

January 2004



**Friends of  
the Earth**

# Briefing

## Why we need a GM Contamination and Liability Bill now

**Why new laws are needed to prevent GM crops contaminating the countryside and food chain, and to ensure biotech companies pay for any harm they may cause.**

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## **Introduction**

Friends of the Earth is opposed to further planting and importation of GM crops and foods into the UK. In our judgement it would take several more years of campaigning to achieve a ban on GM cultivation and imports. In the meantime, pressure to allow commercial growing and further GM imports will continue, and we need to ensure that seeds and food/animal feed are GM-free.

This briefing sets out why Friends of the Earth are putting forward the Genetically Modified Organisms (Contamination and Liability) Bill to be debated in Parliament. Friends of the Earth does not believe GM crops should be planted in this country at all at the present time, and making restrictions on growing as tight as possible is one small part of Friends of the Earth's work to achieve this end.

The briefing includes a summary of the current situation in the UK, explaining where GM crops are already grown or GM foodstuffs imported – all without an adequate legal framework to prevent contamination or ensure the biotech companies are held liable for any damage. It also includes a section putting the decision in the context of the overall GM campaign, and a section dealing with concerns that some people have raised about the Bill.

## **The Current Situation in the UK**

**GM crops have already been grown, imported and consumed in the UK without any legally binding controls agreed by Parliament, and with no liability regime in place to determine who pays up if things go wrong. The occurrences and problems are summarised below.**

- Genetically modified crops have been planted in 290 large fields in the farm scale evaluations (FSE) and hundreds of other test sites since the mid 1990s. These plantings have gone ahead despite the opposition of Friends of the Earth and many other people and organisations. Further GM test sites are likely to be proposed for the UK in 2004.
- All these plantings have gone ahead without legally binding rules being debated in Parliament to prevent contamination of other crops, and without a liability scheme to define who should pay for any damage caused by the planting of the crops. The FSE were planted under a voluntary code of practice with entirely inadequate separation distances and only industry monitoring.
- Since 1996, GM maize and soya have been imported into the EU and UK in large amounts for (mainly) animal feed. Yet no strict laws have been passed to prevent contamination of non-GM imports and to ensure any victims can be compensated easily without recourse to lengthy and expensive court cases.
- GM contamination of imported cotton, maize and oilseed rape seed imports has already occurred because of inadequate laws to prevent contaminated crops entering the EU. Contamination of GM with a different GM variety occurred in oilseed rape seed destined for some of the FSE in England and Scotland. No one has ever been prosecuted for these GM contamination incidents.
- Occasional contamination of human food has also been detected in the EU in the past 6-7 years. Very few prosecutions have occurred.
- The EU is currently considering legislation on Environmental Liability. However, the draft

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Directive will exclude most of the land mass of the EU where GM crops may be grown in the future, and would allow current scientific knowledge plus the possession of a GMO release or marketing consent to exempt companies from repairing any environmental damage (if that were possible).

- The EU has debated coexistence and amended the GMO Deliberate Release Directive to allow individual member states to introduce their own regimes (statutory and voluntary). Denmark and Holland have already produced proposals. In addition, amendments to the Seeds Directive have been proposed which would allow a GM contamination threshold of 0.3% to 0.7% depending on crop species. These thresholds were designed to keep contamination below the 0.9% level, above which labelling is needed, and not 0.1% (the level of detection or effectively zero). English Nature has attacked these proposals because they are not sufficient to protect the environment. They are calling for seed contamination thresholds to be set as low as possible (ie 0.1%). What happens in the UK may influence legislation elsewhere in Europe.
- The UK Government recently voted in the EU to allow importation of a new variety of GM maize (Bt11). The vote failed because other countries, such as France, Denmark, Austria and Greece, opposed it – but it again indicates our Government's continuing support for GM crops and foods.
- Regulation of GM contamination is left to the GM Inspectorate and the local authority trading standards departments through their enforcements of the current Labelling Regulations (the threshold for GM soya and maize is currently 1%). The GM Inspectorate have already failed to detect GM contamination of oilseed rape seed lots at least twice, and have no comprehensive monitoring systems established. They have also failed to bring any prosecutions for breaches of GM experimental release consents (part B consents) since taking the job on from the Health and Safety Executive (who mounted two prosecutions in 1999). Trading Standards departments have been hard pressed to do more than token monitoring because of lack of funding.

This describes the current situation in the UK. This, of course, is not as we would like it to be, but it is where we have to start from. So what can we do? Whilst we want a complete ban, and will continue to call for that, we need to take steps to get the situation under some control.

## **Campaigning for tough contamination and liability rules**

There is a good opportunity to win some restrictive rules on GM planning and liability this year. The advantages of this approach are that:

- European law is clear that it is the job of the UK Parliament to make such rules for the UK
- Other EU countries have already moved in this direction (Holland and Denmark), leaving the UK lagging behind in its regulation.
- The provisions of the Bill cover any further trial crops planted in the next few years, and any commercial crops that are given the go-ahead (though of course we will also oppose the granting of any commercial growing licenses and have active campaigns running to prevent this happening).

