

[www.defra.gov.uk](http://www.defra.gov.uk)

# Access and Benefit Sharing

## A Summary of Aspects of UK Law Touching on Access and Benefit Sharing

July 2010



## A. INTRODUCTION

Unlike certain other countries, the UK has not introduced specific legislation in order to implement the provisions of the [Convention on Biological Diversity](#) (CBD) on access to genetic resources. Rather, the rules governing access to genetic resources are found in other areas of UK law, particularly those relating to property, trespass, statutory protection of species and site protection. Other areas of law, such as health and safety legislation, law concerning the handling of dangerous organisms and intellectual property rights are also relevant. Some of these are outlined below.

## B. PROPERTY

Anybody wishing to access genetic resources in the UK must obtain the permission of the owner of the genetic resources. Thus the owner's permission is needed for access to domesticated and cultivated plants, animals and other genetic resources (including those in *ex situ* collections). In the UK, ownership of 'wild' or '*in situ*' genetic resources is largely determined by who owns the land upon which they are found. In England, Wales and Northern Ireland, generally speaking, a person owns any genetic resources found *in situ* on his or her land, including plants, micro-organisms, domestic animals and livestock. Wild animals other than game or fish are not owned by anybody, so to take them without permission is not theft, but [Game and Poaching laws](#) limit this exception so that a landowner has rights over rabbits, hares and game birds. Also, the Theft Acts make it an offence, in England and Wales, to take, without permission, fish from private property or where there is a private right of fishery. The law is different in Scotland but the effect appears to be similar, at least with respect to salmon and sea trout.

Permission from the owner of the genetic resources is generally sufficient to access wild genetic resources, since an owner is free to dispose of its property voluntarily, whether by gift or sale. However, if the genetic resources are themselves [protected species or found on a protected site](#), additional permission may be needed from the statutory authority responsible. Also, if the applicant for access would like to collect the specimens him or herself, [permission will be needed from the landowner](#) to enter the land.

Information on who owns land in the UK is found from the respective [Land Registries](#).

## C. ACCESS

### 1. Access for collecting specimens

In order to enter onto land for the purposes of collecting wildlife specimens, the permission of the owner should generally be sought. Entering onto land without such permission will normally be a trespass against the owner of the land. Trespass is not generally a criminal offence, but the owner of land may seek civil remedies against a trespasser.

In certain circumstances, there may be a right of access to land, or public access to the land may be permitted or tolerated by the owner. In such cases, entering onto the land for the purposes of collecting specimens may well go beyond the scope of the right or permission, and it is safest, therefore, to first seek the permission of the owner.

### 2. Trespass

Trespass to land is any unjustifiable intrusion by one person upon land in someone else's possession. The slightest crossing on to the land is sufficient to be a trespass; removing soil or part of a building is a trespass; placing anything on someone else's land is a trespass (e.g. leaving rubbish on the land). It is not necessary to know that the land belongs to somebody else — *i.e.* it is no defence that the trespass was due to a mistake of law or fact.

An entry upon another's land is not trespass if it can be justified, for example, by operation of law (e.g. statutory powers given to police officers), by consent of the owner, or by necessity (e.g. to put out a fire). Another example is use of a highway: the public have the right to pass and repass, but use for any other purpose will amount to a trespass e.g. setting up a shop or trying to stop the landowner exercise his shooting rights.

A person in possession of the land can claim damages or an injunction. It is not necessary that there should have been any actual damage. An injunction may be sought to prevent a threatened trespass or stop a continuing trespass. The amount of any damages will depend upon the circumstances. For example, if there is no damage done, and the trespass consists of merely someone using a track that he is not entitled to use, the amount of damages is equal to the usual charge for wayleave in the district.

Where actual damage has been done, the amount of damages will normally be the amount by which the value of the land has been diminished (which will not necessarily be the cost of restoration). "Aggravated damages" can be awarded where, for example, the trespass is accompanied by noise and disturbance.

### **3. Existing access**

Rights of access currently exist over a considerable area of land, much of it open countryside, with varying levels of reliability. Much access is tolerated by landowners (*de facto* access) — but this can be withdrawn at any time, and may not be widely known. Some access has been formally recorded, by contractual agreement with a third party (such as a local authority), under statutory enabling provisions (such as under the National Parks & Access to the Countryside Act 1949 and the Wildlife & Countryside Act 1981), or by practice or custom (such as much open countryside held by the National Trust, or woodland held by the Woodland Trust).

