IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

(1) BEYOND GM LTD
(2) JOSEPH WOOKEY
(3) PATRICK HOLDEN CBE
(4) JOANNA BLYTHMAN

Claimants

and

THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Defendant

STATEMENT OF FACTS AND GROUNDS

References are given to the following bundles: Claimants' Claim Bundle for JR2 (2/CB/y), and Agreed Core and Supplementary (Volumes 1 and 2) Hearing Bundles for JR1 (1/CB/y, 1/SB1/y and 1/SB2/y), where "y" refers to the page number.

List of Essential Reading (time estimate: 3hrs)

- Pre-action protocol correspondence [**2/CB/176-199**]
- Witness statements of Claimants [**2/CB/67-126**]
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INTRODUCTION & SUMMARY OF PREVIOUS PROCEEDINGS & THIS CLAIM

1. This is the second challenge the Claimants have had to bring regarding the Defendant's decision-making regarding the Genetic Technology (Precision Breeding) Regulations 2025 (the "**Regulations**") under powers in the Genetic Technology (Precision Breeding) Act 2023 (the "**Act**"), and the making of the Regulations on 13 May 2025.

2. The Regulations provide a new regulatory framework for so-called 'precision-bred' genetically modified organisms ("**GMOs**"). There is a longstanding regime, largely derived from EU law, governing the use of GMOs. The Act created a new subcategory of GMOs, 'precision bred organisms' ("**PBOs**"), which are authorised for release, regulated, and marketed subject to what the Defendant calls a "general consenting regime"[1] pursuant to the Regulations. PBOs are plants or animals where the genetic makeup of the organism has been altered using techniques of modern biotechnology (such as gene editing) in a precise way. To qualify as a PBO, the changes to the organism must be those that could have also been achieved through traditional breeding methods.

3. The problem of particular importance here, which the Regulations create, is that PBOs are not required to be labelled, or in any other way traceable, including through any combination with other items in the production and supply chain (and particularly the food supply chain). As has recognised by the Court previously (see below), no such provision was made despite the Act (s 26(2)(b)) specifically enabling the Defendant to impose such requirements. The lack of labelling/tracing measures means that PBOs / products containing PBOs are indistinguishable to the user/buyer (whether consumer or commercial) from a conventional product. This also makes it impossible later to identify, investigate and assess whether the genetically modified PBO does in practice, including over time, give rise to health and other safety risks or risks to the environment (including as a consequence of being a PBO). Once PBOs are released, they will therefore be impossible to detect let alone withdraw or remove from the supply chain or environment.

4. However, PBOs remain defined (and prohibited as GMOs) for the purposes of organic industry certification and standards, EU law (at least pending the possible – but by no means certain - outcoming of ongoing negotiations with the EU[2]), and the law of the devolved administrations of England and Wales. As a result, the Regulations give rise to real and credible threats to the regulatory status, livelihoods and professional identities of individuals and business throughout the chain of food (and, in particular, organic food) production or export to the EU or the rest of the UK.

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1 See the Pre Action Protocol Response of the Defendant in the prior proceedings of 21 July 2025 at §69 [**1/SB1/72**].

2 See RB3 §73 at **[2/CB/320]** and PT3 §§5-10 **[2/CB/448]**

5. The fundamental problems this creates for organic farmers, food processors, food businesses and the consumer was at the heart of the Claimants' first challenge to the decision to make the Regulations issued on 15 August 2026. These previous proceedings will be referred to as "**JR1"**. Through JR1, the Claimants challenged the legality of the Regulations on a number of grounds, including, in particular, that the decision was irrational because, in particular, the Defendant had failed to comply with his *Tameside* duty, a point which was reinforced when it became apparent from disclosure that the Defendant had been repeatedly incorrectly advised that he did not have the power to mandate labelling: see the summary of the Claimants' case in their skeleton argument for the hearing in JR1 at **[2/CB/206-209]**.

6. The Court handed down its judgment on 4 June 2026, reported at [2026] EWHC 1306 (Admin) (the **"Judgment"**) **[2/CB/614-656]**. The Court held, in particular, that, when making the decision to lay the Regulations, the then Minister (whose historic involvement in the issue and extensive dialogue with the organic sector and others had been emphasised by the Defendant in response to the JR claim): *"... did not know (because he had been wrongly advised) that he had powers under the 2023 Act to mandate labelling for all PBOs that are placed on the market. This inevitably constrained his thinking, and the range of enquiries that were appropriate…."* Such enquiries could have extended to further investigation of the impact of the Regulations on the organic sector. But this was not pursued in a context where the Minister did not understand the true scope of his powers under s 26 of the Act. A reasonable decision-maker would have taken some time to consider the implications of this, and to properly consider what steps may be appropriate to ensure that any further decision taken would be lawful. This applied particularly where the Court went on to hold that *"there was at least a real possibility that [the Minister] would have considered a materially different range of options"* [163].

7. However, on 23 June 2026, without any prior warning or consultation (whether to the Claimants or publicly), the new (and without prior involvement with this issue) Minister Morgan (using delegated powers from the Defendant) decided to "*accept the current policy approach on labelling*" and so agreed to continue with the current formulation of the Genetic Technology (Precision Breeding) Regulations 2025 (the "**2025 Regulations**") (the "**Maintain Decision**").

8. The Maintain Decision was taken in secret and remains, to the best of the Claimants' knowledge, unconfirmed in the public domain. Indeed, the Claimants were only informed of the Maintain Decision on 25 June 2026 when it was provided in support of the Defendant's submissions regarding relief and permission to appeal in JR1. While the Defendant has granted the Claimants permission to rely on the relevant documents for the purposes of these second proceedings, it is concerning that a decision which has important and serious consequences for many has still not been communicated publicly.

9. That the Maintain Decision remains secret in part follows from the Defendant's failure to conduct any or any adequate consultation.

10. The Claimants rely on the following grounds:

    a. **Ground 1:** The Defendant failed to carry out a fair and lawful consultation;

    b. **Ground 2:** In making the Maintain Decision the Defendant failed to comply with the *Tameside* duty of inquiry, to consider obviously material considerations, and/or there was a failure to put a fair and balanced submission to Minister Morgan;

    c. **Ground 3:** The decision-maker, Minister Morgan, made the Maintain Decision in reliance on a misdirection as to the scope of the labelling powers available under the Food Safety Act;

    d. **Ground 4:** By keeping the Maintain Decision secret, providing it only as part of its disclosure in JR1 as opposed to announcing it publicly, the Defendant is unlawfully operating an unpublished policy.

THE CLAIMANTS

11. As in the previous proceedings, the Claimants are as follows:

12. The First Claimant, Beyond GM, is a UK-based civil society organisation and private company limited by guarantee (company number: 9078147): see first witness statement

of Pat Thomas in the previous proceedings ("W/S PT1") [**1/CB/202-244**]; and first witness statement in these proceedings [**2/CB/67-81**]. It represents the interests of consumers, farmers, breeders, sustainable and artisanal food producers and other civil society groups on matters relating to genetic engineering in food, farming and the natural environment. It has a long-standing record of public engagement, policy advocacy and expert input into regulatory debates, and acts to defend the public interest where transparency, environmental protection and democratic accountability are at risk. Beyond GM engaged extensively in the consultation processes relating to the Act and, in particular, the Regulations, and was the lead claimant in the successful previous proceedings.

