



House of Commons  
Environment, Food and Rural  
Affairs Committee

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# **GM Planting Regime: Government Reply to the Committee's Report**

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**Fifteenth Special Report**

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## The Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Environment, Food and Rural Affairs and its associated bodies.

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\*These Members were nominated as members of the Sub-committee on GM Planting Regime.  
Mr David Drew was the Chairman of the Sub-committee.

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### Committee staff

The current staff of the Committee are Matthew Hamlyn (Clerk), Fiona McLean (Second Clerk), Jonathan Little and Dr Antonia James (Committee Specialists), Marek Kubala (Inquiry Manager), Louise Combs and Jim Lawford (Committee Assistants) and Anne Woolhouse (Secretary).

### Contacts

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# FIFTEENTH SPECIAL REPORT

The Environment, Food and Rural Affairs Committee reported to the House on the *GM Planting Regime* in its Eleventh Report of Session 2003–04, published on 8 July 2004 as HC 607. The Government's Reply to the Report was received on 29 September 2004.

## Government response

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### Introduction

The Government welcomes the opportunity to respond to the EFRA sub-committee's conclusions and recommendations regarding the issue of the co-existence of GM and non-GM crops and the related issue of liability.

The Government recognises that measures are needed to ensure that GM and non-GM crops can co-exist. Our statement to Parliament in March set out the parameters for the approach we would take on this issue. We envisage that there will be a regime where GM farmers will observe a code of practice which has statutory backing. The aim of the measures is to ensure that adventitious GM presence in non-GM crops is within the 0.9% EU traceability and labelling threshold. In addition, we said we would explore with stakeholders:

- whether a lower GM threshold might apply for organic production;
- options for a mechanism to redress economic losses experienced by non-GM farmers who, through no fault of their own, suffer financially because a GM presence in their crops exceeds the legislative thresholds for labelling; and
- guidance to farmers interested in establishing voluntary GM-free zones.

In July, after the Committee's report was published, the Government further announced a two-stage process of consultation with stakeholders on the development of a co-existence regime. Our intention remains to introduce co-existence measures before any commercial cultivation of GM crops takes place in the UK. However, no commercial cultivation of any GM crop is expected before 2008. Accordingly, we have some time to consider this issue and the Government is proposing a comprehensive approach to engaging with those who have interests and expertise in this area.

### Recommendation 1

**There is huge confusion in both the Government's and the European Union's position in relation to GM crops, especially in relation to the thresholds of**

**contamination of non-GM crops and thus liability. The Government cannot allow the commercial cultivation of GM crops in the United Kingdom until there is clarification of these critical issues. Until this is done no credible co-existence regime can be constructed. (Paragraph 18)**

## **Recommendation 2**

**The current European Union interpretation of ‘zero’ contamination is that it is set at the limit of technical measurability: 0.1 percent. This is therefore the standard set for organic crops. We believe that proposals to allow “adventitious or technically unavoidable” contamination are likely to be confusing, unworkable, unacceptable to consumers and potentially destructive of the UK organic food industry. We recommend that the planting regime for GM crops respect the legal requirement that organic crops suffer zero contamination, and so does not undermine the Government’s encouragement of the organic sector exemplified by the Organic Action Plan. (Paragraph 21)**

It is unfortunate that the sub-committee consider there is confusion in both the Government’s and the European Union’s position in relation to GM crops. The Government set out its policy in a statement to Parliament in March this year and our approach is consistent with the European Union position generally, and in particular the Commission’s Recommendation on co-existence guidelines published in July 2003<sup>1</sup>.

On the specific issue of thresholds, the Government has made its position clear. It regards the EU traceability and labelling threshold of 0.9% for adventitious or technically unavoidable GM presence in non-GM produce as the appropriate level, taking account of what is reasonable and pragmatic.

The EU has concluded that the 0.9% threshold is the level at which practical measures can be taken which are aimed at avoiding GM presence in conventional food and feed but without introducing such burdens or expense that the lawful activities of growing and supplying approved GM produce becomes uneconomic. While it is not envisaged that EU-wide measures on co-existence will be developed, the European Commission has issued the above mentioned Recommendation. That states at 2.1.4 that “[Co-existence measures] shall not go beyond what is necessary in order to ensure that adventitious traces of GMOs stay below the tolerance thresholds set out in Community legislation”.

Thus, the positions of the Government, the EU and the European Commission are clear and consistent.