In most cases, the right of access to such land is subject to restrictions or byelaws, which may well prohibit harming or taking wildlife. In many cases, breach of these restrictions or byelaws may constitute a criminal offence.

### **4. Access under Part I of the Countryside and Rights of Way Act 2000**

Under the [Countryside and Rights of Way Act 2000](#) (CROW), the public can walk freely on mapped areas of mountain, moor, heath, downland and registered common land without having to stick to paths. People across England now have approximately 865,000 hectares of land across which they can walk, ramble, run, explore, climb and watch wildlife as they are given the freedom to access land, without having to stay on paths. The new rights, for which people have been campaigning for over 100 years, came into effect across all of England on 31 October 2005.

The right of access is specifically subject to the restrictions contained in [Schedule 2](#) to the Act, which will mean that the right will not apply to any person who collects wildlife specimens whilst on access land (see paragraphs 1(f), (g) and (l) of Schedule 2).

The Act does not, however, affect any licence for, or toleration of, research or scientific activities on access land that was in effect before 31 October 2005. If a person on access land is in breach of a restriction, it will be a matter for the owner whether to tolerate his continued presence. So the status of a scientist or researcher engaging (e.g.) in the collection of insects on the land will be unchanged in such a situation. There are areas of access land where the owner of land may be perfectly content for scientific research to continue, and indeed may be happy to welcome researchers onto the land.

As well as the public rights of way and open access land available for all to enjoy, some landowners may provide permissive access to their land for walking, cycling or horseriding. Permissive access means access is given by permission of the landowner rather than as a public right.

Further information on the Countryside and Rights of Way Act 2000 can be found on the [DEFRA website](#).

## **D. COMMONS**

There are around 550,000 hectares of registered common land in England and Wales – 4% of the total land area in England and Wales. In general terms, common land is land owned by one person over which another person is entitled to exercise rights of common (such as grazing animals or cutting bracken for livestock bedding), and these rights are generally exercisable in common with others.

However, in legal terms, the situation is more complex. There is no single definition of the term 'common land', or indeed of 'common' or 'common rights'.

The Commons Act 2006 aims to protect these areas of Common Land, in a sustainable manner delivering benefits for farming, public access and biodiversity. Owners of rights of common have specific limited rights to the natural produce of the common. Otherwise the landowner owns the common and its produce. In the case of some commons the landowner may not be known for certain. Those seeking access to common land may find it useful to consult the Commons Registration Authority.

The [Commons Registration Act 1965](#) designates county councils (and unitary authorities exercising the functions of county councils), metropolitan borough councils and London borough councils as commons registration authorities. These authorities were originally charged with administering the registration of common land and town and village greens under the 1965 Act. Today the chief function of a registration authority is to maintain the registers for public inspection, to conduct searches of the registers in response to applications from the public and conveyancers, and to handle applications for amendments to the registers, particularly to register new town and village greens and to remove common land from the registers. Registration authorities' duties and responsibilities are set out in the 1965 Act, and in regulations made under the Act. In due course, these responsibilities will be replaced by those set out in Part I of the Commons Act 2006. Part 1 has already been brought into force in seven [pilot areas](#) with effect from 1 October 2008.

The taking of genetic material from common land by others will require the consent of the landowner and might require consultation with the commoners if it is likely to have an impact on the exercise of their rights. Where the land has a specific nature conservation interest, e.g. designated as a Site of Special Scientific Interest, [other UK legislation](#) will afford additional protection. Furthermore, where a common has been made subject to a scheme of management under the [Commons Act 1899](#), the district council or, in Wales, the county or county borough authority is empowered to make bylaws to regulate and protect the common in the public interest. These may prohibit any person from taking or injuring the surface or plants growing on the common without lawful authority, and prohibiting the taking or intentional disturbance of animals on the common. Local authorities also have a byelaw-making power under section 235 of the Local Government Act 1972 which may be used to protect common land not subject to a scheme made under the 1899 Act and to which no other byelaw-making power applies

More information concerning common land can be found on the [DEFRA website](#).

## **E. LAND REGISTERS**

Land registration is required in the UK when a relevant transaction is carried out. This has not always been the case, although it has been common practice in towns and cities for some time. The majority of land titles are now registered, but it is still not uncommon to find rural land unregistered (where there has been no relevant transaction).

