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Select Committee on the Constitution

8th Report of Session 2022–23

Genetic Technology (Precision Breeding) Bill

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Select Committee on the Constitution

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Committee staff

The current staff of the committee are John Turner (Clerk), Rachel Borrell (Policy Analyst) and Jackie Lam (Committee Operations Officer). Professor Stephen Tierney and Professor Alison Young are the legal advisers to the Committee.

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Genetic Technology (Precision Breeding) Bill

Introduction

1. The Genetic Technology (Precision Breeding) Bill was introduced in the House of Commons on 25 May 2022 and brought to the House of Lords on 1 November 2022. Second reading took place on 21 November 2022 and committee stage is scheduled to begin on 8 December 2022.
2. The Bill removes “precision bred” plants and vertebrate animals produced using modern biotechnologies, and the food and feed derived from them, from the existing regulatory system for genetically modified organisms (GMOs). The Government says the Bill is intended to reduce “the regulatory burden and financial barriers in place for researchers and commercial breeders using precision breeding technologies”¹ and ensure that these products are regulated “proportionately to risk.”²
3. The Government has stated that the Bill’s aims are “to encourage agricultural and scientific innovation” and to “unlock the potential of new technologies to promote sustainable and efficient farming and food production.”³
4. **The Bill leaves a number of policy areas to secondary legislation. Given the Bill’s subject matter many of the regulations made under it are likely to be highly technical. The House may wish to reflect on how it might adjust its procedures to best use the expertise available in the House in considering such regulations.**

Delegated powers

Part 2

5. Part 2 determines the conditions under which a person who has a precision bred organism under their control may release that organism into the environment in England and the process by which such an organism may be released. Powers under Part 2 enable the Secretary of State to specify the requirements on notification of release of a precision bred organism into the environment (clause 4) and requirements on making a “marketing notice” (an application for precision bred confirmation) (clause 6). Regulations under clause 9 confer a power on the Secretary of State to revoke a precision bred confirmation. Regulations under clause 11 may make provision about the requirements on application for a precision bred animal marketing authorisation. Clause 11 contains a power to make provision for the Secretary of State to suspend or revoke a precision bred animal marketing authorisation. Each of these powers is subject to the negative procedure.
6. **It is unclear what requirements will be placed on those wishing to release or market precision bred organisms, including precision bred**

1 [Explanatory Notes to the Genetic Technology \(Precision Breeding\) Bill](#), para 1

2 Department for Environment, Food & Rural Affairs, *Genetic Technology (Precision Breeding) Bill: Factsheet 1—overview* (May 2022): <https://publications.parliament.uk/pa/bills/cbill/58-03/0011/FactsheetGenetic.pdf> [accessed 17 November 2022]

3 Prime Minister’s Office, *Queen’s Speech* (10 May 2022): <https://www.gov.uk/government/speeches/queens-speech-2022> [accessed 17 November 2022]

animals, under Part 2 of the Bill. The effects may be significant. *Given public anxiety in this area and the novelty of the simplified regulatory regime established by the Bill, we recommend the Government publishes indicative draft regulations while the Bill is before the House, to assist the House’s consideration of these clauses.*

7. Clause 16 requires the Secretary of State to make regulations for reviews and appeals against decisions made under Part 2.⁴ Appeals will be brought in the First-tier Tribunal.⁵ The regulations may make additional provision about appeals, including on the powers of the First-tier Tribunal on appeal.⁶ These regulations are subject to the negative procedure.⁷
8. **The regulation-making power in clause 16 is wide-ranging given the number of decisions that can be made under Part 2 and their potentially significant effects on producers and consumers.**
9. Clause 17 provides for restrictions on importation and acquisition of precision bred plants and animals in “contained use” conditions.⁸ Regulations may require a person to carry out an environmental risk assessment for precision bred organisms that are imported to a place in England or that are acquired in England.⁹ The use of the power under this clause is therefore discretionary. Regulations made under this clause are subject to the negative procedure.¹⁰
10. **Clause 17 contains a significant power which is important for managing risk in connection with the importation of precision bred organisms. We note that it is both discretionary and subject to the negative procedure.**
11. Clause 22 sets out the advisory bodies for Part 2 of the Bill: the “advisory committee” (which advises in relation to precision bred organisms)¹¹ and the “welfare advisory body” (which advises in relation to precision bred animal marketing authorisations).¹² The former is the committee established under section 124(1) of the Environmental Protection Act 1990¹³ and will advise on precision breeding confirmations. The latter is to be designated by regulations, subject to the negative procedure.¹⁴ It will advise, and report to the Secretary of State, on any matter relevant to the Secretary of State’s functions about precision bred animal marketing authorisations.¹⁵ The regulations are subject to the negative procedure.
12. The Animal Welfare (Sentience) Act 2022 provides for the establishment of an Animal Sentience Committee to consider the impact of government policy on animal welfare. That committee has yet to be established but the then minister in the Commons, Victoria Prentis MP, said that it would be