13. The Second Claimant, Joseph Wookey, is an organic farmer, and the owner and operator of Rushall Organics ("RO"): see first witness statement of Joseph Wookey ("W/S JW1") [**1/CB/245-253**] in the previous proceedings. RO is a family farming business operating over a 2,000 hectare farm in Wiltshire ("**The RO farm**"), which grows organic wheat, barley and oats. The remainder of the farm consists of permanent grass, woodland or crops grown for biodiversity and environmental benefits. The RO farm is additionally located on chalk soils at the edge of Salisbury Plain and Pewsey Vale and a chalk stream runs through the heart of the farm. The farm is situated within the Salisbury Plains Special Protected Area ("**SPA**") and rents land within or adjacent to the Salisbury Plains Special Area of Conservation ("**SAC**"). The RO farm has been farmed by the Wookey family since 1928, conservation began in 1970 and the farm was fully organic by the late 1990s. RO sells its crops to a range of customers including millers, bakers (food processors) and food retailers (food businesses). A significant part of RO's crops are sold to a Northern Ireland based oat processor with markets throughout Europe. In his first witness statement from these proceedings **[2/CB/95-104]**, Mr Wookey explains that "*traceability and segregation are not optional extras when it comes to maintaining the integrity of [his] supply chain*" and that "*labelling seeds is inadequate for an organic arable farmer who needs to know the status of the material that is being grown, harvested, stored and sold".*

14. The Third Claimant, Patrick Holden, is the owner and operator of Holden Farm Dairy ("**HFD**"), an organic farm in West Wales: see witness statement of Patrick Holden ("W/S PH1") from JR1 **[1/CB/190-201]** and for these proceedings [**2/CB/105-115**]. Mr Holden

has worked in sustainable and organic agriculture for over fifty years, and is the founding director and current CEO of the Sustainable Food Trust, a UK-based charity working to accelerate the transition to more sustainable food and farming systems. He established HFD in the 1970s. It is now a 300-acre mixed organic livestock, vegetable and cereal farm. HFD has been certified 4 organic by the Soil Association since 1973 and is one of the longest-standing organic farms in the UK. HFD grows and sells organic cereal crops, processes raw milk and Soil Association organic certified Hafod cheese, and sells that cheese, as well as carrots and oats, both directly to consumers and to other food businesses. Mr Holden is therefore a farmer, a food processor, and the owner and operator of a food business. A significant portion of HFD's cheese is sold to specialist cheese retailers in the EU. HFD's access to the EU market is entirely dependent on compliance with EU organic regulations (and thus the linked prohibition of GMOs in the EU). HFD's organic status as an organic dairy farm processor also requires it to rely only on organic plant-derived inputs – including grains, forage, straw, and animal feed – which it purchases from suppliers in England. Mr Holden was director of the Soil Association from 1995 to 2010. In 2004 he was awarded the CBE for services to organic farming. As he explains in his statement for these proceedings, the issue introduced by the Regulations is "*considerably wider than whether a label appears on a finished food product. The absence of statutory PBO traceability means there is no general statutory requirement on those introducing PBOs into agricultural supply chains to ensure that BO status is communicated to downstream operators*".

15. The Fourth Claimant, Joanna Blythman, is an investigative food journalist and author, and an organic and non GMO consumer: see witness statement of Joanna Blythman ("W/S JB1") [**1/CB/178-189, 2/CB/116-126**]. Since the 1980s she has favoured the purchase and consumption of organic produce. She is opposed to and consciously avoids purchasing or consuming food products produced using unnatural genetic modification, including (when they come to be placed on the market) PBOs. Ms Blythman's food choices and principles have constituted a personal characteristic and have played a key role in both her personal and professional life for over three decades. Her food values form part of her personal identity. As she explains in her first witness statement in these proceedings, the impact of the Regulations is that she *"cannot safely assume something I buy as organic is in fact organic – even though [she knows] organic providers will do their very best"* **[2/CB/116-126]**.

RELEVANT BACKGROUND

Events leading to JR1

16. The relevant statutory framework and factual background to the 2025 Regulations is set out in detail in paragraphs 22-91 of Mr Justice's Johnson judgment of 4 June 2026 in respect of JR1 (the "**Judgment**" **[2/CB/614-656]**).[3] As such, the following is a summary of the key points.

17. As set out in J/36-37, section 26 of the 2023 Act provides a *"general power to regulate the marketing of food and feed produced from PBOs. Section 26(2)(b) explicitly permits that power to be exercised to impose requirements to ensure such food or feed is traceable."* However, as set out at J/40, *"[t]he Regulations … provide a framework within which PBOs may lawfully be released and marketed. They do not impose any labelling: the Secretary of State did not exercise the power under section 26(2)(b) to impose requirements for the purpose of securing traceability…"* And at J/119: *"… section 26(1) and 26(2)(b) give the Minister the power to make regulations for the purpose of securing the traceability of food or feed produced from PBOs that is placed on the market in England. It is common ground that compulsory labelling of such food or feed would assist to secure its traceability. It is therefore also common ground that the 2023 Act gave the Minister a power to introduce mandatory labelling…."*

18. Minister Zeichner made the decision to implement the Regulations without labelling on behalf of the Defendant. However, as the Court held, he had been incorrectly advised as to the scope of his powers. The key passages are as follows:

    a. J/72: "*On 9 August 2024, a submission on "Regulatory Reform: A New Framework for Precision Breeding" was sent by Defra officials to the Secretary of State and the Minister. A section of the document was headed "key issues". The first key issue was "Provision of information":*

[3] This Statement of Facts and Grounds (**"SFG"**) adopts the defined terms contained therein and refers to relevant paragraphs using the reference "J/x" where "x" refers to the paragraph number.

"We understand Ministers are interested in how we could go further on providing information about precision bred organisms. Within the Act, there are requirements to establish public registers to ensure information is available to the public. The previous Government and the FSA Board concluded that existing requirements for labelling and traceability under General Food Law and Food Information to Consumers regulations, were sufficient for the purposes of food safety. <u>As such, powers to impose labelling requirements were not included in the Act</u>.

Industry across the supply chain have signalled that food labelling would deter investment, raise costs to consumers and result in a disadvantage internationally with many countries, including the EU, not proposing food labelling. Whilst we have not been considering food labelling, we are exploring ways to improve the provision of information on precision bred plant varieties and seeds." [Underlining added]"

b. J/78 (emphasis added): "On *29 October 2024, the Minister met Ms Thomas to discuss Beyond GM's concerns about the proposed regulations. A briefing from officials in advance of the meeting addressed the question of labelling:*

"The independent scientific advice is that precision bred plants and animals pose no greater risk than traditionally bred counterparts. Products of precision breeding will only contain genetic changes that could also occur through traditional breeding.

We are committed to delivering informative food labelling and promoting robust food standards, to ensure that consumers can have confidence in the food that they buy.

If pressed: The Precision Breeding Act did not include powers to mandate labelling of precision bred organisms or their food and feed. The statutory instrument we are presenting to Parliament will not include provisions for labelling of any precision bred plant or derived food and feed…."

c. J/80: Minister Zeichner made the key decision to press ahead with the Regulations despite recognising that *"… There are strong arguments on both sides. Needing labelling due to testing limitations is a good argument. Consumer right to know is also a good argument and the public have an increasing appetite for information about their food. DZ sees merits to both sides and thinks that this issue needs to sit in the wider labelling debate. DZ highlighted the difficulties with devolved governments too and asked for their opinion…"* He was told about a then forthcoming consultation regarding seed labelling under the Plant Varieties and

Seeds Act 1964, but decided to press ahead in the light of the information he had been provided with.

d. J/81 (emphasis added): *"A Departmental paper dated 1 November 2024 states* ***"powers for labelling were not included in the Act"*** *and therefore "labelling requirements will not be included in the secondary legislation."*

e. J/82 (emphasis added): *"On 25 November 2024, the Minister responded to concerns expressed by the Soil Association in respect of organic supply chains. He said: "Based on the scientific advice on risk, mandatory labelling focused on breeding technology was not considered to be appropriate for inclusion in the Precision Breeding Act.* ***As such, there are no provisions in the Act to introduce mandatory labelling for precision bred foods.*** *However, the forthcoming legislation will provide detailed requirements for public registers for information about precision bred plants and any approvals for use in food and feed."*

19. At J/122: the Court held that: *It follows that the Minister was given incorrect information as to his powers under the 2023 Act…"* And then at J/134, the Court held:

> "On the totality of the evidence … the claimants have established that the Minister proceeded on the (erroneous) basis that he lacked powers under the 2023 Act to require mandatory labelling of all PBOs placed on the market."