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<sup>1</sup> Commission Recommendation of 23 July 2003 on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming (2003/556/EC)

We are aware that some bodies have argued for alternative interpretations of the EU legislation so far as organic crops are concerned. However, legislative requirements for coexistence measures that aim to achieve zero GM presence in non-GM crops, including organic, would be contrary to the legislative regime in EU Regulations 1829/2003/EC and 1830/2003/EC. To require measures, such as separation distances that are not proportionate to achieving the 0.9% threshold set down in those Regulations, would not be consistent with the above European Commission Recommendation. Imposing such measures would amount to a ban on GM crops (if GM growers were made responsible for implementation) or on the equivalent non-GM crop (if non-GM growers were made responsible). Either way, the outcome would clearly not be consistent with EU legislation. We must be realistic about what is practical and proportionate and how the legitimate interests of two lawful activities should be balanced.

In relation to organic production minimum standards are laid down in EU regulation 2092/91. This:

- prohibits the *use* of genetically modified organisms (GMOs) in the organic process, except in the case of veterinary medicinal products;
- contains a provision that allows for a specific *de minimis* threshold to be set at EU level for “unavoidable contamination” from GMOs.

Therefore, while the intentional and known use of GMOs in organic production is prohibited, the principle of accepting an unavoidable GM presence below a certain threshold is acknowledged. No such threshold specific for organic produce has yet been set so the general threshold of 0.9% set in the EU Regulations on traceability and labelling applies to both organic and conventional products. This has been confirmed in the Commission’s European Action Plan for Organic Farming (June 2004). Nevertheless, and although aiming for zero is unrealistic, we have said that we will look at whether a GM threshold below 0.9% should apply specifically for organic production. We will be exploring this point with stakeholders as part of our consultation.

If there are indications that the European Commission is actively considering setting a specific threshold within EU regulation 2092/91, we will of course contribute to these developments. However, until such a threshold is set, the UK could not prohibit the marketing of products which were labelled as ‘organic’ but which contain up to 0.9% adventitious GM presence. Accordingly, it is important to consider the competitiveness of UK organic producers compared with non-UK producers if UK producers were to bear some or all of the costs of the measures needed to achieve a GM presence at a threshold below the 0.9% EU threshold.

The Government is encouraging the expansion of organic farming through various measures, including a specific scheme that offers financial help to farmers converting to organic methods and have published an Organic Action Plan that

aims to boost domestic organic production. The Government recognises that particular concerns have been raised about how GM and organic crops may co-exist and is keen to ensure that the possible introduction of GM crops in the UK should not unreasonably disrupt our burgeoning organic sector. In this context, it is important to recognise the minimal organic production of maize and oil seed rape which are most likely to be grown in the UK as GM crops in the foreseeable future and for which cross pollination is a significant consideration. We understand that organic production accounts for less than 0.1% of the total area of each crop in the UK.

### **Recommendation 3**

**Government guidelines on separation distances should be regularly and independently audited and reviewed. The Government should clarify how a regime of auditing and review would be funded and conducted. Any audit regime must, in particular, carry the confidence of the organic farming movement in the United Kingdom. (Paragraph 28)**

Separation distances are an established mechanism to minimise cross-pollination between two different crops. For example, they are routinely used in certified seed production and information is available to identify the distances that should limit cross-pollination frequency to specified levels. In 2000 the National Institute of Agricultural Botany (NIAB) completed a Defra-commissioned review of separation distances to limit cross-pollination between maize and oilseed rape crops to certain thresholds on a whole-field basis. We have asked NIAB to review the recommended separation distances in their 2000 report in the light of new data provided by gene flow studies from the Farm Scale Evaluation trials and any other relevant data. Therefore, the separation distances that will be proposed for the co-existence guidelines will be based on the best available scientific evidence. We will, of course, publish this review so that it can be examined alongside our proposals.

The Government agrees that the effectiveness of these separation distances should be evaluated and reviewed. In line with a recommendation by the Agriculture and Environment Biotechnology Commission, the Government proposes that there should be a closely monitored introductory period for co-existence arrangements, followed by a review of their effectiveness and changes made if necessary. We will seek the views of stakeholders on an introductory period and review of the measures as part of our consultation before determining the precise arrangements. We recognise the importance of trying to ensure that both the separation distances that are recommended and the process of evaluating them have the confidence of relevant parties.

## Recommendation 4

**We are sceptical about the concept of ‘voluntary’ GM-free zones. We recommend however that the Government consider carefully the arguments in favour of mandatory GM-free zones, particularly at the level of regions, and nations such as Wales. We recommend that the Government set out its views on this point in its response to this report. (Paragraph 34)**

The Government has said that it will provide guidance to farmers on the establishment of voluntary GM-free zones. However, it is not the Government’s role to advocate such zones, nor does it regard them as necessary.

Under EU law, a GM crop will be approved for cultivation throughout Europe only if a detailed assessment confirms that it does not pose an unacceptable risk to health or the environment. It is possible for an area to be exempted from an EU consent for a GM crop, but only if there is good evidence that it poses a particular risk to the area in question. In practice, it is unlikely that a GM crop would present a risk only to a specific geographic area. In all normal circumstances, therefore, it can be expected that GM approvals will be on a EU-wide basis.

