

September 2009



**Cyfeillion
y Ddaear
Cymru
Friends of
the Earth
Cymru**

Response to Welsh Assembly Government proposals for managing the coexistence of GM, conventional and organic crops in Wales

Friends of the Earth Cymru generally welcomes these proposals, and believes it is crucial to have a clear and transparent system that sets duties on the seed companies, growers and handlers of GM crops.

We are pleased that the Welsh Assembly Government is aiming to set a high standard and give consumers and food producers a real choice to remain GM free and protect the unique environment of Wales. However, there are a number of areas where the proposals should be strengthened to guarantee this choice and protection.

Friends of the Earth Cymru inspires solutions to environmental problems, which make life better for people.

Friends of the Earth Cymru:

- is dedicated to protecting the environment and promoting a sustainable future for Wales
- is part of the UK's most influential environmental campaigning organisation
- is part of the most extensive environmental network in the world, with over 60 national organisations across five continents
- supports a unique network of campaigning local groups, working in communities across Wales
- is dependent upon individuals for over 90 per cent of its income.

To join or make a donation call us on 0800 581 051

Friends of the Earth Cymru, 33 Castle Arcade Balcony, Cardiff CF10 1BY

Tel 029 2022 9577 Fax 029 2022 8775 Email cymru@foe.co.uk Website www.foecymru.co.uk

Friends of the Earth Limited Registered in London No 1012357. Registered office 26-28 Underwood Street London N1 7JQ

Introduction

Friends of the Earth Cymru is dedicated to protecting the environment and promoting a sustainable future for Wales. We are one of the UK's most influential environmental campaigning organisations and have 22 local groups working in communities all over Wales. We are part of a network of over 77 organisations across five continents who share knowledge and experience on climate change and its global affects on local communities.

We welcome the publication of this proposal for a coexistence regime in Wales and the opportunity to respond. The final proposal should reflect the government's 'One Wales' agenda commitment to "*maximum restrictions on GM crops*"¹, and statements from the Minister that the government's position is to "*adopt the most restrictive policy compatible with our legal obligations.*"². Our comments and responses are made in this context.

Welsh farmers have deservedly gained a reputation for high quality food produce and a healthy environment is central to this. The food and farming industry in Wales must be developed in a way which is sustainable and consistent with environmental protection.

As GM crop authorisation remains outside Welsh Assembly Government (WAG) control it is essential that the regime for the coexistence of GM, conventional and organic crops is as robust and tight as possible. This will be absolutely necessary to ensure protection for the environment, communities, farmers, food producers and consumers from unwanted GM contamination in Wales.

Summary

We generally welcome the content of these proposals, and believe it is crucial to have a clear and transparent system that sets duties on the seed companies, growers and handlers of GM crops.

We are pleased that the Welsh Assembly Government is aiming to set a high standard and give consumers and food producers a real choice to remain GM free and protect the unique environment of Wales. However, there are a number of areas where the proposals should be strengthened to guarantee this choice and protection which we explain below.

We call for changes to:

- 'avoid' contamination by setting the contamination level at the lowest detectable level of 0.1% rather than aiming to 'minimise' contamination to meet a threshold of 0.9%;
- recognise and deal with environmental and health aspects as well as economic;
- protect beekeepers and consider the effects on honey production;

¹ "One Wales – A progressive agenda for the government of Wales" June 07, p.32

² Elin Jones, Statement on GM Crops to the National Assembly, 24th February 2009

GM coexistence proposal response

- put cross-border arrangements in place urgently;
- include allotment holders, gardeners and non-commercial crops in the regime, and widen the definition of 'placing on the market';
- make all measures statutory;
- ensure that GM oilseed rape cannot be grown in Wales;
- set precautionary separation distances and cultivation intervals based upon international research;
- take account of organic certification requirements;

Whereas we fully support:

- a public register, and notification of neighbours and interested parties;
- a voluntary all Wales GM-free zone;
- a ban on GM crops in environmentally designated areas and agri-environmental scheme land;
- a statutory redress mechanism and compensation fund paid for by GM consent holders/seed companies.