20. The Court also made key factual findings regarding the impact of the Regulations on the organic sector and other key stakeholders (emphasis added): *"117. … the claimants have not shown that it is impracticable for the organic sector to maintain their organic certification [following the introduction of the Regulations].* ***They have, however, shown that it will be significantly more difficult. It will also be more difficult for consumers: to avoid PBOs they will have to purchase food that is certified as organic,*** *or else rely on voluntary labelling of products that do not contain PBOs.* ***The position of non-organic farmers and food producers who wish to export to the European Union is analogous, though not identica****l: they too may* ***face materially increased difficulty*** *in demonstrating the absence of PBOs in products destined for markets that regulate such organisms as GMOs."* This finding was based on the extensive evidence the Claimants

served in JR1; but that evidence was not summarised in any detail in the Judgment, and was neither summarised nor fairly or accurately reflected in the materials put to Minister Morgan in making the Maintain Decision.

The Judgment on Ground 2 in JR1

21. As noted above, the Court (Mr Justice Johnson) upheld Ground 2 of the Claimants' challenge. In particular, he made the following findings:

    a. There were very strong arguments (see J/156) in favour of delaying making the 2025 Regulations and undertaking obvious further potential enquiries (including as to what the real costs of a labelling requirement would be, or precisely how the organic sector could operate without a labelling requirement) and proceeding in tandem with the EU, including:

        i. The 2025 Regulations put the regulatory regime in England out of kilter with the rest of the United Kingdom and the European Union.

        ii. The decision not to introduce mandatory labelling was made at a meeting where the recorded discussion was somewhat perfunctory (see J/80), even though (as the decision-maker was seemingly well-aware) the decision was going to be extremely unwelcome to the organic sector.

        iii. The De Minimis Assessment published by the Defendant when she enacted the Regulations showed that there remained (and indeed there still remains) considerable uncertainty about how the organic sector can best avoid the introduction of PBOs (whether by contamination or accidental introduction) into supply chains. See further **[1/SB1/278-279]** and PT3 §17-18 **[2/CB/451]**.

        iv. There is ongoing uncertainty about whether the EU, having signed the new NGT Regulations **[2/CB/538-541]** will amend, or slightly more likely, allow the Government an exception to its regulatory regime and, if so, in what way, and whether dynamic alignment of the regulatory regimes will be practical

given the difference between the regimes. That uncertainty remains: see further Ms Thomas' Third Witness Statement in JR1 **[2/CB/448-451]**.

v. Regulations to address the labelling of PBO seed in England have not yet been made.

b. It was for the Minister to decide whether and when to make the 2025 Regulations, and to decide what enquiries to make. The fact that there were sensible and further enquiries that could be made does not mean the Minister was bound to make them: J/158.

c. The Minister understood, and articulated, the arguments for and against introducing mandatory labelling. He recognised that the organic sector, and many consumers, were strongly in favour of mandatory labelling, and (a point emphasised by the Defendant in response to the JR1 claim) he understood why. He was aware that "*that the 2025 Regulations would have a significant adverse impact on the organic sector*". He was also aware that the 2025 Regulations would mean that England would operate a different regime from other parts of the UK and from the EU and that this would impact on trade. However, faced with all of that, he decided to press on with making the 2025 Regulations without mandatory labelling. In doing so, he "*prioritised the interests of commercial innovators (and the consequential economic benefits of attracting investment into England) notwithstanding the concerns of, and impact on, the organic sector, consumers and trade*" with the EU and other parts of the UK: J/160-161.

d. There was a logical reason for proceeding more quickly and not making further enquires; the whole purpose was to secure a first mover competitive advantage: J/162.

e. However, in proceeding, the Minister was under the misapprehension that his powers to mandate labelling arose only under the 1964 Act and extended only to seeds. The critical reasoning in J/163 was as follows (emphasis added):

> "All of that may have been capable of withstanding a rationality challenge if the Minister had correctly understood his legal powers. But he did not. He was under the misapprehension that his powers to mandate labelling arose only under the 1964 Act and extended only to seeds. **He did not know (because he had been wrongly advised) that he had powers under the 2023 Act to mandate labelling for all PBOs that are placed on the market. This inevitably constrained his thinking, and the range of enquiries that were appropriate**. Given that the Minister thought the only power to mandate labelling was in the 1964 Act, and that was going to be considered later anyway, then it may be unsurprising that he decided to press on rather than to undertake further enquiries. **If the Minister had understood that he had power under the 2023 Act to mandate labelling more broadly than seed-labelling, there was at least a real possibility that he would have considered a materially different range of options**. **There is a real possibility that he would have directed further enquiries into the costs, benefits and practical operation of such a requirement.** …"

f. It was not highly likely that the outcome would have been substantially the same if the Minister had correctly understood his legal powers (cf section 31(2A) of the Senior Courts Act 1981): J/163.

g. It was sufficient that his decision-making was materially constrained by a misunderstanding of his legal powers. That rendered the lack of further enquiry, and the decision itself, irrational: J/163.

22. The Defendant has applied for permission to appeal on Ground 2. That application is to be addressed at a hearing before Mr Justice Johnson on 12 November 2026. As indicated in the application section below, it thus seems appropriate and sensible for this claim to be put before Mr Justice Johnson (a point with which the Defendant agrees), see further the Claimants' submissions regarding a rolled up hearing, and proposed Order at **[2/CB/61-63]** and **[2/CB/64-66]**.

JR1 relief process ongoing

23. As recorded at J/193, the parties agreed that if the first claim succeeded on any individual ground, as it did on Gound 2, the court should not immediately determine what consequential remedy should follow and should instead provide the parties with an opportunity to make submissions on relief in light of the court's judgment.

24. A timetable for dealing with consequential matters has been agreed and, accordingly, on 25 June 2026 the Claimants and Defendant in JR1 each filed submissions on relief. Further submissions were exchanged by the parties on 9 July and 16 July 2026, prior to a relief hearing listed for 12 November 2026.

25. At present, the Claimants' position, as communicated in submissions of 25 June 2026 ("**Cs' Relief Submissions**") **[2/CB/383-385]**, is that the Court should make an order quashing the 2025 Regulations; if not minded to do that, the Court has been invited to at least to order that the Defendant conduct a lawful reconsideration of the question of what traceability provisions are appropriate (something which has not been dealt with by the Maintain Decision for the reasons set out in this claim). That is because the Judgment found that the Minister's decision to make the Regulations was irrational and thus unlawful. In particular, the Minister's misunderstanding of his legal powers was material to the Regulations and the court found that if the Minister had understood his legal powers "*there was at least a real possibility that he would have considered a materially different range of options*": J/163. This arises from the fact that PBO traceability and the question of mandatory labelling of PBOs goes to the heart of the 2025 Regulations, which relax the regulatory regime for the release and marketing of PBOs. Further, the lack of any mandatory labelling is key to the Regulations' negative impact on the organic sector and on trade between England and the rest of the UK and EU: J/160. Ultimately, the error of law vitiates the resulting 2025 Regulations and therefore a quashing order is the most appropriate remedy.

26. Cs' Relief Submissions noted that the Claimants wished to ensure that prior to the Court's decision on relief (noting, as above, that a hearing has now only been listed for 12 November) the Defendant would take no further actions under the 2025 Regulations. The Claimants also raised that they would, seek further information from the Defendant as to his developing approach to PBOs in view of the ongoing negotiations with the EU and proposed future labelling regime for PBO seeds, given the position remains unclear, and would, if necessary, apply to the court for an interim order prohibiting any actions from being taken under the Regulations.

27. By this point, the Claimants had received no indication that the Maintain Decision had already been made. This was only revealed for the first time by the Defendant's Relief Submissions ("**D's Submissions**") of 25 June 2026 **[2/CB/267-284]**.