In addition the European Commission’s Recommendation on co-existence guidelines states that, subject to gaining the relevant approvals, no form of agriculture (conventional, organic or GM) should be excluded in the EU; and that co-existence measures should be proportionate, not going beyond what is necessary to ensure that GM presence is below the tolerance thresholds set out in EU legislation. Mandatory “GM-free” zones would clearly not be consistent with these principles. This means that under current EU legislation it is not possible to declare parts of the UK “GM free” on a mandatory basis if the effect would be to deprive individual farmers of the opportunity to grow GM crops which are approved for commercial cultivation in the EU. We see no prospect at the current time of the EU position changing to accommodate mandatory “GM-free” zones and indeed the Government does not support changing EU law to make them an option.

## Recommendation 5

**We believe that environmental damage and liability is inextricably linked with the matters we have discussed in this report. We therefore believe that it should properly be subject to the Government’s consultation process. The Government cannot proceed to allow cultivation of GM crops until this matter is resolved. (Paragraph 36)**

The Government recognises that environmental liability is an issue that has to be addressed. However, we intend to deal with it separately from the consultation on co-existence. Co-existence is an economic issue. We shall explore mechanisms for



redress where farmers do suffer an economic loss. It does not necessarily follow that there would be any direct similarity between redress for economic loss and a liability regime for environmental damage. Furthermore, GM crops will only be approved for commercial release after a thorough assessment of potential risks to the environment, and if approved they will also be subject to post-release monitoring plans.

We will be consulting separately on the implementation of the new EU Directive on environmental liability in the UK, including its application in relation to the release of genetically modified organisms. We are also considering recommendations made by the Agriculture and Environment Biotechnology Commission on this subject and will respond to these in due course.

## **Recommendation 6**

**The second major strand of the consultation exercise should be the question of how liability should be determined and how compensation should be funded. In particular the Government must decide who should accept liability and fund compensation, and the mechanisms by which compensation should be paid. At the centre of this mechanism must be a guiding principle that economic liability should extend to the level of proven economic losses suffered by non-GM and organic farmers as a result of admixture or contamination. It is a duty of Government to ensure a consistent approach to environmental and economic liability. (Paragraph 40)**

We should keep this issue in context. If effective co-existence arrangements can be put in place then compensation cases should be a rare occurrence. Nonetheless, in the Government's policy statement in March we set out our intentions to consult stakeholders on options for providing compensation to non-GM farmers who suffer financial loss through no fault of their own. In doing so, we made clear that any such compensation scheme would need to be funded by the GM sector itself, rather than the Government or producers of non-GM crops.

Insurance cover is unlikely to be available in the short term, so it is appropriate to consider other ways of dealing with this potential problem, at least in the interim. Therefore, our consultation will set out options for a redress mechanism to compensate non-GM farmers if they suffer financially because a GM presence in their crops exceeds the legislative threshold. The consultation will need to address the issues of who precisely will fund any scheme and the circumstances for which redress would be available. In addition the scheme should clearly be designed to encourage compliance with co-existence measures, and not open to fraud or abuse.



## Recommendation 7

**We recommend that the Government begin the process of consultation soon, so that final details of a co-existence and liability regime for GM crop cultivation can be settled. To do so, the consultation exercise must focus on threshold levels and on the details of economic and environmental liability. In conducting the consultation, we urge the Government to keep in mind the recommendations made in this report. We will examine closely the way in which the consultation is conducted, specifically in relation to the way issues of damage and liability are addressed. (Paragraph 41)**

The Government's statement to Parliament in March set out the parameters for the approach we would take on this issue. This made clear our intention that farmers growing GM crops should apply measures to ensure that adventitious GM presence in non-GM crops is within the 0.9% traceability and labelling threshold adopted by the European Union. In addition we would explore whether a GM threshold below 0.9% might apply for organic production; options for a mechanism to compensate non-GM farmers if they suffer financially because a GM presence in their crop exceeds the 0.9% threshold; and guidance for farmers interested in establishing voluntary GM-free zones.

In July the Government further announced how we intended to consult with stakeholders on the development of a co-existence regime. Firstly, we will engage with stakeholders to ensure we have sufficient background and evidence. We have embarked on a small programme of workshops with a variety of stakeholders. These workshops are not concerned with choosing between different proposals and options but are intended to draw upon technical and practical expertise outside of Government as to how we could fulfil the parameters of the policy statement. Our conclusions from this initial engagement with stakeholders will form the basis for a second phase of consultation when everyone will get a chance to contribute to, and comment upon, our ideas when we publish a written package in the autumn.

Department for Environment, Food and Rural Affairs  
September 2004