Response to specific consultation questions

Q1. What problems are stakeholders currently experiencing with herbicide resistance in weeds, and do you think that GM technology impacts on this issue in a positive or negative way. (2.4.6)

Evidence from North and South America, where GM crops have been commercially grown for over ten years, shows clearly that the introduction of GM herbicide tolerant varieties has exacerbated resistance to herbicides in other plants. This has resulted in serious weed management problems and the dramatic increase in use of herbicide – both the herbicide designed to be used with the GM crop (mainly Monsanto's Roundup), but also other, older and even more damaging herbicides such as 2-4-D. For more information see 'Who Benefits from GM crops – the rise in pesticide use', which analyses US Department of Agriculture (USDA) and other official sources of data³.

See also environmental impacts in the next section.

Q2. Do stakeholders accept the above analysis of the potential sources of GM presence and that the assumptions the Welsh Assembly Government are proposing should underpin the coexistence regime? (2.5.4)

We accept the main sources of potential GM presence as listed but are concerned that the measures are underpinned by an aim to meet a threshold of 0.9%.

Contamination threshold and avoidance

Our main concern throughout the proposal is that the 0.9% threshold for labelling GM food is transferred as a baseline for crops and coexistence. This is problematic for

³ 'Who Benefits from GM crops – the rise in pesticide use', Friends of the Earth International (2008) <http://www.foei.org/en/publications/pdfs/food-sovereignty/2008/gmcrops2008full.pdf>

two main reasons, as backed up by a legal opinion prepared in 2006 by Paul Lasok QC and Rebecca Hayes at the request of Friends of the Earth England, Wales and Northern Ireland, GM Freeze and the Soil Association⁴.

Firstly, the labelling thresholds are legally irrelevant to the scope of coexistence measures. Appropriate measures to avoid GM presence in non-GM products are not constrained by, reliant on, or necessarily allied to the labelling threshold, and there is nothing in the wording of Directive 2001/18/EC or Regulation 1829/2003 to support this limitation. The legislation states that “operators should avoid the unintended presence of GMOs in other products” – clearly measures that permit a certain level of GM content do not “avoid the unintended presence of GMOs”.

Secondly, the exclusion from labelling for GM content below 0.9% is dependent on this content being adventitious or technically unavoidable i.e. accidental. Coexistence measures that aim only to limit GM content to a 0.9% threshold would be meaningless in terms of the labelling requirements as this only applies to products with a GM content that is essentially accidental, or that cannot technically be avoided. A regime that sets out to avoid GM contamination as far as technically possible would make it much easier for non-GM producers to comply with all elements of labelling.

Coexistence regimes should not be based around the achievement of contamination thresholds, but rather the complete avoidance of contamination. Article 26a of Directive 2001/18/EC⁵, which provides for member states to put in place coexistence regimes, states “Member States may take appropriate measures to avoid the unintended presence of GMOs in other products”.

A value of less than 0.1% GM contamination would be more appropriate, and indicate that such a coexistence regime was operating correctly, as 0.1% is the current reliable limit of detection for GM. The consultation should have provided measures needed to aim to avoid GM contamination in conventional and organic crops.

Environmental and health aspects

Coexistence is also considered here as a purely economic issue. Yet Article 26a was introduced into the Directive by Regulation (EC) 1829/2003, which is concerned with environmental and health aspects of GM, implying that Article 26a was not intended to be limited in scope to the economic aspects of coexistence. Member States are also required by Articles 6 and 152 of the EC Treaty and Articles 1 and 4 of the Directive to take into account the aims of protection of human health and the environment when implementing Community law. Directive 2001/18 and Regulation 1829/2003 also recognise a continuing need to protect health and the environment, including a safeguard clause to suspend and withdraw GM products. The principal aim of the labelling requirements, apart from being to inform consumer choice, is to enable the proper monitoring of GM and to take appropriate safeguard measures. The protection of human health and the environment is therefore not discharged

⁴ Lasok KPE QC & Haynes R (2005). Advice - In the matter of Co-existence, traceability and labelling of GMOs., 21 January 2005. Included as an Annex to this submission.

http://www.foe.co.uk/resource/briefings/legal_opinion_in_the_matte.pdf

⁵ As inserted by Article 43(2) of Regulation (EC) 1829/2003

entirely by the authorisation process, and so coexistence should not be seen as a purely economic issue.