If land is unregistered, it can be difficult to obtain details of the owner, especially if the land is not occupied. Local enquiries may have to be made on the ground.

Where land is registered, details of ownership will be contained in the land register. This is open to public inspection for a modest fee, and copies of entries may be taken.

Information on who owns land in the UK is found from the respective Land Registries.

### **1. HM Land Registry**

[HM Land Registry](#) is an Executive Agency of the UK Government. Its main purpose is to register title to land in England and Wales and to record dealings once the land is registered.

## **2. Registers of Scotland**

The [Registers of Scotland](#) contain information about property and property transactions in Scotland. The main registers are the Register of Sasines and the Land Register.

## **3. Northern Ireland Land and Property Service**

The [Northern Ireland Land and Property Service](#) administers the Land Registry, Registry of Deeds and the Statutory Charges Registry. The agency records details of legal rights to land, provides information for land and property conveyancing and has a judicial role in resolving disputes about registered land.

## **F. NATIONAL PARKS**

Land may be in a National Park, but this does not necessarily mean that it will be publicly owned. The National Park regime passes a number of the environmental protection or planning functions of local authorities to joint planning boards etc. (comprising constituent authorities) or National Park Authorities.

Authorities have special duties in respect of National Parks, concerning protection of the natural beauty and wildlife and promoting public enjoyment. National park status will mean that decisions about regulatory consents etc. will need to be sought from the relevant Park body, and that that body will need to apply its duty to secure and enhance the natural beauty and wildlife of the Park when considering consent applications.

Other than these changes to regulatory bodies and the matters they must take into account, there are no special controls or permitting regimes that apply particularly to National Parks. Further information on National Parks is available on the [DEFRA website](#).

## **G. PROTECTED SPECIES AND HABITATS**

### **1. Protected sites**

Where a site is protected through notification as a [Site of Special Scientific Interest](#) (SSSI), it is an offence for anyone to damage the special interest features of that site. Owners and occupiers are required to obtain consent from [Natural England](#) or the [Countryside Council for Wales](#) before carrying out any of the operations listed as likely to damage those features. SSSIs may also be notified as being of European importance (forming part of the Natura 2000 series of sites). A plan or project that is likely to have a significant effect on the site, or is not directly connected with its management must be subject to an appropriate assessment by the competent authority.

Further information on Nature Conservation Designations can be found on the [DEFRA website](#). Information on the [Convention on Wetlands of International Importance, Especially as Waterfowl Habitats](#) (The Ramsar Convention) can be found on the [DEFRA website](#).

### **2. Wildlife and Countryside Act 1981**

#### **a. Protection of birds**

The [Wildlife and Countryside Act 1981](#) (WCA) affords statutory protection to all wild birds and implements and fulfils the United Kingdom's obligations under the [EC Wild Birds Directive](#). Under Section 1 it is an offence to intentionally kill, injure or take any wild bird, take damage or destroy the nest of any wild bird while that nest is in use or being built, or take or destroy an egg of any wild bird. It is also an offence to disturb any wild bird included in Schedule 1 Part II of the Act while it is building a nest or is in, on or near a nest containing eggs or young; or disturbs dependent young of such a bird.

It is also an offence to be in possession or control of any bird or egg or any derivative of a wild bird, or to sell such an item, unless it can be shown that it was taken legally from the wild.

Certain birds, listed on Schedule 2 Part III, can be taken from the wild during the open season, without the need for a licence. These species may legally be hunted during this period. If they are to be taken during the close season, a licence will be required from the appropriate body. This includes the taking of birds during the close season for the collection of genetic material.

#### **b. Protection of Animals**

Under Section 9 WCA, the animals listed in Schedule 5 are protected from killing, taking or injuring. It is also an offence to be in possession or control of or to sell any live or dead specimen or derivative if it cannot be shown to have been taken legally from the wild.

It is also an offence if any person intentionally or recklessly damages, destroys or obstructs access to any structure or place which a wild animal listed in Schedule 5 uses as shelter or for protection, or disturbs any such animal whilst it is occupying this structure.

#### **c. Protection of Plants**

Under Section 13 of the WCA, plants listed in Schedule 8 are protected from picking, uprooting or destruction. It also protects these species against sale, offer or exposure for sale, possession and transport for the purposes of sale, or the advertising with the intention of sale, unless it can be shown that the specimen in question was legally taken from the wild.

