

# SL(5)464 – The Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) (Amendment) Regulations 2019

## Background and Purpose

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These Regulations amend the Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019 (“the 2019 Regulations”) to:

- correct an incorrect cross-reference,
- make minor amendments to the Welsh text, and
- effect equivalence between the English and Welsh texts.

These amendments are as a result of the Constitutional and Legislative Affairs Committee report, dated 16 October 2019, on the 2019 Regulations. The report identified a number of technical points.

The Welsh Government provided a response and agreed to make a number of corrections to the 2019 Regulations, to reflect the points identified. This is done by way of these Regulations.

## Procedure

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Negative.

## Technical Scrutiny

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No technical points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

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One point is identified for reporting under Standing Order 21.3(ii) in respect of this instrument.

**Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.**

The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented. However, in this case, the Welsh Government consider that the circumstances justify a breach of that rule. The Minister for Finance and Trefnydd, as required under section 11A of the Statutory Instruments Act 1946, has notified the Presiding Officer of the breach so that the matter can be brought to the attention of Members.

The Explanatory Memorandum (“the EM”) sets out the reasons for the breach of the 21 day rule:

*“These Regulations are made under section 2(2) of the European Communities Act 1972, meaning there is some urgency in making them in advance of exit day, when the power will no longer be available. One of the amendments made by the 2019 Regulations relates to the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019*



*(S.I. 2019/379 (W. 94)) (EU Exit Regulations 2019). The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No.2) Regulations 2019 (EU Exit No. 2 Amendment Regulations 2019) are currently being drafted. The EU Exit No. 2 Amendment Regulations 2019 will also amend the EU Exit Regulations 2019 and it is anticipated that they will be laid on 28 October, with a coming of force date of (for some provisions) immediately before exit day, and (for other provisions) exit day. Given that these Regulations and the EU Exit No. 2 Amendment Regulations 2019 both amend the EU Exit Regulations 2019, for clarity – on both the statute book and for the ease of understanding for lay readers – it is considered appropriate that the amendments made by these Regulations come into force first. The 2019 Regulations come into force on 30 October, and these Regulations need to come into force before that date. The latest day on which they can come into force is 29 October. In order to achieve this it is necessary for the 21 day rule to be breached.”*

These Regulations and the EM were laid on 29 October 2019, and the letter to the Llywydd is dated 28 October 2019.

On 30 October 2019 the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 3) Regulations came into force and amended the definition of “exit day”. Exit day is now defined as 31 January 2020. Because of this amendment, the provision in the EU Exit Regulations 2019 which the 2019 Regulations amend, is not yet in force.

The EU Exit No. 2 Amendment Regulations 2019 were laid on 5 November 2019.

It remains the case that the 2019 Regulations came into force on 30 October.

## Implications arising from exiting the European Union

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These Regulations amend the 2019 Regulations which implement EU obligations in relation to the deliberate release of genetically modified organisms, the 2019 Regulations will form part of retained EU law after exit day.

## Government Response

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A government response is not required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**6 November 2019**