4 [Genetic Technology \(Precision Breeding\) Bill](#), clause 16(1)

5 [Genetic Technology \(Precision Breeding\) Bill](#), clause 16(2)(c)

6 [Genetic Technology \(Precision Breeding\) Bill](#), clause 16(4)

7 [Genetic Technology \(Precision Breeding\) Bill](#), clause 16(5)

8 [Genetic Technology \(Precision Breeding\) Bill](#), clause 17. The explanatory notes to the Bill give laboratories as an example of a contained use condition. [Explanatory Notes to the Genetic Technology \(Precision Breeding\) Bill](#), para 111

9 [Genetic Technology \(Precision Breeding\) Bill](#), clause 17(1)

10 [Genetic Technology \(Precision Breeding\) Bill](#), clause 17(6)

11 [Genetic Technology \(Precision Breeding\) Bill](#), clause 22(1)

12 [Genetic Technology \(Precision Breeding\) Bill](#), clause 22(3)

13 [Explanatory Notes to the Genetic Technology \(Precision Breeding\) Bill](#), para 141

14 [Genetic Technology \(Precision Breeding\) Bill](#), clause 22(3) and 22(9)

15 [Genetic Technology \(Precision Breeding\) Bill](#), clause 22(5)

established before the first precision bred organisms are released or marketed under this Bill.¹⁶

13. **This Bill might have benefited from consideration by the Animal Sentience Committee. We recommend the House explore the proposed relationship between that committee and the welfare advisory body to be established by this Bill.**
14. **The power to establish the “welfare advisory body” by regulations is significant. It is unclear how this body, which is central to the governance structure for precision bred animals, will operate and the evidence base from which it will work.**
15. *In the light of public concern about genetic technology, and the potential implications of precision breeding for animal welfare, we recommend that the Bill is amended so that advice received by the Government from the welfare advisory body (under clause 12) is published. If the Government disagrees with the welfare advisory body’s assessment and decides to issue a precision bred animal marketing authorisation contrary to the welfare advisory body’s advice, the Secretary of State should be required to publish a justification for this decision.*
16. **More generally, Part 2 of the Bill contains a number of powers, many subject to the negative procedure, with little guidance in the Bill on how they are to be exercised. The Delegated Powers and Regulatory Reform Committee concluded that, without convincing justification from the Government, many of the powers in Part 2, as currently cast, are inappropriate. We agree.**

Part 3

17. Part 3 provides for the regulation of food and feed produced from precision bred organisms. Each of its four substantive clauses contains a regulation-making power, each subject to the affirmative procedure. Clause 26(1) provides for the introduction by regulations of a regulatory framework governing the placing on the market in England of food and feed produced from precision bred organisms.¹⁷
18. **Part 3 contains significant delegated powers. While secondary legislation may be appropriate given the fast-moving nature of genetic technology, we are concerned that wide areas of policymaking are being left to executive discretion. We note concerns raised in the House of Commons about whether food and feed from precision-bred organisms will be labelled to identify it as such.^{18 19} *The House may wish to assure itself that the labelling regime is subject to appropriate parliamentary control.***

16 Public Bill Committee on the Genetic Technology (Precision Breeding) Bill, 7 July 2022, [cols 261–262](#)

17 [Genetic Technology \(Precision Breeding\) Bill](#), clause 26(1)

18 HC Deb, 15 June 2022, [col 378](#) [Commons Chamber]

19 The Common Frameworks Scrutiny Committee has recently written to the Government about the updated provisional Food Compositional Standards and Labelling Common Framework. Common Frameworks Scrutiny Committee, [Food Compositional Standards and Labelling \(FCSL\) Common Framework](#) (26 October 2022)

19. ***We recommend that the regulations provided for by clauses 26, 27 and 28 are published in indicative draft form by the Government while the Bill is before the House.***

Part 4

20. Part 4 is about enforcement. It largely leaves to secondary legislation the creation of compliance notices, stop notices, monetary penalty notices²⁰ and enforcement notices,²¹ together with processes for reviews and appeals²² and the power to impose costs incurred in relation to enforcement notices.²³ The power to make such Regulations is discretionary. Regulations made under each of these powers are subject to the draft affirmative procedure.²⁴
21. **We agree with the Delegated Powers Committee that the discretionary nature of the powers in Part 4 requires further explanation.**