Taking environmental issues into account would also be consistent with the WAG's previous regulations on the Environmental Liability Directive.

There are significant environmental impacts that could arise from the cultivation of GM crops. The UK Government's Farm Scale Evaluations found that growing herbicide tolerant oilseed rape and beet caused a negative impact on farmland wildlife. Gene flow into weedy or wild plants may create issues such as gene stacking (if more than one form of herbicide tolerance is available), or increased fitness through gaining novel genes, as demonstrated by a study that found wild sunflowers became hardier and produced more seeds when crossed with a GM sunflower⁶. This could disturb the balance of ecosystems, or require increased use, or the use of more hazardous types of herbicides.

The social and geographical features of the land and farming in Wales, with a high level of family farms, relatively small size fields, rich biodiversity and upland areas are additional considerations which present challenges to setting up a regime of coexistence and necessitate a precautionary approach.

Health impacts could arise where a GM food was found to be allergenic, for example. The current allergenicity testing guidelines for GM foods have been criticised as inadequate by Friends of the Earth⁷, and it would be possible for an allergenic food to slip through the net. A strict coexistence regime that avoids contamination would be very important should a GM food need to be withdrawn from the market – it would aid removal of the GM crop from the environment, and ensure that uncontaminated food was still available for susceptible individuals.

Other possible sources of GM presence by contamination are seed transfer from footwear, seed spillage during transportation, contamination via farm saved seed and animal and bird movements.

Q3. Do stakeholders accept this conclusion on honey production? (2.6)

We do not believe that honey production can be left out of the coexistence regime and urge WAG to reconsider this section of the proposal.

It is questionable whether the presence of GM pollen in honey can be dismissed as adventitious or unavoidable. If GM crops are not located within the vicinity of beehives, the presence of GM pollen can easily be avoided.

Pollen is an integral part of honey rather than an ingredient, therefore GM pollen content below 0.9% is still a significant influence on the texture and flavour of the honey.

Beehives may need to be taken into account when considering the separation distances required, and certainly beekeepers have a right to be notified if a GM crop is being grown within six miles – the separation distance between GM crops and hives recommended by the British Beekeepers' Association during the UK Farm Scale Evaluations. GM pollen was detected in honey during the trials on several

⁶ New Scientist, 15 Aug 2002. 'Weeds get boost from GM crops'.

⁷ Friends of the Earth (2006). Could GM foods cause allergies?
http://www.foe.co.uk/resource/briefings/gm_allergies.pdf

occasions. GM contamination, no matter how small the level, will also impact upon honey's reputation as a pure and wholesome food.

The economic value of crops grown commercially in the UK that benefit from bee pollination is estimated at around £120m-£200m per year, and the value of honey production in the UK is between £10-£30m per year⁸. For Wales this would be approximately £1m for honey production and over £10m for pollination. The impacts of excluding honey from a coexistence regime could therefore go beyond beekeepers.

It is vital that beekeepers have clear advice on the implications of GM contamination of honey, the measures required to prevent such contamination, and the exact locations and timings of GM crops. Registered beekeepers should be informed of GM crop plantings within 6 miles from their hives.

Q4. What cross border arrangements with England would be appropriate? (2.7)

The WAG should as a matter of urgency negotiate an agreement with DEFRA regarding cross-border provisions. In some cases farm land covers both jurisdictions and which legislation applies has to be resolved in a clear manner. Our preferred option is agreement on statutory buffer zones affecting both sides of the border to avoid contamination and further legal difficulty from occurring. These rules should respect the integrity of the Welsh farming community and consumers' right to choose GM-free food.