Process leading to the Maintain Decision

28. The Claimants understand that, as explained for the first time in the Defendant's Third Witness Statement of Rachel Bailey[4], the following process led up to the Maintain Decision:

29. **4 June 2026**: Judgment was handed down publicly.

30. **Date unknown:** Officials briefed (new) Minister Eagle on the Judgment. Minister Eagle was the Minister of State in the Department for Environment, Food and Rural Affairs ("**Defra**") from 6 September 2025 to 12 June 2026. Minister Eagle proceeded Minister Zeichner, who made the 2025 Regulations in May 2025: RB3/13 [**2/CB/305**].

31. **9 June 2026:** Officials asked Minister Eagle whether she wanted to quash the 2025 Regulations, to which she replied she did not want to: RB3/13 [**2/CB/305**]. To date, no documents have been disclosed regarding this exchange.

32. **10 June 2026**: Officials prepared a submission for Minister Eagle to make a formal decision: Exhibit RB3/docs 1-3 [**2/CB/324-333**]. However, as noted above, the Minister had in fact already made up her mind.

33. **12 June 2026**: Owing to a change in Cabinet, Stephen Morgan MP was appointed as Minister of State in Defra, before Minister Eagle had communicated her decision on the 10 June submission: RB3/14. [5]

34. **18 June 2026**: Officials prepared a submission for (second new) Minister Morgan and a background briefing on the policy area and key relevant issues (the "**18 June Submission**"): RB3/14; Exhibit RB3/docs 4-8 [**2/CB/128-172**].

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4 References to this statement are given as RB3/x, where "x" refers to the paragraph number.

5 Prior to his appointment, Minister Morgan was Junior Lord of the Treasury (Government Whip) from 7 September 2025 to 12 June 2026 and Parliamentary Under-Secretary of State (Minister for Early Education) at the Department for Education between 9 July 2024 and 7 September 2025. He was elected as the Labour MP for Portsmouth South in June 2017. It has not been suggested that he had any prior knowledge, understanding or expertise in the matters in consideration here, in contrast to Minister Zeichner who had dealt with the issue while in opposition.

35. **23 June 2026**: Minister Morgan attended a meeting running "*just over 20 minutes*" with officials "*so that he understood all the issues before taking any decisions*". This was "*in addition to the time the Minister had spent reviewing the documents in advance of the meeting*" [**2/CB/306**]. RB3 acknowledges that the Minister had a number of pressing concerns and priorities in his second week new in Defra, but "*gave significant time*" to considering the submission and discussing further with officials: RB3/15 [**2/CB/306**]. Eleven days after coming into post, Minister Morgan agreed to continue with the current formulation of the 2025 Regulations: Exhibit RB3/doc 9 [**2/CB/173**] (as above, the "**Maintain Decision**").

36. **25 June 2026**: The Defendant filed D's Submissions on consequential matters and supporting evidence, including RB3, all of which revealed (but only to the Claimants and their legal advisers, and not the public, the Maintain Decision). In RB3, it is submitted that "*Following Minister Morgan's decision on this issue, even if an error had occurred in consideration by Minister Zeichner, the position is now that the outcome would be the same if the 2025 Regulations were quashed and a decision on labelling was remitted to the Minister. Quashing the 2025 Regulations would cause unnecessary administrative and economic burden*": RB3/18 [**2/CB/306**].

The 18 June Submission

37. The 18 June Submission comprises of the following documents:

    a. Cover email [**2/CB/128-129**];
    b. The Submission itself [**2/CB/130-134**];
    c. A document titled 'Intro to Precision Breeding: Briefing Pack' [**2/CB/135-137]**;
    d. Explanatory Notes to the 2023 Act [**2/CB/138-169**];
    e. A document titled 'Annex A: Further information for Minister Morgan on labelling' [**2/CB/170-172**]; and
    f. (as confirmed in the PAP Response at paragraph 6a) the Judgment [**2/CB/614-656**].

38. The Defendant has confirmed that the above documents represent the totality of the material presented to the Minister: PAP Response, paragraph 6(a) [**2/CB/196**].

39. The cover email and Submission stated that the timing for a decision on the above was "*Urgent*" and a decision was required "*promptly*" owing to the fact that further submissions and applications to the court have a deadline of 25 June, and those submissions would be drafted following any decisions taken on next steps [**2/CB/128, 130**].

40. The submission explained that Mr Justice Johnson found that the decision to make the 2025 Regulations was irrational, because Minister Zeichner did not understand he had powers available to him to require labelling other than of seeds and that there was a resulting failure to undertake adequate enquiries on labelling (and therefore traceability) of PBOs: Exhibit RB3/doc 5, para 2 [**2/CB/130**].

41. Under the subheading 'Decision', the Submission (Exhibit RB3/doc 5, para 7-8 [**2/CB/130]**) asked the Minister to decide whether "[*a]pproaching the matter with an open mind, and assuming the High Court is correct that the Minister misunderstood his powers to require labelling*", he wished to remake or amend the 2025 Regulations to make different provision on labelling, or whether he was content with a position (consistent with the 2025 Regulations as drafted) where the 2025 Regulations impose no mandatory food labelling requirement. He was also asked to decide if he wished to seek permission to appeal the Judgment.

42. Elaborating on the above, paragraph 19-22 of the Submission [**2/CB/131]** explained to the Minister that officials were seeking the Ministerial views "*to inform our submissions on relief* [in respect of JR1]", but that the Minister "*must consider [his decision] with an open mind and on the basis that the judgment from the High Court is to be accepted in full*" and that the Minister should consider whether he wishes "*to explore PBO labelling further afresh and should not be influenced by the existence of the High Court proceedings*." The passage instructed the Minister that "*what is required is your decision on whether, in circumstances where the High Court has stated clearly that you have the power to require the labelling of all PBOs, and has held that the Minister misunderstood when making the regulations, you would wish to explore labelling further, or are content with the 2025 Regulations as made*." Paragraph 22 states: "*Once a decision has been made on this, we can*

consider what is the appropriate relief to seek from the Court". The Maintain Decision and JR1 were thus inextricably linked.

43. No information on labelling (including as to the nature/extent of any labelling or its potential utility in practice within the supply chain, especially for the organic sector), or the views of industry (including the organic sector), was provided in the Submission itself.

44. The 'Intro to Breeding: Briefing Pack' was titled 'Breeding for the future' and purported to provide the Minister with background and context on the policy and key issues. Paragraphs 11, 17 and 18 (Exhibit RB3/doc 6) set out, very briefly, concerns relating to the organic sector. Paragraph 17-18 states (emphasis added) [**2/CB/137**]:

> "17. Currently, precision bred crops are classed as GMOs under organic regulations and cannot receive organic status. Most organic operators do not want to change this and as noted above, are concerned about maintaining the integrity of their production systems and international equivalence of organic standards for trade.
>
> 18. Organic operators will need a means of verifying that all reasonable steps are taken to exclude precision bred organisms from the organic supply chain. We have engaged with the organic sector and conducted externally facilitated dialogues to understand how methods could enable coexistence between precision bred and organic crops. <u>There is agreement that there are established methods for enabling different supply chains to coexist, but no consensus has been reached on industry led solutions. The High Court hearing confirms this view that organic farmers have a means of enabling different supply chains, albeit with greater difficulty</u>. Further engagement with stakeholders on this issue is dependent on outcomes of the Judicial Review and SPS negotiations."

45. In that way, the Briefing Pack clearly failed to provide Minister Morgan with anything like proper or sufficient information as to the concerns raised by the organic sector while materially downplaying those matters in circumstances where (unlike Minister Zeichner) Minister Morgan did not have the previous (let alone current, through direct dialogue with the organic sector and Pat Thomas) understanding of "with greater difficulty".

