



Access and Benefit Sharing (ABS), the Nagoya Protocol.

ABS and the Nagoya Protocol are part of the UN Convention on Biological Diversity, (CBD) to which the UK, Northern Ireland and the Republic of Ireland became signatories in 1992.

One part of the CBD dealt with access to, and fair distribution of, the benefits from genetic resources. This recognises two key concepts:

1. it is important for there to be access to genetic resources
2. it is equally important that benefits arising from use of those resources are shared with the owners.

The Nagoya Protocol became law in the EU on the 12th October 2014. It is an international treaty – it does not apply to material originating within the state in question, that is governed by national law. Plant genetic material collected in signatory countries since then has to comply with the Protocol.

It should be clearly understood that the Convention, Protocol and legislation relating to it, are not designed to restrict fair access to genetic resources; restrictions on access are imposed by individual states.

How does it work?

Under the terms of the CBD and the Nagoya Protocol, users of genetic material will be required to obtain prior informed consent (PIC) from the owner of those resources, on mutually agreed terms. (MAT). For example, should a trip be organised to country X to collect seed of species Y, it will be necessary to find out what the legal requirements with regard to ABS are in that country, who to contact, and with whom arrangements and agreements need to be made. This will need to be investigated some months or years prior to the trip, to allow for the necessary negotiations (for example, the plant in question may be in an area owned not by the government but an indigenous group, who are concerned about exploitation both by their own government and overseas visitors, such situations require diplomacy!).

Genetic resources that are already in this country but were collected since 1992 should have paperwork detailing the consent, and the terms under which it was given. The Nagoya Protocol is effective from the 12th October 2014, with some of the key obligations within the EU from 12th October 2015.

Scope of ABS

Genetic resources are defined as: “genetic material of actual or potential value”, and “any material of plant, animal, microbial or other origin containing functional units of heredity”. It is clear from the CBD context that it refers to resources needed for their genetic material and not for other uses (such as timber). It excludes human genetic resources.

Anything collected before 12 October 2014 is not within the scope, so hold on to pre-2014 plant records, especially where a plant or collection has been passed on from previous collectors. Keep their accession numbers with your own. If plants die and need to be re-collected after 2014, they would then come within the scope.

What should I do now?

Users will be expected to be able to demonstrate that they have exercised ‘due diligence’ with regard to their acquisition and use of genetic resources. **Due diligence includes the seeking, keeping and transfer of information; it covers both parties in the exchange of material.** It has been



described as an ‘obligation of actions, not results’ – meaning that if there is a query over material, it will be important to be able to demonstrate actions that you have taken to ensure yourself that it is legitimately obtained.

It is important to record the source and date acquired of all your plants – even those from commercial sources. This is one of the requirements of National Collection status.

For wild collected material, even if you did not make the collection yourself, **you need to record the Collector’s number** and retain a copy of the paperwork (permits, agreements etc) **if you have access to it**. The Collector’s number allows the paperwork for the original collection to be connected to the plant. If you have purchased the plant commercially, you should find that the number is traceable to the collector, and they will retain the paperwork. If you need to discover details of the agreement under which that plant was collected you can contact them. This effectively means users maintaining a ‘paper trail’ of information related to plants that have been collected in the wild.

It is important that you only exchange material from the plant in line with the agreement made when the plant was collected. For example material collected by a botanic garden from overseas will have conditions under which that material was collected. This may be that the material can only ever be used in one botanic garden, or it may be that it can be exchanged with others provided it is only for non-commercial purposes. There are many different types of agreement.

It remains to be determined what degree of diligence is required of the user in investigating material with unclear origins.

Useful information

DEFRA provide a website with guidance - <https://www.gov.uk/guidance/abs>

There is an **ABS Clearing House**, (<https://absch.cbd.int/>) where information will be kept to allow for easy access to information from all parties to the Protocol. This will be the first point of call for information with regard to making use of a genetic resource acquired since the date that the Treaty came into force. Eventually, all the information with regard to contacts, legislative, policy and administrative issues for the state in question will be available here.

Each country will have a **National Focal Point**: <https://absch.cbd.int/countries/GB> , a Competent National Authority, and a publishing authority. The focal point will act as a source of information for those looking to access genetic resources, traditional knowledge, and information held in that state. If you have difficulty arranging permission for a collecting expedition with the National Focal Point in the destination country, contact our own at Defra, as they can help. (BEIS, “baize”, the Department for Business, Energy and Industrial Strategy, is the UK enforcement authority but at present are still concentrating on raising awareness).

The CBD and signatories: <http://www.cbd.int/countries/default.shtml?country=gb>

The UK Clearing House mechanism for Biodiversity:

<http://uk.chm-cbd.net/default.aspx?page=0>

Full text of EU 511/2014 available here:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0511&from=EN>