Q5. Do stakeholders have any comments on the proposed scope of the coexistence regime?

The areas noted do cover the main areas but we support adding the following sectors:

- Allotment holders and gardeners, as anyone who intends to grow a GM crop is a potential source of contamination and should apply the safeguard measures.
- Non-commercial crops. There is no justification for the exclusion of crops that will not be placed on the market, and 'placing on the market' is not limited to products that are bought and sold.
- Beekeepers, as discussed under Q3.
- Beyond the farm gate. The assumption has been made that beyond this point "industry will implement its own arrangements" which will be "in line with the EU rules on the tracing and labelling of GM products". But WAG must ensure that there are measures to control the physical movement of GM seeds via spillage at any point between field and factory, or via, for example, farm equipment, vehicle tyres, animals, clothing and footwear. Such movements could fall beyond the scope of the proposed coexistence regime, and according to WAG would be covered by "normal contractual relationships". However we do not believe that this is adequate safeguard against the negative environmental impacts that may result from gene transfer to feral crop plants or wild relatives, and it is essential that these considerations are brought under a statutory coexistence regime.

⁸ <http://www.defra.gov.uk/hort/Bees/index.htm>

GM coexistence proposal response

- Farms that grow GM and non-GM crops also risk contaminating their own GM-free crops and those of others.
- Farm saved seeds.

With regard to oilseed rape, please see response to Q14.

Q6. Do Stakeholders agree with the proposed split of between Statutory Measures and a Voluntary Code of Practice? (3.2.3)

Friends of the Earth Cymru strongly believe that all measures should be statutory and that avoiding contamination of food crops and the environment is too important to leave to a Voluntary Code of Practice. This should include training, volunteer control and bolter control.

Q7. How do you think the voluntary measures could be monitored as voluntary measures are NOT enforced? (3.2.3)

This highlights a basic flaw in the voluntary measures and would leave land in Wales open to contamination without monitoring, liability or redress. A statutory monitoring and enforcement system should be established, protecting the best interests of Welsh farmers, consumers and the environment.

Q8. How should any register relate to a notification requirement? (3.3.4)

Any notification should be included in the public register. All information placed on the register should be open to the public and sent to neighbours and affected parties. The six-figure grid reference location of GM crops to be grown should be included.

Q9. Is a 3-month registration period reasonable and practical? (3.3.4)

We believe that a 3 month registration period is reasonable, and in line with European best practice in Germany, Belgium and Estonia. Neighbours (including farmers and non-farmers) and interested parties such as beekeepers, allotment holders and nature conservation organisations should be directly informed at the beginning of this period and notices placed on community notice boards and on nearby public roads.

Q10. If a register is established should the information be available to everyone? How should a register be funded? (3.3.4)

We strongly agree that the information on the register should be available to everyone. It should be funded by fees from GM crop growers and GM consent holders/seed companies, and involve minimal public cost. The register should be available freely online, and also in hard copy format for anyone without internet access. We support a register set up as suggested by the Royal Institute for Chartered Surveyors.

Q11. Is the training requirement reasonable and what should it comprise of? (3.3.4)

The training requirement is very necessary and the proposed content is adequate. Practical demonstration of cleaning materials and equipment would be a useful addition to the syllabus. We would prefer a licensing system, as in the Danish model

referred to in the proposal. Handlers should be required to undertake a refresher course every couple of years. Again, this should be funded by the GM industry/GM growers.

Q12. Do Stakeholders agree with the need to keep records and the level of detail proposed? (3.3.4)

We agree with the need to keep full and detailed records, as is normal with most farm management procedures. This is necessary in order to demonstrate compliance with the proposed regime, inform future tenants or owners, facilitate disputes about contamination and inform environmental monitoring.

Q13. Do Stakeholders agree with the range of field measures proposed? (3.4.8) p.48

We agree with the range of field measures put forward, and propose that equipment, vehicle and clothing cleaning on site should also be required.