46. The 'Annex A' document on labelling (Exhibit RB3/doc 8) set out the history of decision making on food labelling including previous 'Consideration by Minister Zeichner'. It explained that following public consultation, and a subsequent submission to Minister

Eagle, Defra had agreed to label seeds and plant reproductive material to indicate precision bred status, but that this would be subject to the outcomes of the SPS agreement (#4 Annex A).[6]

47. The document also asserted to Minister Morgan that Minister Zeichner had been aware that he had the power to pursue food product labelling under the Genetic Technology (Precision Breeding) Act 2023, contrary to the High Court's finding at J/163 [**2/CB/170**]:

> "10. On 31 October 2024 officials discussed the 2025 Regulations and the issue of labelling with Minister Zeichner. This included key considerations related to stakeholder views, the organic sector, Devolved Governments, enforcement and the international regulatory picture. Minister Zeichner was directed towards powers available in the Food Safety Act 1990 and asked whether he wanted to pursue food product labelling (although it should be noted that the High Court has not accepted this and suggests that the Minister only understood that he had the power to label seeds). The High Court has not accepted our understanding, which is that Minister Zeichner stated an awareness of both sides of the argument and, ultimately, decided not to pursue food product labelling before the discussion then moved to the issue of seed labelling as an option that stakeholders have indicated would help address their concerns, and Minister Zeichner agreed to consult on this issue."

48. The submission thus directly sought to undermine and contradict the Judgment (and thus would clearly have coloured Minister Morgan's evaluation of the Judge's analysis) – in circumstances where it was plain that Minister Zeichner had been repeatedly misadvised as to the scope of his powers under the Act, see paragraphs 18-19 and 21 above.

49. The document also purported to provide "*views form organic stakeholders*" (see paragraphs 12-15) and views from "*other key stakeholders*" (paragraphs 16-19). In respect of organic stakeholders, it stated **[2/CB/171]** (emphasis added):

> "12. Control bodies have raised concerns about organic producers being able to demonstrate that Precision Bred products have not entered their supply chains, especially where derogations are in place for the use of non-organic inputs.

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[6] It is noted that this submission appears to materially contradict the advice Minister Morgan was then given at the meeting of 23 June, as recorded in the readout of the Decision [**2/CB/173**].

13. From 2022 – 2024, the Department contracted the National Centre for Social Research, to conduct a total of nine workshops with representatives across organic and conventional farming. These focused on developing on-farm coexistence measures between precision bred and non-precision bred crops including organic crops.

14. Experts within the dialogue agreed that there are established methods for enabling different supply chains to coexist in agriculture, and they would build upon these through the formation of an industry led working group. For example, industry have noted that requirements for ensuring varietal purity and integrity of identity for all seed that is placed on the market provides an existing example and is already used by the organic sector to avoid certain F1 hybrid technology. The High Court hearing confirms this view that organic farmers have a means of enabling different supply chains, albeit with greater difficulty.

15. The organic sector is strongly supportive of seed and plant labelling but have indicated that product labelling would also be required to address their concerns."

50. Again, that materially downplayed the issues relating to traceability (though Minister Morgan would not have realised it). This was particularly concerning given that Minister Morgan would not (unlike Minister Zeichner) have any insight into what was meant by "*greater difficulty*". If Minister Zeichner had not been in a position to decide what further inquiries might be needed, and as such what other options could be available, Minister Morgan was even less well placed to make such a judgment given the paucity of the information provided, and the failure to recognise the implications of the Judgment as to the seriousness of the difficulties created for the organic sector.

51. Under the subheading "*Policy Ambition*" the document states (emphasis added):

"20. The intention underlying the 2023 Act is to create a science-based regulatory approach that focuses more on the outcome rather than the process used (as explained in more detail in the Explanatory Notes to the 2023 Act). Adding further regulation and burdens through mandatory labelling, where there are no greater safety issues than in relation to traditionally bred organisms, may significantly raise costs to industry, and risks negating the ambition of encouraging innovation and investment. Mandatory labelling would not be consistent with reducing barriers to entry for small businesses.

21. Methods of production, such as organic, cruelty free or halal may be labelled voluntarily or under other legal regimes and can be catered for by the market where there is demand. Processes to ensure supply chain segregation for these products are already well established."

52. Again, the briefing materially downplayed the concerns raised by the organic sector in circumstances where (unlike Minister Zeichner who had at least some, if incomplete knowledge) Minister Morgan would have no way of appreciating what the organic sector considered to be "*already established*" or the problems to which that gave rise – i.e., that without labelling or traceability it would be very difficult for established methods to work, indeed, it is recognised that further action would have to be taken to allow for it (largely by placing burdens on small organic businesses to try and get more information), see from these proceedings W/S PT1 §21-27 **[2/CB/73-76],** W/S JW1 §10-13 **[2/CB/97-99],** W/S PH1 §14-22 **[2/CB/108-110],** W/S JB1 §17-21 **[2/CB/119-121]**, in addition to evidence relied on in JR1: **[1/CB/178-260, 268-299, 303-318]**

53. Under the subheading "*Powers for mandatory food labelling*" the document stated:

> "26. Whilst there are no provisions in the 2023 Act that impose a mandatory duty to require the labelling of PBOs, there are broad powers under Part 3 of the 2023 Act on traceability. This power under Section 26 enables regulations to be made for the purposes of securing traceability, which is sufficiently broad to allow for the mandatory labelling of food but is not an explicit power for consumer labelling.
>
> 27. Broad powers to introduce food labelling are available in the Food Safety Act 1990 (in particular section 16(1)(e)).
>
> 28. We are legally required to publicly consult when proposing to revise food law except where the urgency of the matter does not allow this."

54. From the documents disclosed, the Claimants must assume/note the following:

    a. Minister Morgan, who was new in post and (unlike Minister Zeichner) did not have relevant past experience or understanding of these matters, reached the Maintain Decision based only on the 18 June Submission and the conversation had during the brief meeting on 23 June. Minister Morgan was not even provided with a copy of the DMA (or the earlier impact assessments) or any further information relating to the views of the organic sector, ethical consumers or the impact on trade including as to the real world practicability of using the "*established methods*"

referred to Minister Morgan in circumstances where there is no mandatory labelling (in contrast to the various briefings and meetings, (including direct a direct meeting with Pat Thomas) before Minister Zeichner when he made the 2025 Regulations).

b. At no point between the Judgment being handed down and the Maintain Decision did Defra officials consult with anyone from the organic sector or the Claimants (including as to their concerns in the light of the current status of discussions around the PVS regime, and developments with the EU), despite having consulted them prior to making the 2025 Regulations. In contrast, the documents, including the Witness Statement of Tom Allen-Stevens [**2/CB/285-298]**, shows that the Defendant directly sought the views of other industry stakeholders (i.e., those who support the maintenance of the Regulations without labelling) prior to the Maintain Decision. The PAP Response denies this stating: *"Officials engaged with those who might be adversely affected by a quashing order so as to gather information relevant to understanding any potential hardship or prejudice that quashing the regulations might cause to third parties. That was not consultation. No further consultation was carried out with anyone (industry stakeholders or otherwise) regarding Minister Morgan's decision"* (paragraph 6(b) [**2/CB/196**]). Following a request for further information about this denial made on 3 August 2026, the Defendant essentially repeated this denial, whilst refusing to provide any information as to who was consulted, what was asked, or how this was relevant only to the issue of relief and not the – clearly related – Maintain Decision (paragraphs 8-10 [**2/CB/203**]). The denial is highly problematic. It is unclear how engaging with those who might be adversely affected by a quashing order – i.e., it is to be inferred, the industry members who benefit from PBOs being permitted – does not amount to consultation. It remains unclear whether this 'engagement' was relied upon in the material put to the Minister / he was informed of it during the same period in which he was considering the Maintain Decision. This is a matter of serious concern because on the limited information available it implies there has only been unfair, selective, consultation. See further Ground 1 below.

c. The material before the Minister repeated many of the problematic and incorrect claims as to the scale of the impact of the Regulations on the organic sector and the consequences for consumers.