Devolution

22. Most provisions in the Bill extend to England and Wales only and apply in England only.²⁵ The Government has said that the Sewel convention is not engaged and that the legislative consent of the devolved assemblies is not required.²⁶
23. In our report *Respect and Co-operation: Building a Stronger Union for the 21st Century* we concluded:

“At present when the Government considers consent is not required from a devolved legislature and proceeds to give effect to that view, there is no parliamentary scrutiny of this determination. In future we recommend that the Government should justify its approach to the House at the beginning of a Bill’s consideration.”²⁷

24. ***In line with our previous recommendation we recommend that, before the Bill leaves the House, the House asks the Government to justify its assessment that the Bill does not require legislative consent.***
25. There is a significant relationship between the Bill and the United Kingdom Internal Market Act 2020. Regulation of precision bred organisms, and genetic technologies in general, are devolved matters, but under the United Kingdom Internal Market Act 2020 precision bred products which are marketed in one nation may be marketed in the other UK nations.²⁸ Northern Ireland is an exception due to the Northern Ireland Protocol, which requires EU rules to be followed in this area.²⁹

20 [Genetic Technology \(Precision Breeding\) Bill](#), clauses 32(1), 33, 34 and 35

21 [Genetic Technology \(Precision Breeding\) Bill](#), clause 32(2) and 36

22 [Genetic Technology \(Precision Breeding\) Bill](#), clause 37

23 [Genetic Technology \(Precision Breeding\) Bill](#), clause 38

24 [Genetic Technology \(Precision Breeding\) Bill](#), clause 32(4) and 38(8)

25 [Explanatory Notes to the Genetic Technology \(Precision Breeding\) Bill](#), paras 13 and 265

26 [Explanatory Notes to the Genetic Technology \(Precision Breeding\) Bill](#), paras 264–266

27 Constitution Committee, [Respect and Co-operation: Building a Stronger Union for the 21st Century](#) (10th Report, Session 2021–22, HL Paper 142), para 139

28 United Kingdom Internal Market Act 2020, [section 2](#)

29 [Protocol on Ireland/ Northern Ireland](#); [Explanatory Notes to the Genetic Technology \(Precision Breeding\) Bill](#), para 14

26. The Scottish and Welsh Governments have indicated they do not plan to change regulation of gene editing technologies for food and feed.³⁰ The Welsh Government maintains a “precautionary and restrictive approach” to the growing of genetically modified crops within the parameters of legislation.³¹ The Scottish Government has consistently opposed genetic modification in food production. It has announced that it is opposed to the Bill.³²
27. The Scottish and Welsh governments have criticised the Government for the late notice to and consultation with the Scottish and Welsh Governments about the Bill.³³
28. **Although the Bill does not legislate on devolved matters, it has potentially significant spill over consequences for Scotland and Wales, which the Government should have foreseen. The Bill could result in products being sold in Scotland and Wales, the development of which there would contravene local laws. With this in mind, we regret the late notification of the Bill to the devolved governments and that the Government did not make greater efforts to consult the devolved administrations in good time before the Bill was introduced.**
29. The Government has suggested avenues of agreement with the devolved governments over the regulation of genetically modified organisms is possible through the existing GMO concordat agreed between the UK Government and the three devolved administrations.³⁴ At committee stage in the House of Commons the then minister, Victoria Prentis MP, said the Government would be willing to revisit the concordat and consider whether the intergovernmental arrangements under it were “sufficient for intergovernmental working, and, where relevant, to manage divergence in the regulation of genetic technologies.”³⁵ She said there is time for this to happen, noting:

“[I]t will be at least five years before products come on to the markets for farmers and growers. We hope that consumers across the whole of

30 House of Commons Library, Genetic Technology (Precision Breeding) Bill 2022–23, Research Briefing, [CBP 9557](#), August 2022, p.9. The positions of the devolved administrations are discussed in more detail in this paper: pp 23–24

31 Welsh Government, *Public attitudes towards Genetic Modification: A Scoping Review* (4 July 2017): <https://gov.wales/sites/default/files/statistics-and-research/2019-07/170704-public-attitudes-towards-genetic-modification-scoping-review-en.pdf> [accessed 21 November 2022]

32 Scottish Government, *Letter to the UK Government from Mairi McAllan MSP, Scottish Government Minister for Environment and Land Reform* (10 June 2022): <https://www.gov.scot/publications/genetic-technologies-precision-breeding-bill-letter-to-uk-government/> [accessed 21 November 2022]