As to statutory cultivation intervals, we generally agree with the times proposed but point to research that suggests longer time periods may be appropriate for potatoes and beet.

As will be mentioned in Q15, a JRC/IPTS report⁹ states that a separation time of at least seven years is necessary for potatoes.

For beet, the AEBC suggest a cropping interval of four years, with 6 to 7 years where weed beet is causing problems¹⁰.

Q14. Do stakeholders agree with this precautionary approach to GM oilseed rape cultivation in Wales? (3.5.1)

Friends of the Earth Cymru strongly believe that a precautionary approach is essential towards all GM crops in Wales. As the WAG states that coexistence is not possible between GM and conventional oilseed rape in Wales we believe GM oilseed rape crops should be prohibited from being grown and cultivated in Wales. Omitting it from the coexistence regime leaves the Welsh farmers open to risk of contamination without protection or redress.

We urge WAG to use all legislative tools, including Article 19 of Directive 2001/18/EC and safeguard clauses, to ensure that GM oilseed rape crops are not grown in Wales on the grounds of the impossibility of coexistence, unsuitability for growth in Wales and long term interests of consumer and farmer choice. This is a more sustainable solution than simply not including it in the regime.

Q15. Do stakeholders agree with these proposed separation distances? If not, which aspect(s) are thought to need further consideration? (3.5.4)

⁹ Bock A-K, Lheureux K, Libeau-Dulos M, Nilsagard H, Rodriguez-Cerezo E (2002). Scenarios for co-existence of genetically modified, conventional and organic crops in European agriculture. IPTS/JRC

¹⁰ AEBC (2003). GM Crops? Coexistence and liability: A report by the Agriculture and Environment Biotechnology Commission, November 2003.

Separation distances must aim to completely avoid contamination. We welcome that the proposal recognises that average field size in Wales can play a part in cross pollination levels. However there are a number of factors that can control pollen movement and are difficult to model – including wind speed, insect pattern, temperature, humidity, vegetation and topography. For these reasons, a precautionary approach is justifiable when it comes to setting separation distances.

Maize

The separation distance proposed for maize seed production is 200m, giving purity of between 99 and 99.9%, with lower purity for open pollinated varieties. But there is evidence to suggest maize pollen can cross pollinate over much greater distances than 200m. A three year study indicated that average cross pollination rates at 200m were 1.19%, with up to 2.47% cross pollination recorded in a year that was favourable for cross pollination¹¹. Data appears to be only available up to 800m, where levels of 0.21% cross pollination have been found¹². Further research is vital to identify a suitable separation distance for maize, which could be in the region of several kilometres to take account of long distance pollen dispersal via wind.

Coexistence measures for maize, a wind pollinated crop, could be very complicated. A JRC/IPTS report on coexistence¹³ considered GM maize cultivation in France, and demonstrated the serious difficulties in developing a coexistence system that can take account of the major variables involved in cross pollination, such as prevailing wind direction, flowering times of various varieties, sizes and locations of fields etc. They suggested a 'flexible decision-support system' would be needed to deal with the great variability, and concluded that the only way to reduce contamination to below 0.1% would be to cluster maize fields together, and in each cluster farmers would have to decide whether to cultivate GM or non-GM maize. While not specific to Wales, the difficulties in accounting for the various factors involved would still be very relevant here.

Beet

Current seed production separation distances help to give an idea of the distances over which cross pollination can occur, and should form the starting point of any calculation of necessary separation distances between GM and non-GM crops, whether for seed production or not.

For beet, current separation distances for seed production are up to 1000m. But beet pollen can travel beyond this distance – at least three kilometres¹⁴. Although beet is biennial, so does not usually flower within the harvesting regime, bolters can

¹¹ Emberlin J (2000). An assessment of outcrossing in maize, relevant to the proposed decision to add GM maize variety Chardon LL to the National List. Proof of Evidence, Chardon LL hearing.

http://www.foe.co.uk/resource/evidence/assessment_outcrossing_maize.pdf

¹² Treu R & Emberlin J (2000). Pollen dispersal in the crops maize (*Zea mays*), oilseed rape (*Brassica napus* ssp *oleifera*), potatoes (*Solanum tuberosum*), sugar beet (*Beta vulgaris* ssp. *Vulgaris*) and wheat (*Triticum aestivum*). Evidence from publications. A report for the Soil Association from the National Pollen Research Unit.