The Maintain Decision

55. A readout of the Maintain Decision is provided at [**2/CB/173**]. The document records the meeting as lasting 15 minutes (contrary to RB3/15 [**2/CB/306**]). The Decision is recorded as follows (emphasis added):

> "SM: What other elements do I need to consider beyond my question?
> OW: The decision has been returned to you on whether you want to explore the issue of labelling further ahead of the court determining relief. The submission asks whether you agree with the current policy position not to label food and feed PBOs, and whether you wish to maintain the original provisions on labelling set by DZ. You need to consider this with an open mind, considering the issues outlined in the submission and noting the powers available.
> CB: This should be considered with an open mind. This decision will be included as further evidence and submitted to the Court.
> SM: Are there any interactions between SPS negotiations and domestic innovation?
> CB: Nothing substantive to note regarding SPS interactions, though the situation is not helpful for ongoing SPS relations.
> OW: We are seeking a temporary exception on PB with the EU SPS deal to achieve a smooth transition for business. Labelling food and feed would increase divergence from EU regulations and could undermine our first-mover advantage. EU genomic techniques regulations being developed are not expected to label for food and feed PBOs.
> NK: A judgment on relief is unlikely before October, so interactions with current SPS negotiations are minimal.
> SM: My readout is that I am content with the current policy approach on labelling."

56. As far as we are aware, the Maintain Decision has not been made public.

GROUNDS

Ground 1: Failure to carry out a lawful consultation

57. A duty of consultation will exist in circumstances where there is a legitimate expectation of such consultation, usually arising from an interest which is held to be sufficient to found in

such an expectation, or from some promise or practice of consultation: *Moseley v Haringey LBC* [2014] UKSC 56 [35]. In *Hollow v Surrey County Council* [2019] EWHC 618 (Admin) [2019] PTSR 1871 at [77] the court again found that a duty to consult arises "where *there has been a promise to consult [or] an established practice of consultation*." An established practice is taken to be "*sufficiently consistent to be regarded as more than an occasional voluntary act*": *BAPIO Action Ltd v Secretary of state for Home Department and another* [2007] EWCA Civ 1139 [39]. Further, even if no statutory duty, promise, or settled practice exists, a duty to consult may arise where it would be conspicuously unfair not to consult before introducing a significant policy change: *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2015] 3 All ER 261, as recently confirmed in *Freedom of Torture & Anor v Secretary of State for Home Department* [2026] EWHC 1278 [136-140].

58. As set out in detail at paragraphs J/67-87, prior to making the 2025 Regulations, Defra and Minister Zeichner had held public consultations (and personally took into account the responses to them, supplementing the knowledge he had gained in opposition – as relied on in response to JR1 [**1/SB2/321**] – and his directly dialogue with, among others Pat Thomas – again relied on in response to JR1 (See DGR §73-75 **[1/CB/127]**, D Skel §73 [**2/CB/259],**), received correspondence on and attended meetings relating to the question of mandatory labelling of PBOs. In addition (largely after Minister Zeichner's decision to make the 2025 Regulations but before the regulations were made), Defra undertook a consultation on updating the Plant Varieties and Seeds framework to include PBOs, and specifically sought feedback on the potential impact of mandatory labelling for PBO seed: J/89. In all instances, the organic sector (including in part the Claimants) responded to the consultations, attended workshops organised by Defra, sent letters to the Minister and in the case of the First Claimant attended a 1:1 meeting with the Minister directly. As above, these factors were heavily relied on by the Defendant in support of Minister Zeichner's decision in response to JR1.

59. Having chosen to consult on policies around mandatory labelling of PBOs previously (and it anyway being hard to see how he could have legally avoided doing so given what was at stake) the new Minister ought to have consulted prior to the Maintain Decision. There was a common law duty to consult, including due to the Defendant's established practice of consultation on this issue. The Claimants had a legitimate expectation that any fresh decision would be similarly informed, particularly given what JR1 had said about Minister

Zeichner's awareness previously. Further, and in any event, given the nature of the decision, its potential impact on the Claimants and others, and the findings made in the Judgment regarding the rationality of undertaking further enquiries (see paragraph 21 above), this duty to consult arose.

60. This is particularly the case in circumstances where the issue being decided on, i.e. the question of whether the new Minister wished to remake or amend the 2025 Regulations to make different provision on labelling, had not been lawfully considered by any Minister before given the previous Minister reached the Decision on the unlawful basis (due to receiving incorrect advice) that the 2023 Act did not include powers to mandate labelling of PBOs or their food and feed. As such, further enquiries that could and should have been made prior to the unlawful decision were not undertaken – and the decision to go ahead without further consultation in such circumstances is unlawful. Consultees should have been able to provide the types of evidence they had provided previously (in response to prior consultations and, for the Claimants, in the context of JR1), and to provide any new information available. That evidence base should then have been fairly reflected in briefings to a Minister.

61. The PAP Response simply denies that a further consultation was required (paragraph 7 [**2/CB/196**]). That denial is unsustainable for five key reasons.

    a. Bare assertions to the effect that there was no promise of further consultation and/or no established practice to that effect do not address the detailed concerns raised by the Claimants. The Defendant does not explain why of all the decisions taken regarding the new PBO regime and issues of labelling; the Maintain Decision is the only one in which it was deemed unnecessary to undertake a public consultation.

    b. The Defendant relies on the consultation undertaken prior to the enactment of the Regulations, but that ignores the clear findings made in the Judgment and – in any event – Minister Morgan was plainly not provided with a lawful briefing that would allow him to have conscientiously taken into account the responses to that earlier consultation as would have been required. In JR1, the Court found that owing to the fact that Minister Zeichner was under the misapprehension that his powers to mandate labelling arose only under the 1964 Act and extended only to seeds, he did not know

he had powers under the 2023 Act to mandate labelling for all PBOs placed on the market. The result of this was (as quoted above) that "*this inevitably constrained his thinking, and the range of enquiries that were appropriate… If the Minister had understood that he had power under the 2023 Act to mandate labelling more broadly than seed labelling, there was at least a real possibility that he would have considered a materially different range of options. There is a real possibility that they would have directed further enquiries into the costs, benefits and practical operation of such a requirement*.": J/163. No or no adequate regard has been paid to this clear finding of the Court. Instead, a new Minister was pressed for an urgent decision without the benefit of any additional material – nor a complete account of the material that had already been provided.

c. In such circumstances, a decision not to consult and obtain further essential information and evidence from, in particular, the organic sector cannot be justified by reference to the prior consultation. It did not provide the very material Minister Zeichner may have sought if properly advised.

d. As set out at paragraph 54(b) above, it appears that there was some form of 'formal consultation' with some stakeholders, despite the Defendant's denial of this fact. Other impacted industry stakeholders were engaged with in considering the impact of quashing the Regulations. It is evident from the material put before Minister Morgan that the Maintain Decision was taken in the context of the Defendant deciding how to respond to the issue of relief in JR1. In such circumstances, it seems from the limited information available that formal consultation did occur (within the meaning of *The National Council for Civil Liberties, R (on the application of) v The Secretary of State for the Home Department* [2025] 3 W.L.R. 543), but it focused only on those that agree with and support the Defendant's position. This is a yet further reason why the failure to re-consult, in particular, the organic sector and other relevant stakeholders impacted by the Maintain Decision, is unfair. At the very least pending full and frank candour disclosure, mere assertions that there was no consultation cannot be simply accepted.

