Bill are made for a purpose which is within the legislative competence of the Senedd.

19. In our view, the effect of the mutual recognition principle in UKIMA, which will apply to precision-bred plants and animals and food and feed derived from them that are produced in or imported into England legally, is that it would be possible to place them legally on the market in Wales as a result of the Bill and the delegated legislation to be made under it.

20. We therefore agree with the Welsh Government's analysis that the effect of UKIMA will be that PBOs could be sold and marketed in Wales (despite existing Welsh law) if those PBOs are lawfully marketable in England.

21. However, Standing Order 29 applies where a Bill makes provision "in relation to Wales". Unless it modifies the legislative competence of the Senedd, which is not the case in relation to the Bill, it must also make provision for any purpose "within the legislative competence of the Senedd".

22. The substantive clauses of the Bill are limited in their application to England only. Its provisions do not, in our view, apply "in relation to Wales" so as to engage Standing Order 29. In addition, the Senedd does not have the legislative competence to legislate as to the sale and marketing of PBOs in England so as to render the Bill as making provision "within the legislative competence of the Senedd".

23. In our view, the effect of UKIMA:

- is engaged only by virtue of the Bill becoming an Act and coming into force;
- is not a legislative competence issue for the purposes of Standing Order 29.

24. We recognise and accept that UKIMA has wider ramifications for Welsh policy. However, we do not believe that Standing Order 29 allows for wider factors to be considered when

assessing whether a Bill is a relevant Bill making relevant provision so as to engage that Standing Order and require the consent of the Senedd.

25. As such, the effect of the mutual recognition principle provided for in UKIMA is a separate issue from that of competence and, as a consequence, Standing Order 29.

26. We note also that the Welsh Government could have used other Standing Orders as a means of debating the subject matter of the Memorandum.

Conclusion 2. We disagree with the statement contained in paragraph 9 of the Memorandum that the Genetic Technology (Precision Breeding) Bill "is a relevant bill as it makes relevant provision in relation to Wales because of the *United Kingdom Internal Market Act 2020*".

Conclusion 3. The Senedd's consent is not required for the Genetic Technology (Precision Breeding) Bill.

27. While we have reached this view, we do agree with the Welsh Government's analysis as to the effect of UKIMA on existing Welsh law following the changes proposed for England by the Bill.

28. We are however surprised that the Welsh Government's analysis of the effect of UKIMA on existing Welsh law (in the context of the introduction in the UK Parliament of this England-only Bill) appears to be different to its analysis of the effect of UKIMA on its own Environmental Protection (Single-use Plastics Products) (Wales) Bill, when we were told that UKIMA "does not bite" on the Bill¹¹ and therefore the subsequent Act.

Recommendation 1. The Counsel General should write to the Committee and explain why the Welsh Government is of the view that the *United Kingdom Internal Market Act 2020* will affect existing Welsh law as a consequence of the introduction of the Genetic Technology (Precision Breeding) Bill, but will not affect the Environmental Protection (Single-use Plastics Products) (Wales) Bill once it becomes law.

29. In its Fifth Senedd Legacy Report, our predecessor Committee considered the impact of UKIMA and noted that it will have a practical impact on the way in which legislation is made in the Senedd. Accordingly, it suggested that consideration should be given to a number of factors

¹¹ See LJC Committee, [Report on the Environmental Protection \(Single-use Plastic Products\)\(Wales\) Bill](#), October 2022, paragraphs 32, 35, 42 and 75; [Letter from Julie James MS, the Minister for Climate Change](#), 25 October 2022, [Letter to Julie James MS, the Minister for Climate Change](#), 25 November 2022, [Letter from Julie James MS, the Minister for Climate Change](#), 9 December 2022

when Bills are being scrutinised in the Senedd and also how relevant legislation made by UK Ministers under UKIMA should be drawn to the attention of the Senedd.¹²

Recommendation 2. The Business Committee should ensure that the Senedd's Standing Orders are reviewed and amended at the earliest opportunity to ensure that they make appropriate provision to ensure that the practical effect of the *United Kingdom Internal Market Act 2020*:

- is taken into account when considering Bills under Standing Orders 26, 26A, 26B and 26C;
- is taken into account when legislation passing through all legislatures in the UK has an effect on other matters, including, for example, subordinate legislation;
- on existing primary and secondary legislation can be drawn to the attention of the Senedd.

30. Recommendation 2 is important because it is necessary to ensure that laws to be made in Wales, or Welsh law that is already on the statute book, are effective. It is also important to consider whether law made outside Wales impacts on the purpose and effect of Welsh law.

¹² Legislation, Justice and Constitution Committee, *Fifth Senedd Legacy Report*, March 2021