¹³ Messean A, Angevin F, Gomez-Barbero M, Menrad K, Rodriguez-Cerezo (2006). New case studies on the coexistence of GM and non-GM crops in European agriculture. JRC/IPTS

¹⁴ Defra (1994). Genetically modified crops and their wild relatives – a UK perspective. Research Report No 1. DOE, London, 1994

still arise and so there is potential for gene flow from GM bolters to non-GM bolters (producing seed resulting in GM weed beet in following crops), existing weed beet or wild sea beet.

A working document from the European Commission regarding adventitious GM presence in seeds¹⁵ states that the Scientific Committee of Plants advised that beet seed production would need a separation distance of 2000m in order to minimise contamination to 0.5%. Friends of the Earth considers that a suitable separation distance to reduce contamination to the lowest practicable level would therefore have to be greater than 2000m – further research may be required to identify a suitable distance.

Potatoes

Although commercial potatoes are propagated via tubers, true potato seed production can also occur, and while not affecting the current tubers, it can create GM volunteers in future crops. Rates of outcrossing recorded under field conditions for potatoes range from 0 to 20%, with both wind and insect pollination likely to be involved¹⁶. Studies have detected pollen up to 20m from the source¹⁷, with one study recorded cross pollination levels of 31% at 1000m, thought to be due to pollen beetles¹⁸.

True seed, unharvested tubers and damaged tuber pieces can all sprout in the following year to produce weed plants in subsequent crops, which will in turn produce small tubers which can persist to contaminate crops in future years. They can be hard to control with herbicides in broad leaved crops - long rotations and destruction of all tubers remaining in the field after harvest are required¹⁹.

As cross pollination has been recorded at 1,000m we believe that a separation distance of over 1,000m is necessary in order to avoid risk of contamination. Furthermore, a reasonable separation time before non-GM potatoes can be grown in the same field is vital –the aforementioned JRC/IPTS report recommended at least 7 years, which we would support.

Q16. Do stakeholders accept how the proposed separation distance requirement would apply? (3.5.4)

We believe that separation distances should apply to all GM crops regardless of field size or location.

¹⁵ Memorandum to the European Commission by the Scientific Commission on Plants on the growing conditions and other requirements for seed purity circulated by the Plant Variety Rights Office and Seeds Division of Defra 9th July 2001

¹⁶ Treu R & Emberlin J (2000). Pollen dispersal in the crops maize (*Zea mays*), oilseed rape (*Brassica napus* ssp *oleifera*), potatoes (*Solanum tuberosum*), sugar beet (*Beta vulgaris* ssp. *Vulgaris*) and wheat (*Triticum aestivum*). Evidence from publications. A report for the Soil Association from the National Pollen Research Unit.

¹⁷ Eastham K & Sweet J (2002). Genetically Modified Organisms (GMOs): The significance of gene flow through pollen transfer. European Environment Agency

¹⁸ Skogsmyr, I. (1994) Gene dispersal from transgenic potatoes to conspecifics: A field trial. *Theoretical and Applied Genetics* 88: 770– 774.

¹⁹ Bock A-K, Lheureux K, Libeau-Dulos M, Nilsagard H, Rodriguez-Cerezo E (2002). Scenarios for co-existence of genetically modified, conventional and organic crops in European agriculture. IPTS/JRC

Q17. Do stakeholders agree that due to the high dependency on contract harvesting in Wales, sharing of equipment on the basis proposed is acceptable? (3.5.4)

We do not agree that sharing of equipment on this basis is acceptable. Safety and non-contamination cannot be risked by sharing equipment, and GM crop growers must accept that this is an extra cost of their operations, in order to safeguard farming and consumer choice.