e. Contrary to the Defendant's claim, it is readily apparent what prejudice flows from the failure to consult. The Claimants demonstrated in their evidence for JR1 that they

could provide cogent and important evidence on the impact of the Regulations on the organic sector and consumers. None of that material was put before the decision-maker in reaching the Maintain Decision, nor was it fairly summarised or reflected in the material that was put to him. That is because his briefings materially downplayed the issues previously raised by the organic sector, as noted above, in ways which were particularly acute here given his newness in the job and to these issues. Moreover, wider stakeholders, including the Claimants, were denied any opportunity to provide any further such evidence to the Minister before the Maintain Decision was taken. The witness statements of the Claimants served in support of JR 1 and these second proceedings provide a summary of the types of evidence and material the Claimants have and would have further provided if they had had a proper opportunity: see, in particular, W/S PT1 §21-27 **[2/CB/73-76],** W/S JW1 §10-13 **[2/CB/97-99];** W/S PH1 §14-22 **[2/CB/108-110],** W/S JB1 §17-21 **[2/CB/119-121]**. The First Claimant has, for example, engaged consistently with the process providing expert input, and Ms Thomas explains the types of knowledge and insight BeyondGM could have shared for example, if the Third Claimant had been consulted she would have explained, *inter alia*, that:

i. *"... transparency also means more than a label on a finished product. As a journalist, effective traceability is important because it allows independent scrutiny of what is entering the food supply, where it is being used and how the regulatory system is working in practice. The absence of consumer labelling and the absence of supply-chain traceability reinforce one another: individual shoppers have less information on which to make their own choices, while journalists and others seeking to scrutinise the system have greater difficulty establishing where PBOs have entered the food chain*";

ii. In her experience, "… *full and accessible information is particularly important where consumers are being asked to accept unfamiliar or emerging food technologies. Consumers cannot reach an informed view about a technology if they are not told when, where and how it is being used. Nor do I believe that withholding information is a sound way of building confidence. Consumer confidence is earned; it is not an entitlement*…"; and

iii. She would have: "*Reminded the Minister that lack of transparency threatens both small businesses and larger more established ones. To return to my earlier point about the BSE scandal of the late 1990s, what the fallout from that made clear was that being an established brand was not, by itself, sufficient protection against loss of consumer confidence when the integrity of the underlying supply chain was called into question. McDonalds, for example had to stop selling British Beef to regain consumer trust. In the aftermath of the crisis, traceability became part of what made a brand trustworthy. If an organic business promises consumers that its products exclude genetic engineering, but the regulatory system deprives it of the information needed to substantiate that promise, the commercial risk sits with the organic brand even though it did not create the information gap*." (paragraph 20, [**2/CB/121**]).

62. Given the Maintain Decision simply retains the Regulations unchanged, despite the Judgment's findings on the difficulties this creates for the organic sector now, the prejudice caused is obvious and substantial.

Ground 2: Failure to comply with the *Tameside* duty of inquiry; consideration of obviously material consideration and/or failure to put a fair and balanced submission to the Minister

63. When considering the duty of sufficient inquiry, "*…the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?": Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014, 1064-1065.

64. That obligation "*includes the need to allow the time reasonably necessary, not only to obtain the relevant information, but also to understand and take it properly into account*": *CPRE Kent v Dover DC* [2018] 1 WLR 108 at [62] per Lord Carnwath JSC. It "*in practice may require [the decision-maker] to consult outside bodies with a particular knowledge or involvement in the case*": *R (Plantagenet Alliance) v Secretary of State for Justice and others* [2014] EWHC 1662 (QB) at [100(5)]. The "*wider the discretion conferred on the Secretary of State, the more important it must be that he has all relevant material to enable him properly to exercise it*": *Plantagenet Alliance* at [100(6)].

65. The extent of inquiry depends upon the context of the particular decision; and the duty may be *more* onerous where the consequences of the decision are significant: *R (Leadbetter) v SST* [2023] EWHC 210 (Admin) [37]; *R (Refugee Action) v Secretary of State for the Home Department* [2014] EWHC 1033 (admin), [121]. Moreover, a submission to a Minister must be fair and balanced, an issue which the Court must determine for itself: *B4 v Secretary of State for the Home Department* [2024] 1 W.L.R. 5342.

66. The context in which the Maintain Decision was taken is key. The Court held in the Judgment that Minister Zeichner had been incorrectly advised as to the scope of his powers to mandate traceability measures. As a result, the Court held specifically that: *"... If the Minister had understood that he had power under the 2023 Act to mandate labelling more broadly than seed labelling, there was at least a real possibility that he would have considered a materially different range of options. There is a real possibility that they would have directed further enquiries into the costs, benefits and practical operation of such a requirement"* (as set out above). Against such findings by the Court, a fair and balanced submission to the new Minister would have explained the implications of this finding, and provided a fair, balanced and clear overview of: (i) the very real difficulties that the Regulations present for the organic sector; (ii) the clear indication from the Court that further enquiries could be appropriate; and (iii) the types of further enquiries which could be undertaken to address the gaps in the previous evidence base.

67. The 18 June Submission wholly failed to meet any of these requirements. In particular, it failed:

    a. To provide any material detail about the organic sector's concerns on supply chain traceabilitiy, nor the impacts on EU traders and ethical consumers. This is particularly stark when compared with the vast amount of information which was before Minister Zeicher including multiple briefings (albeit on a flawed legal basis, and with an incomplete picture of the facts) and a copy of the De Minimis Assessment in respect of the 2025 Regulations (which itself provided information regarding the concerns for trade and the organic sector). In addition, Minister Zeichner had a long-term understanding of the issues owing to being in the relevant role for a long time and his activities whilst in opposition (a point relied on heavily by the Defendant in JR1). By

contrast Minister Morgan was in post for 11 days before the Maintain Decision and (in so far as the Claimants are aware) did not come to the post with prior knowledge on the complex issues arising from the Judgment and 2025 Regulations. The Maintain Decision was made after a 15-20 minute meeting on the basis of a substandard briefing.

b. To recognise and therefore address the clear gaps in the evidence base which was before Minister Zeichner. Given the Court's conclusion that an accurately advised Minister could have asked for further enquiries to be undertaken (see paragraphs X above), this omission is of particular concern. Indeed, there is no evidence that this new Minister considered or adequately enquired into the impact (i.e. the costs, benefits and practical operation) of maintaining the Regulations as compared to the impact of introducing mandatory labelling for PBOs. He was not given the information necessary to understand that such inquiries could be made and in fact should be made following the conclusions reached in the Judgment. Given the Court's findings on the impact of the 2025 Regulations, the extent of inquiry required here was onerous. This was not grappled with as the matter was put to the Minister as urgent solely because of the imminent deadline for relief submissions in JR1.

c. To properly explain the findings of the High Court. The court explicitly found that Minister Zeichner was aware *"the 2025 Regulations would have a significant adverse impact on the organic sector […], would mean England would operate a different regime from other parts of the United Kingdom and from the European Union […] would have an impact on trade":* J/160. The same cannot be said for Minister Morgan on the basis of the 18 June Submission. The requirements of *Tameside* were clearly not met here. For the avoidance of doubt: being given a copy of the judgment did not change that, contrary to paragraph 9 of the PAP Response, since the Minister was being told that the judge got the facts and the law wrong. There was in reality no fair and balanced account put to the new Minister that could put him in a position to decide this important issue on a rational basis.

68. It follows that the briefings to Minister Morgan were materially misleading so as to vitiate his decision in reliance on them. But, in any event, any reasonable Minister in his position, even knowing what little was told and (at the very least) being aware of the controversial

background to the matter before him, would have wanted and asked for more information (including but not limited to arising from consultation) about the potential impact of proceeding as he was being invited to do on the organic sector, exporters to the EU and rest of the UK, and ethical consumers. For him to proceed as he did was thus unlawful.

Ground 3: Misdirection in law relating to powers under the Food Safety Act

69. As above, Annex A explained to Minister Morgan that "*broad powers to introduce food labelling are available in the Food Safety Act 1990 (in particular section 16(1)(e))"*. The relevance of this is not expanded on. However, to the extent that the Minister relied on the possible deployment of Food Safety Act 1990 labelling powers as being (later) able to address the supply chain traceability concerns in issue here, he misdirected himself in law – or, in reality, the Minister was again incorrectly advised about the scope of his powers. This is because the powers under the Food Safety Act 1990 are, at best, only available to secure the labelling of food (as defined to be things potentially ingested by humans) and not things which input into the production of that food.

