

Explanatory Memorandum on the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety

Treaty Title

The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety

Command Paper Number: 8921

Subject Matter

The Nagoya-Kuala Lumpur Supplementary Protocol is a protocol to the Cartagena Protocol on Biosafety. The Cartagena Protocol is a multilateral environmental agreement governing the movements of living modified organisms¹ (LMOs) resulting from modern biotechnology from one country to another. The UK ratified the Cartagena Protocol in 2003.

The Nagoya-Kuala Lumpur Supplementary Protocol (the Supplementary Protocol) covers damage from the transboundary movement of LMOs within the limits of a Party's national jurisdiction, and therefore it does not affect the potential liability of national 'Operators' (those in direct or indirect control of the LMO) for damage occurring as a result of activities under their control in third countries. It is potentially of benefit to many developing countries that are concerned about their lack of capacity to deal with imports of LMOs that could, in theory, result in damage to their environment. The wish by developing countries to add an additional level of security to transboundary movements of LMOs was the main driver for negotiation of the Supplementary Protocol.

The Supplementary Protocol was adopted in 2010 at the fifth Meeting of the Parties of the Cartagena Protocol. It sets out rules governing liability and redress should the transboundary movement of GMOs have significant adverse effects on the conservation and sustainable use of biological diversity, including risks to human health, and it reinforces the polluter pays principle.

The EU is a signatory of the Supplementary Protocol and concluded its own process of ratification on 4 October 2012. The UK signed the Supplementary Protocol in February 2012, but it cannot enter into force until it has been ratified by 40 parties.

Ministerial Responsibility

The Secretary of State for Environment, Food and Rural Affairs has responsibility for policy matters relating to LMOs in EU and international negotiations. Domestic GM policy is a devolved matter. The Secretary of State for Business, Innovation and Skills, and the Secretary of State for International Development also have an interest in GM policy.

The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for UK policy relating to the EU's relations

¹ The Cartagena refers to 'living modified organism' and Defra tends to refer to 'genetically modified organisms'. In everyday use, the terms are inter-changeable.

Policy Considerations

(i) General

The UK Government recognises that GM technology could deliver benefits providing it is used safely and responsibly, in particular as one of a range of tools to address the longer term challenges of global food security, climate change, and the need for more sustainable agricultural production. The UK Government also acknowledges that developing countries should have fair access to such technology and make their own informed decisions regarding its use. We have been supportive of the aims of the Supplementary Protocol throughout its development and introduction so having signed it we should now take the necessary steps to ratify it formally.

The Supplementary Protocol will have no substantive effect within the EU as its provisions are already fully covered by the Environmental Liability Directive, which has been transposed into UK law by the Environmental Damage (Prevention and Remediation) Regulations².

The Environmental Liability Directive addresses environmental damage, including identification, liability, and redress. It is based on the polluter pays principle, where those responsible for damaging natural resources are also responsible for the restoration. The Regulations identify specific roles and responsibilities for 'operators' and 'authorities' and provide time limits for each stage of the restoration process. The emphasis is on operators identifying potential threats to the environment from their activities, and taking action to avoid them. Enforcing authorities are responsible for determining environmental damage and deciding on, and enforcing, appropriate remedial measures. Three types of remediation are defined, primary (to restore the damage itself); complementary (restoration of similar damage where primary remediation does not fully restore the primary damage); and compensatory (measures taken while the original damage is being restored).

Potential damage from LMOs is covered by the Environmental Liability Directive. However, LMOs for both importation and cultivation in the EU already go through a robust risk assessment for potential damage to the environment and human health. These assessments are conducted by the applicant and submitted to the EU authority in their application. These are then assessed by the European Food Safety Authority and a lead Member State and are open to scrutiny from Competent Authorities in the Member States. In the UK, applications are considered by the independent Advisory Committee on Releases to the Environment which provides advice to ministers on issues relating to GMOs.

(ii) Financial

No additional funding is required at this stage for the Supplementary Protocol's entry into force as the budget will come from within the existing funding arrangement for the Cartagena Protocol.

² England: Environmental Damage (Prevention and Remediation) Regulations 2009 (SI 2009/153); Scotland: Environmental Liability (Scotland) Regulations 2009 (SSI 2009/266); Wales: Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (SI 2009/995 [W. 81]); Northern Ireland: Environmental Liability (Prevention and Remediation) (Northern Ireland) Regulations 2009 (SI 2009/252)

(iii) Reservations and Declarations

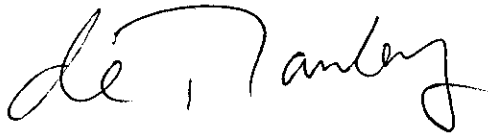
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Implementation

There is no need for any additional measures either at EU or UK level to implement the Supplementary Protocol.

Consultations

Defra consulted the Department of Business, Innovation and Skills; the Department for International Development; the Ministry of Justice; the Food Standards Agency and the responsible departments in Scotland, Wales, and Northern Ireland. None of these organisations raised any objections to the UK's signature or ratification of the Protocol.



Lord de Mauley,

Parliamentary Under-Secretary

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

28th July, 2014