## **Why we need a GM Contamination and Liability Bill now**

- Debates on the Bill will force Government Ministers and MPs to address the science and risks of GM crops in open debate – there has been almost no debate on the floor of the House on GM crops and foods. In debating the separation distances (should they be 200m as at present, or 10km as proposed in the Bill?) we will force consideration of the science of pollen spread and contamination – other clauses will force similar debates. In doing so we will highlight the risks of GM in a vivid and clear manner and build political support for more stringent controls in the future.
- The UK government is in a difficult position as its formal GM policy advisors (AEBC) are recommending legislation on liability and contamination rather than a voluntary approach. English Nature's position on seed purity complicates matters even more for the Government who should take advice from the JNCC (as they did when the FSE were proposed).
- It puts the biotech companies in a difficult place. They claim their products are safe – so presumably they will be happy to support liability rules that make them pay up if they are wrong? Similarly, can they really argue against contamination rules if they support choice?
- If GM crops are approved for growing in the EU, the decision to grow them will be made by individual farmers not by biotech companies. They will carefully weigh up the costs of growing GM crops against the alternatives. The higher the costs of growing the less likely they are to take a chance on planting GM crops. The Bill will certainly increase the cost of GM crop cultivation as it will require farmers to pay for measures to prevent contamination and take out insurance against damage. This absolutely proper application of the "polluter pays" principle will make farmers less likely to grow crops as it affects the economic bottom line.

## **Why a GM Contamination and Liability Bill Now?**

In the next two years there will be a serious attempt by the biotech industry and pro-GM EC commissioners and member states to commence commercial growing across the EU. They will be proposing coexistence regimes and liability regimes that will allow GM contamination to become commonplace and leave the environment and people affected largely unprotected and unable to seek redress from the companies licensed to release GM crops into the EU.

The anti-GM movement across Europe is working extremely hard to fight every application for GM commercial approval to prevent any further GM planting and import. In the past this rear guard action has been largely successful, but it has not prevented GM planting in Spain and the numerous contamination incidents.

The biotech industry and the US Government have already complained about current EU policy on GM approvals (the *de facto* moratorium) to the WTO and they will certainly make another complaint once the Traceability and Labelling regulations come into force in April 2004. They don't like labelling and they don't like thresholds and they hate traceability (all part of the Bill). They want industry controlled guidelines on growing and no liability. Despite this the current EU laws allow for contaminated food, feed and probably seed to enter the EU from April 2004.

## **Why we need a GM Contamination and Liability Bill now**

We must seize the initiative and push for strict laws. Industry will not welcome it – they were still clinging to the idea of a voluntary approach to legitimise contamination until early November and still hold to that belief when speaking on the subject. We are also working hard to stop all marketing consents at various crucial points along the regulatory chain in the EU and UK. By having a public, parliamentary driven campaign, industry lobbying behind closed doors will have less chance of success.

In the past there have been massive amounts of media coverage on contamination in the UK, Greece, USA, France and Canada. Delegations from the UK have visited North America and talked to victims of GM contamination and reported on it. Select Committees have looked into it. The EU and DEFRA have published numerous reports on contamination levels as have the Canadian Government. Beekeepers and seed producers/savers have lobbied AEBC and Government to secure proper protection from GM contamination.

The GM Contamination and Liability Bill seeks to prevent contamination, not facilitate coexistence. It will get widespread public and political support.

The GM Contamination and Liability Bill sets out very clearly that achieving the threshold of not detectable at 0.1% (effectively “zero” at present) will be impossible without very tough rules which would have to be strictly enforced. Anything less than what is proposed would be risking contamination. Farmers faced with the strict hygiene requirements and licensing requirements under the Bill are far less likely to proceed with planting if GM crops do get commercial approval. The Bill also makes getting approval for test sites much more difficult. The Bill would make the process even more transparent, and offers organic or conventional farmers within the separation distance of the crops an absolute veto on the location of test sites. This provides real opportunities for farmers and consumers to unite at local level to stop GM planting in test sites.

## **Responses to questions and comments**

### **The Bill legitimises GM crop planting**

No it doesn't. The Bill does not weaken in any way the regulations that govern the release of GM crops into the countryside – whether as test crops or as commercial planting. GM crops can be legally planted now, and are likely to be legally planted next year whether or not the Bill is passed.

What the Bill would do is impose controls on the ways in which GM crops are planted, and ensure those responsible for them are made liable for any damage caused. These controls will not exist if the Bill is not passed or they will be designed by the biotechnology industry.

### **The Bill means we have “given up” and accepted GM planting.**

No it doesn't. Ensuring that biotech companies would bear the costs of any damage resulting from their products in principle is a certain means of forcing the industry to face up to wider commercial and environmental realities. The biotechnology industry has so far been successful in avoiding such responsibility. As a result it has been free to push untested and potentially damaging crops onto the market and lobby for further commercialisation with relative impunity. The Bill also sets down a challenge to the Government and the biotech industry to ensure that the choice of GM-free food, feed, seed and farms is assured.