



Briefing

GM-free local areas

A guide to using the law to protect your area from GM crops

GM-free – what does it mean?

Any Local Authority can declare their area GM-free. In fact you can declare your garden a GM-free area, or even your window box. However, under current law there is no legal provision for gaining absolute protection for your area as GM-free. A declaration of GM-free status by a local authority should be seen as an aspiration.

Section 2 of the Local Government Act 2000 gives all local authorities very broad powers to do anything which it considers is likely to promote or improve the environmental well-being of its area. Declaration of GM-free status might fall into this category. In addition, the Courts recognise that local authorities are entitled to take into account ethical considerations when making decisions (the most well known case in this area is a Court of Appeal decision which concerned a local authority's decision to ban deer hunting on its land¹).

¹ *R v. Somerset County Council ex p. Fewings and Ors* [1995] 1WLR 1037

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When a local authority declares its intention to be GM-free there are certain concrete measures that it can take in order to help realise that aspiration. These include ensuring that the services they provide, such as school meals and catering are free of GM ingredients, and ensuring that any land over which they have control is not used for the growing of GM crops.

Article 19 – what is it about?

In addition to, and separately from, declaring their area GM-free, Local Authorities have a new legal tool they can use - Article 19 of the Deliberate Release Directive (Directive 2001/18/EC).

Article 19 in a nutshell:

Article 19 is a powerful legal tool that local authorities can use to help them achieve their desire to be GM-free. *A local authority can not use Article 19 to become a GM-free area.*

Article 19 can only be used on a case-by-case basis to impose a condition to protect a specific geographical area from the marketing of a GM crop. *It can not be used to get a blanket ban on all future marketing consents for GM crops.*

If a biotech company wants to market a GM crop in the European Union (EU), it needs to obtain a Part C (marketing) consent under the Deliberate Release Directive. Once a consent is granted, that GM crop can then be marketed across the EU without further restriction or local consultation. Conditions must be attached to the granting of a Part C consent. One condition that can be imposed relates to the geographical area where the GM crop can be grown. This is specifically provided for in Article 19 of the Directive.

Article 19(3)(c) requires that any Part C consent for a GM crop must specify conditions for the protection of particular ecosystems/environments and/or geographical areas. In other words, Article 19 allows a condition to be included in a Part C consent that says that the crop in question can not be grown in a specific geographical area. So for example, a Part C consent could be granted allowing a GM crop to be grown throughout the EU except for in Devon.

To make their case, local authorities should write to the Secretary of State for Agriculture (Margaret Beckett) asking her to seek a 'geographical area' exemption from the European Commission. This should be done for each prospective Part C Consent which is relevant to their area (ie likely to be grown there). Ideally, this should be done during the specific consultation period provided for in the Directive. Responses to the Commission should be made via the Joint Research Council website². In addition, local authorities should write directly to the Commission, making the same case. The Commission then has a legal duty to circulate those comments to the relevant authorities in every member state. In this way you guarantee that your argument actually reaches the decision makers at the Commission level and those in all other member states.

² http://gmoinfo.jrc.it/gmc_browse.asp

What can my local authority do?

To confirm its desire to be GM free, a local authority should pass a resolution stating that it will commit to:

- Ensuring no GM crops are grown on land over which it has control
- Adopting a GM-free policy for all goods and services for which it is responsible
- Writing to the Secretary of State and the European Commission for each prospective Part C consent which causes particular local concern requesting a condition be imposed under Article 19 to protect their area.

Friends of the Earth's legal team are happy to advise on these letters and to help any local groups or councillors to draft appropriate wording for a GM-Free resolution.

DEFRA's position on Article 19

In February 2003, the Department for the Environment, Food and Rural Affairs (DEFRA) published a briefing on Article 19 at www.defra.gov.uk/environment/gm/eu/art19.htm

Nothing in DEFRA's briefing has altered our understanding of the meaning of Article 19(3) – if anything it has strengthened it. The meaning of Article 19(3) is sufficiently clear to allow a local authority to pass a resolution to examine all pending and future Part C applications and where appropriate to request a condition be imposed on any such consent that the particular crop in question not be grown in their area.

It is worth noting that the DEFRA briefing states that "It has been suggested that Article 19 could also be used to attach conditions to all Part C consents in order to ban their marketing and use in the UK as a whole or in localised GM free areas." That briefing also refers to "a blanket policy". This is not our position and we are cautioning against any Council adopting a 'blanket policy' under Article 19.

If you need more detailed legal advice, Friends of the Earth's legal team are available to help. Contact Liz Wright to find out more, see useful resources at the end of this briefing.

How can I help my local authority make a good case?

The case for seeking a 'geographical area' exemption for your area is likely to be strongest where the reasons for seeking the exemption are scientifically based, environment/human health related and especially where they reflect the specific character or concerns of your area. Any information you can gather on distinctive and relevant features of your local environment will be very useful. For example the amount of land under organic management, presence of wild relatives of GM crops in question, the number and size of designated wildlife habitats and the number of bee keepers as well as the presence of organic farms.

We have produced a guide to EU decision making for GM-free local authorities called **Keeping your area GM-free** (see useful resources at the end of this briefing). It explains how the process works, and how to build a strong case. We will also notify local authorities who have joined our gm_alert email list about each prospective Part C consent relevant to their area that emerges - ie that relates to a GM crop that is likely to be grown in their area.

What if they won't do it?

If your local authority does not believe it has the power to prevent GM crops being grown in your area, our legal team would be happy to discuss the issues with them. Contact Liz Wright to arrange this, see useful resources at the end of this briefing.

If they are not interested in the idea of becoming GM-free, you may need to rethink your campaign strategy. Getting local businesses and farmers on board will be very helpful in showing the strength of feeling in your area and demonstrating that there are genuine worries about the effects of growing GM crops. Local opinion polls held during stalls can give a good snapshot of public opinion, and can be easier to carry out and provide larger numbers than petitions.

If they are not interested because they are an urban council and don't think it is relevant to them, you can remind them that they can provide GM-free food in the services for which they are responsible, and point out that having this choice will disappear if GM crops are grown widely across the UK. This kind of policy would also show consistency with any local sustainability policies eg Local Agenda 21. Some Urban Local Authorities own farm land outside their area, so this would be worth checking.

For more information on how to build support locally for your campaign, see GM-free Britain – campaigning with local authorities – a starter pack.

Useful resources

You can download most of these resources from www.GMFreeBritain.com or contact Liz Wright to get a copy: lizw@foe.co.uk or 0113 242 8153.

1. Now or never: why you should make your area GM-free
2. GM-free Britain – campaigning with local authorities – a starter pack
3. Beginners guide to local authorities in England
4. GM-free sticky questions
5. Article 19 legal advice from the Friends of the Earth legal team *
6. Monthly updates on gm_free_britain email list – ideas from other groups campaigning on this issue *
7. Visual materials – posters, placards, flags, plate labels
8. GM-free Britain stickers
9. 'Like it or lump it' leaflets
10. GM-free technical briefings
11. Sample press releases and letters to local authorities/businesses
12. Keeping your area GM-free: a guide to EU decision making for Local Authorities and National Parks – download from http://www.foe.co.uk/campaigns/real_food/resource/local.html

* Not available on www.GMFreeBritain.com, please contact Liz Wright.