70. That matters because, as Minister Zeichner had been aware, the Claimants' concern here relates to traceability throughout the food chain (partly to secure labelling of food as finally produced, but also partly to assist in maintaining compliance with the organic regulation and philosophy) including as to matters which might for example, be fed to animals products from which are then included in food. Labelling of "food" as being contaminated with PBOs (even if it could be done under the Food Safety Act 1990 and the regulatory ecosystem in which it operates, including General Food Law and the Food Information to Consumers (FIC) Regulations) would at best only a partial answer in some circumstances (most particularly for the simplest items where something is grown and then directly used as food for humans, without being combined with other things). It would not deal with (for example) inputs such as the unlabelled (potentially PBO) hay which the Third Claimant might buy to feed to his cows so that the milk they produce can be made into cheese – the hay would not be labelled PBO; nor with the way in which multiple inputs (not all of which would be food but could be PBOs or derived from PBOs) could be combined in a production process to produce food. That is why the Claimants are concerned about traceability through the supply chain and that is why Parliament gave the Defendant (notwithstanding its assumed

awareness of the 1990 Act) that power in relation to PBOs: Parliament does not act in vain; if those powers added nothing they would not have been in the 2023 Act.

71. Moreover, there must at least be significant doubt as to whether the Defendant could anyway use those food safety powers in relation to food contaminated with PBOs given her policy assumption that such food is "*safe*". This assumption was strongly relied upon by the Defendant in responding to JR1 (for example see DGR§ 15, 21 **[1/CB/108, 110**]) and it is fundamentally inconsistent with any suggestion the Food Safety Act could be relied upon in this context. Indeed, the FSA made essentially that point when considering consultation responses (as seen in Q26 and Q33 answers within its September 2023 Board Paper which explains the way in which the seemingly open textured 1990 Act power to label food is actually significantly constrained [**2/CB/434-435, 440-441**]). The PBO industry would likely succeed in a challenge that argued such an approach was the exercise of a power for an improper purpose and in any event unlawful.

72. The Defendant's reliance on the possibility of Food Safety Act labelling simply further illustrates the continuing failure by the Defendant and her officials to grasp the problems being raised by the Claimants and to properly consider the powers granted by the Genetic Technology (Precision Breeding) Act 2023. The imperative seems to have been to reach a new decision as quickly as possible so it could be relied upon in the context of relief in JR1. In the context of a second decision taken in the context of a failure to allow an individual to make prior representations, the Court has recognised the risks created by a decision-maker being asked to reconsider a process against a backdrop where the decision-maker is seeking to uphold the first decision:

> "An ability to make representations after a decision is taken … does not … meet the point… The best time to check on the factual basis by asking for the [affected person's] comments is before the decision is made… once a decision is made, it is difficult to change it. This is particularly so when a decision has been made on a factual basis and when the person subject to the decision seeks to persuade the decision maker, after the decision has been made, that the factual basis on which he acted is wrong. Inevitably the decision maker will be reluctant to conclude that his original decision was wrong. Simon Brown LJ [in Hickey] made the point that 'it is difficult to suppose that [a decision maker] can remain as open-minded if no clear decision has been taken'": *R (SP) v SSHD* [2004] EWCA Civ 1750 at [58].[7]

[7] See also *R (Balajigari) v SSHD* [2019] 1 WLR 4647, at [60].

73. These concerns apply by analogy here. Without taking any steps at all to adequately explore and consider alternative options to maintaining the status quo, Minister Morgan was asked to approve maintaining the status quo in parallel with deciding how to defend the existing Regulations. This will inevitably have tainted his views as to the correct approach; which would have been compounded by the inadequate way in which the Judgment and the issues raised for the organic sector were put to him: see paragraphs 37-54 above.

74. The Defendant's reply to this proposed ground is confused. The Defendant asserts that the Minister understood the scope of his power (paragraph 12 **[2/CB/197]**), but then asserts that the Minister was *"expressly briefed that he had the power to require the labelling of all PBOs, including food and feed, under both the Genetic Technology (Precision Breeding) Act 2023 ("the 2023 Act") and the Food Safety Act 1990 (RB3 §16)"* (paragraph 13), and goes on to explain the scope of the power under the 2023 Act. But this does not answer the points made by the Claimants at all. No explanation is given as to why the Food Safety Act was relevant at all – and if it was, on what basis it was suggested this power could be relied upon. Instead, the PAP Response simply goes on to deny that the scope of the power under the Food Safety Act had any impact on the Minister's reconsideration. But there is no basis for such a factual assertion in a context where this was specifically put to the Minister as an option. The fact he was also told that he could introduce labelling of food and feed under the 2023 Act is no answer to this point. In deciding whether or not to do so, the Minister was being told – incorrectly – there was an alternative legislative route for some labelling. This is precisely the same type of error which the Court has already held in the Judgment could materially impact on a Minister's decision-making when there are reasons to simply press ahead, here the need to respond to the Judgment.

Ground 4: unlawfully operating an unpublished policy

75. The Decision represents the Defendant's policy that, notwithstanding the Judgment, its current policy approach on labelling, and thus the Regulations, is unchanged. That policy position has not been published, yet the Judgment has. Consequently, there is a publicly unexplained dissonance between the Maintain Decision and the Judgment. As a result, the Maintain Decision was inconsistent with the constitutional imperative of legal certainty (i.e. that statute law be made known to the public), given the Defendant has withheld information about its policy relating to the exercise of a power conferred by the 2023 Act: see: *R. (on*

the application of Lumba) v Secretary of State for the Home Department [2011] UKSC12 at [36].

76. The Defendant's denial of this is concerning. It is asserted at paragraph 17 of the PAP Response that: *"… The Secretary of State has not withheld any information relating to the exercise of her power conferred by section 26(2)(b) of the 2023 Act."* **[2/CB/198]** But she has. There has been no public confirmation that in response to a public judgment, the Minister has reached the Maintain Decision, which affects the rights and interests of multiple stakeholders. How does an organic farmer unconnected with these proceedings know that the Regulations are simply being maintained intact despite the Judgment? This lack of transparency is of deep constitutional concern as it prevents other parties coming forward who might have relevant information and/or wish to bring their own challenge.

APPLICATIONS/COSTS

77. Alongside this Statement of Facts and Grounds, the Claimants bring two applications:

    a. An application for a rolled-up hearing of this application for judicial review alongside the relief hearing listed in JR1 for 12 November 2026. The basis of this application is set out in separate submissions at [**2/CB/61-63**]. But the main point is that it is expedient in terms of time and resources for relief and JR2 to be addressed together due to their close interrelationship.

    b. An application to increase the ordinary Aarhus Convention costs limits, reflecting the particular circumstances which arise for the Claimants in being forced to bring a second set of judicial review proceedings even before relief is determined on JR1.

PROMPTNESSS

78. The Defendant has repeatedly asserted that the Claimants must issue proceedings almost immediately after the Pre-Action Response and/or her letter of 4 August 2026, otherwise the claim has not been issued promptly. This strong arming is inappropriate. The Maintain Decision was only communicated by the Defendant, indirectly, in the relief submissions

received on 25 June 2026. The Claimants sent their Pre-Action Letter on 9 July 2026 [**2/CB/176-194**], with the response received on 23 July 2026 [**2/CB/195-199**]. This application for judicial review required substantial work to prepare and further communications with the Defendant regarding information requests/clarification of the suggestion she was open to ADR, and regarding how the claim should be handled alongside the relief hearing: [**2/CB/200-204**]. Despite the summer holiday period, this claim was issued within 18 working days of receipt of the Pre-Action Response (and 10 days of the Defendant's letter of 4 August 2025). There is no basis for the Defendant's continued allegations about lack of promptness, not least given her history of delays in the JR1 proceedings.

RELIEF SOUGHT

79. For the reasons set out above, the Claimants seek in these proceedings (alongside the relief sought in JR1):

    a. A declaration that the Maintain Decision is unlawful;
    b. Any other orders the Court considers appropriate; and
    c. Costs in accordance with the costs cap set by the Court.

DAVID WOLFE KC
MATRIX
JULIANNE KERR MORRISON
MONCKTON CHAMBERS

18 August 2026