Q18. Do stakeholders accept this analysis? Are there points that need to be clarified or points not covered that should be considered? (4.0)

Friends of the Earth Cymru believe that the needs of the organic farming and food sector are particularly pertinent to the need to reduce the contamination threshold from 0.9% to 0.1%²⁰. This is due to certification requirements of organic standards to remain GM-free, despite the EU Agriculture Council's decision in June 2007²¹.

We support using best endeavours to avoid GM contamination and try and ensure safety throughout, but also to test the end product. As organic farmers are by definition GM-free this onus should be placed on the GM farmers and those who have the potential to contaminate organic farms. Any risk of contamination would permanently undermine the reputation of the organic producer.

Given WAG's support for expanding organic farming in Wales we urge a reassessment of the analysis and better protection for organic growers.

Q19. Do stakeholders consider that the voluntary GM-free zone is a concept worthy of further development? If yes, what could be done to facilitate further development of the model? (5.4)

We do not believe that a purely voluntary scheme could work but the concept would be worth examining if it is based upon a binding contract and given legal and practical support by the WAG. A process must also be set in place to deal with disputes and the breaking of the agreement.

However, this remains problematic with many questions arising such as does the contract apply to a farmer, land owner, tenant or the land; how long would it last for; and how would failure to comply be dealt with? In light of these challenges, our preferred option is an all-Wales GM-free zone.

Q20. Would stakeholders support efforts to establish an all Wales voluntary GM-free zone? (5.4)

Friends of the Earth Cymru strongly supports a GM-free Wales. Until such time as this status is given legal status under EU law we would welcome and support efforts to establish Wales as a voluntary GM-free zone. We believe that this is appropriate considering the farming interests of Wales, reputation for high quality food, the risk, cost and lack of economic, environmental or consumer benefits GM crops would bring, the Assembly's environmental protection policies and statutory duty to

²⁰ see page 2 of this response and the attached legal opinion

²¹ EU Agriculture Council, 12 June 2007 decided to allow organic food containing up to 0.9% "adventitious or technically unavoidable" GMO content to be classed and labelled as organic.

sustainable development.

Q21. Do Stakeholders agree that GM crops should be excluded from Environmentally Designated Areas? (5.5)

Environmentally Designated Areas are central to rural development policies and environmental protection in Wales. A precautionary approach must be taken as the potential damage to the environment in these areas by GM contamination is irrevocable. We fully support the WAG's position that GM crops should be excluded from these areas, and believe that buffer zones are necessary in adjacent areas to avoid contamination from nearby land. This position must be statutory, and should be put in place for extra protection for these areas even if Wales is declared a voluntary GM-free zone.

Q22. Should Agri-Environment Schemes such as Tir Cynnal, Tir Gofal and Organic Farming Schemes/Organic Maintenance Schemes include the requirement to an agreement holder not to grow GM crops on the land entered into such a scheme? (5.5)

We agree that land supported by these publicly funded schemes should not be available to grow GM crops. Organic land, as required by organic standards, cannot contain GM crops and the environmental land management requirements of the other schemes make it necessary to ensure no GM contamination, and GM crop growing is incompatible with the long term aims of these schemes.

Q23. What are your views on the types of losses identified above? (6.3)

We believe that the correct types of economic losses have been identified, including knock on effects such as loss of certification or business. Beekeepers also need to be included.

Q24. Should coexistence measures try to ensure that such losses should be covered? (6.3)

All such losses should be covered, and widely defined. Indirect losses for time spent dealing with the contamination, legal costs, travel as well as the less measurable losses of reputation and status should be included.

