



National Assembly for Wales and GM crops

Five steps the Assembly must take to keep Wales GM Free

November 2002

“Our policy is for Wales to be GM-free. It is an important marketing advantage for Wales, as it fits in with the ‘green’ image and the trend in Welsh agriculture away from intensive farming towards more organic and traditional methods. Being GM-free will help us to gain a niche at that end of the agricultural market.”

Rhodri Morgan AM, 15 October 2002

Introduction

We welcome the fact that no genetically modified (GM) crops have been grown outdoors in Wales in 2002. This paper, prepared on behalf of GM Free Cymru, the Farmers' Union of Wales, Friends of the Earth Cymru and the National Federation of Women's Institutes – Wales, explains why we believe that GM crops should not be grown in Wales for the foreseeable future and lays out a route for the National Assembly for Wales to take to achieve that goal.

We do not believe that it has yet been proven that the cultivation of any GM crop in Wales would be safe for human health and the environment. Until such a time as we can be completely confident of this, we do not support the growth, experimental or commercial, of any GM variety in Wales.

The cultivation of GM crops has proven controversial around the world. At present, the benefits from GM agriculture are unclear. The advantages to Wales of remaining GM Free are apparent. The public, on the whole, is sceptical of GM technology, and would rather eat GM free food. Wales can gain a marketing advantage from remaining GM free which we could never achieve through the use of GM products.

The National Assembly for Wales plays a key role in controlling the release of GM crops in Wales. The Assembly has already led the way in Europe with its cross-party agreed sceptical line of GMOs. It was the first authority in Europe to set a statutory separation distance between GM and non-GM crops. We believe that the National Assembly should make the most of its pivotal position within the UK and the EU to resist the growth of GM crops until their safety is assured.

This document lays out the five key steps which the National Assembly for Wales should take over the next six months:

- Refuse to add GM Maize Chardon LL to the National Seed List
- Make the law dealing with GM releases tough and transparent
- Apply for Wales to be excluded from European GM marketing consents
- Keep the right to a public hearing on GM safety issues
- Get independent advice on GM issues

Step 1:

Mike German must refuse to add Chardon LL to the National Seed List

Once a seed is added to the UK *National List of Varieties* it can be marketed across the UK. Since devolution, a decision to add a seed to the List must be made jointly by the relevant authorities in England, Wales, Scotland and Northern Ireland. In 2000 Christine Gwyther, the then Welsh Agriculture Secretary, gave a *provisional* approval for GM maize Chardon LL to be added to that List.

Objections to the provisional approval ensured that a hearing was called into the Ministers' decision to put the seed forward for listing. Hearings were held into the variety between 2000 and 2002. They were adjourned for a significant period as the fact emerged that Chardon LL had not completed the necessary two year experimentation period before French authorities approved it for marketing.

The hearings have finished and the Chairman is due to send a final report to Ministers in the National Authorities around the end of October 2002. They will then jointly make the final

decision once they have considered his report and the evidence submitted to the ChardonLL hearing.

It is our opinion that the National Assembly is lawfully justified in refusing to add ChardonLL to the National List.

Indeed, we would argue that legally, the National Assembly MUST refuse to add ChardonLL to the National List because:

- ChardonLL is not of satisfactory value for cultivation and use (Reg. 5(3)(c) of EU Directive 2001/3510); and
- It cannot be said that “all appropriate measures have been taken to avoid adverse effects on human health and the environment” in accordance with Art. 4(4) of Directive 70/457 (as amended).

On these grounds, among others, Mike German not only can but must refuse to add Chardon LL to the National Seed List.

Step 2:

The Welsh *GM deliberate release regulations* must be as strict as possible and ensure that the system is as open and democratic as possible.

The Regulations for transposing the EU Directive on GM Crop Releases (2001/18/EC) into Welsh Law must be made much more restrictive than those currently under consideration by the Assembly.

The Assembly has the freedom to write its own regulations on this issue as long as it does not deviate from the objectives of the Directive. There is scope for the Assembly to draft distinctive regulations which support its stated policy on restricting growth of GM crops in Wales. Unfortunately, the draft regulations before the Assembly are virtually identical to those issued by the UK Department for Environment, Farming and Rural Affairs (DEFRA) and it appears that the Welsh version has not taken into account the particular interests of Wales in maintaining a GM free environment or the National Assembly’s stated policy of operating the most restrictive GM policy possible within the constraints of the law. Implementation of the deliberate release regulations in Wales provides an excellent and rare opportunity to give legal effect to that policy which, on the currently worded draft, is being squandered.

A plenary session of the Assembly will vote on the regulations in December..

In particular we would urge the Assembly to:

- Reject the amendment to the definition of “harm” contained in the English regulations which would make it more difficult for the Assembly to protect the Welsh environment. This is of great importance as the amendment to the definition in the English regulations would appear to be aimed specifically at preventing Wales from seeking the protection of the Safeguard Clause as it did in relation to the planting of Chardon LL in Flintshire in 2001. There is no legal justification.
- Improve the scope for public consultation by including a provision for a right to a public hearing before consents for GM crop release or marketing consents are granted.
- Tighten the requirements for information on location of releases, particularly of Part C consents.