33 Scottish Government, *Genetic Technologies (Precision Breeding) Bill: letter to UK Government* (10 June 2022): <https://www.gov.scot/publications/genetic-technologies-precision-breeding-bill-letter-to-uk-government/> [accessed 24 November 2022]; Mick Antoniw, Counsel General and Minister for the Constitution, *Letter to the Legislation, Justice and Constitution Committee* (4 August 2022), Q 30: <https://business.senedd.wales/documents/s129323/LJC6-23-22%20-%20Paper%2052%20-%20Letter%20from%20the%20Counsel%20General%20and%20Minister%20for%20the%20Constitution%204%20Augus.pdf> [accessed 24 November 2022]

34 The GMO concordat “sets out the agreed framework for co-operation between the Department of the Environment in Northern Ireland, the Department for Environment, Food and Rural Affairs (Defra), the Welsh Government and the Scottish Government, on the administration and coordination of the regulatory frameworks established under: Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms (GMOs), including the 2015 amendment; and Regulation (EC) No.1946/2003 on trans-boundary movements of GMOs”. *Concordat on the Implementation of Directive 2001/18/EC (as amended) and Regulation 1946/2003/EC* (July 2013): <https://gov.wales/sites/default/files/publications/2018-09/concordat-with-defra.pdf> [accessed 21 November 2022]

35 Public Bill Committee on the Genetic Technology (Precision Breeding) Bill, 7 July 2022, col [254](#)

the UK will be able to benefit from the research into precision bred plants and animals that the Bill will enable.”³⁶

30. It is also possible that agreement could be reached on possible exclusions from internal market access principles under the United Kingdom Internal Market Act 2020. This would allow the devolved administrations some degree of control over what can and cannot be marketed in their territories, including the possibility of certain types of labelling. The Government noted:

“There is an established process for considering exclusions to the application of the UKIM market access principles in the common framework areas ... The UK Government are fully committed to common frameworks and to taking forward discussions with the Governments of Scotland, Wales and Northern Ireland on the interaction between the proposals in the Bill and UKIM.”³⁷

31. At report stage in the House of Commons the minister, Rt Hon Mark Spencer MP, said that the Government would continue to engage with devolved administrations to address their specific concerns with the Bill.³⁸ This was reiterated at second reading in the House of Lords.³⁹

32. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we stated:

“We welcome the agreement reached between the UK Government and devolved administrations on the process for agreeing exclusions from the UK Internal Market Act 2020’s market access principles in policy areas covered by common frameworks. This is an encouraging sign that constructive intergovernmental relations are being re-established.”⁴⁰

33. **We welcome the Government’s apparent preparedness to revisit the GMO concordat and possibly to consider exclusions in relation to this Bill to the application of the market access principles in the UK Internal Market Act 2020. We encourage the Government and the Scottish and Welsh governments to work closely to agree the new regulatory regimes.**

36 Public Bill Committee on the Genetic Technology (Precision Breeding) Bill, 7 July 2022, col [255](#)

37 Public Bill Committee on the Genetic Technology (Precision Breeding) Bill, 7 July 2022, col [255](#); HC Deb, 31 October 2022, [cols 697–8](#) [Commons Chamber]

38 HC Deb, 31 October 2022, [cols 697–8](#) [Commons Chamber]

39 HL Deb, 21 November 2022, [col 1253](#) [Lords Chamber]

40 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century*, (10th Report, Session 2021–22, HL Paper 142), paras 169–171

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Drake (Chair)
 Lord Falconer of Thoroton
 Lord Faulks
 Baroness Fookes
 Lord Hennessy of Nympsfield
 Lord Hope of Craighead
 Lord Howard of Lympne
 Lord Howarth of Newport
 Lord Howell of Guildford
 Lord Robertson of Port Ellen
 Lord Sherbourne of Didsbury
 Baroness Suttie
 Lord Thomas of Gresford

Declarations of interest

Baroness Drake (Chair)
No interests declared
 Lord Falconer of Thoroton
No interests declared
 Lord Faulks
No interests declared
 Baroness Fookes
No interests declared
 Lord Hennessy of Nympsfield
No interests declared
 Lord Hope of Craighead
No interests declared
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No interests declared
 Lord Howarth of Newport
No interests declared
 Lord Howell of Guildford
No interests declared
 Lord Robertson of Port Ellen
No interests declared
 Lord Sherbourne of Didsbury
No interests declared
 Baroness Suttie
No interests declared
 Lord Thomas of Gresford
No interests declared

A full list of members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Professor Stephen Tierney, University of Edinburgh, and Professor Alison Young, University of Cambridge, acted as legal advisers to the Committee. They declared no relevant interests.