

Lord Hodgson of Astley Abbotts CBE
Chair
Secondary Legislation Scrutiny Committee
House of Lords

By email to: hseclegscrutiny@parliament.uk



26 January 2022

Dear Lord Hodgson

I am writing on behalf of GM Freeze – the UK umbrella campaign for a responsible, fair and sustainable food system, focused on concerns around the use of genetic engineering in food and farming – to ask the Secondary Legislation Scrutiny Committee to consider two queries regarding a statutory instrument (SI) laid on 20 January – [The Genetically Modified Organisms \(Deliberate Release\) \(Amendment\) \(England\) Regulations 2022](#).

1. What criteria will be used to determine which genetic changes could have occurred naturally or by any of the techniques used in traditional breeding as listed in 5(2) of the Genetically Modified Organisms (Deliberate Release) Regulations 2002?

The Department for Environment Food and Rural Affairs (Defra) public consultation, held in 2021 and referenced in the [Explanatory Memorandum](#) included, as Question 4a: “What criteria should be used to determine whether an organism produced by gene editing or another genetic technology, could have been produced by traditional breeding or not?”

Defra’s [Summary of responses to the consultation](#) indicates significant uncertainty about such criteria, including the following points:

“Individuals most commonly stated that there are no suitable criteria to determine whether an organism produced by GE or other genetic technologies could have been produced by traditional breeding.”

“The most frequent view given by NGOs and academics was that scientific criteria should be developed in order to determine whether an organism produced by GE or other genetic technologies could have been produced by traditional breeding.”

Defra has not published consultation submissions, but many organisations have made their contributions public. The following points are all included in submissions that were broadly supportive of the Government’s policy towards the regulation of genetic technologies but nonetheless expressed concern about the feasibility of determining whether or not a genetic change could have occurred naturally or through traditional breeding:

- The [Institute of Food Science and Technology](#): “expert review is required to identify appropriate criteria”.
- The [Roslin Institute](#): “it is exceptionally challenging to define which changes to the genome could have been produced by ‘traditional’ breeding.”

- The [Royal Society](#): “this question is problematic as there is a difference between what could be produced by traditional breeding in theory and in practice.”
- The [Royal Society of Biology](#): “No clear criteria can be described that would determine whether an organism produced by genome editing or other genetic technologies could have been produced by traditional breeding. This means no clarity can be achieved using this principle, and it is not appropriate as the basis of regulation.”

There is clearly a high level of uncertainty about how – and by whom – the new category of “qualifying higher plant” will be determined and we hope that the Committee will seek clarity on this point.

2. Which business sectors were considered or consulted in order to determine, under 12.1 in the Explanatory Memorandum that “There is no, or no significant, impact on business, charities, or voluntary bodies” and, under 13.2 that “it will reduce overall cost to business”?

The SI establishes a notification requirement for the release of the newly defined “qualifying higher plants”. However, the information that must be notified to the Secretary of State for each release (set out in a new Schedule 3A) does not include the location or scale of any release, or details of the containment measures that will be employed to ensure that the GMOs do not affect either commercial crops or the wider environment.

Non-marketing releases of experimental GMOs have, in many instances, led to the escape of pollen, seed and other plant material capable of reproduction. This risk is well recognised by Defra and field trials of genetically modified organisms (GMOs) are only allowed to proceed if the Advisory Committee on Releases to the Environment (ACRE) is satisfied that adequate containment measures have been put in place.

The SI does not change the legal status of the affected GMOs for marketing purposes, ie it will remain illegal to grow the plants commercially or allow them to enter the food chain. With no mandatory containment measures, farmers, food producers and distributors will be vulnerable to significant business disruption and potentially catastrophic costs in the event that “qualifying higher plants” contaminate conventional or organic crops of the same, or a closely related species. Such contamination could lead to lost business, the loss of organic status (where relevant) and legal action.

I would be pleased to discuss these questions with the Committee and can be contact on the details below. GM Freeze places a high value on transparency and will publish this letter on our website, www.gmfreeze.org approximately one week from the date shown above. If you have any objection to such publication, please contact me urgently.

Yours sincerely



Liz O'Neill
Director – GM Freeze