Q25. Are there any other types of losses that should be taken into consideration? Environmental? Cost of volunteer control? Cost of clean up? Administration cost associated with adventitious presence? (6.3)

Friends of the Earth Cymru believes that all types of harm should be covered for as long as they persist – including measures to ensure that contamination is eliminated in the longer term, such as volunteer control. Those that have suffered contamination should be able to deal with the problem confident in the knowledge that they will not be burdened with the costs. Environmental losses, although difficult to calculate, should be included as well as economic losses. This would also be consistent with the WAG's regulations implementing the Environmental Liability Directive.

Q26. Are there any alternative ways of distributing the burden of a redress system on the GM sector? (6.4.3)

Q27. Are there any strong arguments or pros/cons to each approach that have not been covered? (6.4.3)

Reply to Qs26 & 27

We do not believe that anything but strict liability can provide a fair and reliable redress. A fault based system could lead to expensive and time consuming legal wrangling and the difficulty of direct proof would mean the contaminated party suffers greater losses. GM crop growers and the GM consent holders/seed companies that provide the crops should be responsible for the impacts of the seeds they provide and sow.

Q28. Should redress be available for all proven economic losses as a result of GM adventitious presence or should it be limited to the 0.9% threshold and regulatory constraints? (6.5.4)

We have commented on the 0.9% threshold earlier in our response, and reiterate that we believe it to be highly problematic in light of the intention of avoiding contamination from GM crops to conventional and organic crops. Redress must be available for all proven losses, or GM crop growers will quite reasonably work towards a 0.9% rather than avoidance of any detectable contamination. In particular, some organic certification schemes insist on no detectable GM for the certification of farms and a threshold of 0.9% without redress would mean economic loss and loss of reputation to organic growers who would be thrown out of such schemes.

Q29. Have we correctly identified the range of losses that might occur in crop values? (6.5.4)

See Qs24 & 25

Q30. Should consequential or additional losses be covered by any redress mechanism? If so, which should be covered and why? How likely are these to occur? Are there any other types of losses that should be considered? (6.5.4)

As previously mentioned, losses as a result of industry certification schemes, including voluntary schemes should be covered by a redress mechanism.

Q31. Who should be entitled to claim redress and what eligibility criteria should they satisfy? (6.5.4)

Q32. What should the eligibility requirements be for non-GM farmers to seek redress? Have any particular criteria been highlighted? (6.5.4)

Reply to Qs31 & 32

Any party who has suffered direct or indirect losses should be entitled to claim redress, regardless of whether separation distances and the other requirements of the coexistence regime have been met. This should include gardeners, allotment holders, beekeepers and businesses.

GM coexistence proposal response

Q33. Are there any alternative ways of distributing the burden of a redress system on the GM sector? Are there any strong arguments or pros/cons to each approach that have not been covered? (6.5.4)

Q34. Which redress mechanism do you favour and why? If a compulsory redress mechanism is your preferred option, which of the options described should it employ? (6.5.4)

Reply to Qs 32 & 34

Friends of the Earth Cymru strongly support WAG's proposal of Option 4 - a statutory redress mechanism, and object to all the other options presented.

We concur that seeking compensation under existing law or a new statutory tort would be complicated for the party seeking redress, due to the difficulties of identifying defendants, potential for greater costs and lengthy court battles, and impact on community relations. We therefore do not support Options 1 or 2.

But Option 3 of a voluntary, industry-led scheme is not appropriate either. For such an important issue it is vital that there is a statutory scheme that clearly lays out the rights of an affected farmer and the redress that is available to them, that provides independent adjudication on claims, and that has the power to order payments to be made. An industry-led voluntary scheme is simply not able to meet all these criteria.

A statutory redress mechanism is by far the most appropriate measure and we favour Option 4, model c with elements of model b.

The only way to ensure an independent, clear and transparent scheme is to create a statutory mechanism with an independent body to administer it. It is vital that a body that is able to cope with these claims in a timely and efficient manner is created from the outset.

It should be financed through charges on GM seed companies or a levy on seed sold going into a central compensation fund, thereby being controlled by WAG or an independent body but financed directly by industry. The risk with Government acting as a buffer and initially financing redress is it could lead to protracted disputes with seed companies and loss of public funds.