Step 3:

The Assembly must investigate use of the Deliberate Release Directive to exempt Wales from future releases of commercially approved GM crops.

Article 19.3(c) of Directive 2001/18/EC allows geographical conditions to be placed on any future marketing consents for GM crops, including re-evaluations of existing consents.

The Directive specifies that such conditions can be “*for the protection of particular ecosystems/ environments and/or geographical areas*”. The Assembly already has a specific policy restricting the use of GM crops within its borders. It is in a prime position to argue for an exclusion for Wales from future GM marketing consents. This could apply to growing or import on the basis of its declared policy and the need to protect Wales’ unique farming systems and agricultural environment from GM contamination.

The drafting of the clause is vague but this is an area the Assembly should be exploring if it is really serious about keeping future releases of GM crops out of Wales.

Step 4:

Assembly must reject DEFRA’s proposed changes to the Seed Listing regulations.

DEFRA and the Assembly Government have proposed changes to the *National List Written Representations and Hearings Procedures* which establish the rules for public involvement in the Seed Listing process. The proposal explicitly aims to prevent the discussion of GM safety and environmental issues at public seeds hearings (such as the ChardonLL hearing).

The UK Government is known to be frustrated that individuals and organisations objected to the Listing of Chardon LL and gave evidence about the GM aspects of the new seed. Objectors at the ChardonLL hearing raised very serious legal and scientific issues that would otherwise never have come to light. A variety cannot progress to National Listing until it has a consent for marketing in Europe under the 90/220 Directive (which has just been replaced by the 2001/18 Directive). The UK Government believes that GM safety issues should have been properly investigated during the application for consent process and should not be considered in the context of a seed hearing. .

In support of this position, the Welsh Assembly Government believes that “*the National List system is not the place to challenge GM safety assessments*” (19 September 2002, letter from Huw Jones, National Assembly, attached to consultation paper on National List Written Representations and Hearings Procedures). The proposal indicates that the changes to the Regulations are intended only to move the public hearings from the Seed context to the GM specific context and WAG promises “*to put in place improved, effective and transparent mechanisms that will enable public concerns on GM safety to be heard and taken into account before approvals are granted (ie under the Directive 90/220/EEC regime on the release of GMOs) [his emphasis]*”.

However, this is misleading as it is clearly not the case that the proposals for implementation of 2001/18 offer an equivalent **right** to the public hearings under the Seeds Listing procedures. In fact, there are currently **no** proposals to create any such hearing in the GM context. In other words the proposed amendment to the Seed Hearings procedure would remove the only opportunity that currently exists for members of the public to contribute to the debate on GM safety at a public hearing and for them to publicly challenge the scientific evidence relied on by the applicant for consent and by ACRE. The Assembly must reject any

removal of this hearing right unless and until an equivalent right to a full public hearing is established within the GM context.

Step 5:

Establish an independent Welsh ACRE to advise the Assembly on GM issues

The Advisory Committee on Releases to the Environment (ACRE) has been a key limiting factor on how Assembly Ministers use their powers. Assembly Ministers feel constrained in rejecting ACRE's advice in case it appears that they have acted unreasonably. Such action, they are concerned, could open them up to judicial review of their decisions.

The Assembly needs to establish its own Advisory Committee which would give it independent advice taking into account the particular features of the Welsh environment and the Assembly's stated policy on GM crops. This is especially important as the Assembly has been misled by ACRE in the past.

Conclusion

We have laid out five key challenges for the Assembly to meet, in order to keep GM crops out of Wales. These challenges are not just for the Assembly Government, but for all Assembly Members from all parties. Keeping Wales free of GM crops will be a challenge for the National Assembly. It is a challenge well worth rising to.

"Liberal Democrats are convinced that it is not for the Assembly to prove that GM crops are harmful, it is for the manufacturers to prove that they are safe."

"At the end of the day, this issue, like many others in the Assembly, is a matter of political will. We can no longer hide behind the law. The people of Wales are expecting firm political leadership and the Liberal Democrats will make sure they get it."

Mike German AM, 10 March 2000

This campaign is supported by:

*GM Free Cymru
Friends of the Earth Cymru
Farmers' Union of Wales
National Federation of Women's Institutes - Wales
Merched Y Wawr
The Organic Strategy Group
The Soil Association
Welsh Beekeepers Association
Welsh Black Cattle Society
The West Wales Ecocentre
Y Urdd
Carmarthen Gene Care*

November 2002

Published by
Friends of the Earth Cymru
33 Castle Arcade Balcony
Cardiff
CF10 1BY
Tel: 029 20229577
Fax: 029 20228775
Email: cymru@foe.co.uk
Web: <http://www.foecymru.co.uk>