#### **d. Licensing procedures for the taking of genetic material under the Wildlife and Countryside Act 1981**

Licences can be granted under Section 16 of the WCA, which implements the powers of derogation under Articles 7 and 9 of the Wild Birds Directive to allow collection of any genetic material from protected species.

A licence can be obtained from Natural England or the Countryside Council for Wales to allow the collection of genetic material under Section 16 of the 1981 Act scientific, research or educational purposes.

#### **e. Introduction of alien species**

Section 14 of the WCA makes it an offence to release or allow to escape into the wild any animal, which is of a kind not ordinarily resident in and is not a regular visitor to Great Britain. It also prohibits release or allowing to escape of animals listed in Part I of Schedule 9. Similarly, it is an offence to plant or otherwise cause to grow in the wild any plant included in Part II of Schedule 9.

### **3. Habitats Directive**

The [Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna](#), is transposed into national legislation via the [Conservation \(Natural Habitats, &c.\) Regulations 1994](#). Certain animals listed in Annex IV(a) of the Habitats Directive are listed on Schedule 2 of the 1994 Regulations and it is an offence to deliberately capture, kill, take or disturb a European protected species or to damage or destroy a breeding or resting site of such an animal. Further information the EC Birds and Habitats Directives can be found on the [DEFRA website](#).

### **4. International Trade in Endangered Species**

The [Convention on International Trade in Endangered Species](#) (CITES) aims to protect certain species of plants and animals by regulating and monitoring international trade in them so that it does not become unsustainable. It is implemented within the UK and throughout the EU by the European [Wildlife Trade Regulations](#). Currently, the commercial transfer of samples for scientific analysis derived from specimens of CITES listed species is not exempt from the CITES controls. Further information on CITES controls can be found on the [UK's CITES website](#)

## **5. Bonn Convention on Migratory Species**

The [\*Convention on Migratory Species\*](#) (CMS) aims to improve the status of all threatened migratory species through national action and international agreements between range states of particular groups of species

Article IV CMS provides that Parties that are Range States of migratory species listed in Appendix II (those with an unfavourable conservation status) shall endeavour to conclude Agreements where these should benefit the species and should give priority to those species in an unfavourable conservation status.

A number of Article IV Agreements have been concluded as self standing international legal instruments:

- [\*Agreement on the Conservation of Albatross and Petrels\*](#);
- [\*Agreement on the Conservation of Cetaceans in the Black and Mediterranean Seas\*](#);
- [\*African and Eurasian Waterbird Agreement\*](#);
- [\*Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas\*](#);
- [\*Agreement on the Conservation of Bats in Europe\*](#);
- [\*Agreement on the Conservation of Gorillas and their Habitats\*](#); and
- [\*Agreement on the Conservation of Seals in the Wadden Sea\*](#).

In addition, a number of "soft law" [\*Memoranda of Understanding\*](#) have been concluded. Further information on the CMS can be found on the [\*DEFRA website\*](#).

## **H. INTELLECTUAL PROPERTY RIGHTS**

Some genetic resources and their derivatives are protected by various kinds of intellectual property rights (IPRs). These can affect whether, and on what terms, the genetic resources may be accessed. In addition, agreements on access to genetic resources and benefit-sharing often include terms related to intellectual property rights.

This section provides a basic introduction to intellectual property rights in the UK, including a brief description of the circumstances in which permission is needed from the holders of IPRs in order to access IP-protected genetic resources. It also introduces typical IP-related issues covered in access and benefit-sharing agreements.

### **1. Intellectual Property**

Intellectual property rights, often known as IPRs, allow people to own their creativity and innovation in the same way that they can own physical property. The owner of IPRs can control and be rewarded for its use, and this encourages further innovation and creativity to the benefit of us all.

Intellectual property exists in a variety of forms according to what has been created. Some are "registered rights" and have to be applied for. Some are unregistered and arise automatically on the creation/publication of the original work.

The main types of IPRs are patents; trade-marks; designs and copyright however, intellectual property is much broader than this including also trade secrets, plant breeders' rights (PBRs), and geographical indications. Of these, patents and PBRs (see below) are those likely to have the closest connections with access to genetic resources and benefit-sharing, although trade secrets and geographic indications are also relevant.

IPRs are private property rights so it is usually up to the owner to decide how to exploit or benefit from their intellectual property. IPRs generally give the owner exclusive rights to use the protected material

in certain ways - exactly how depends on the type of IPR. If someone else uses the intellectual property in these ways without the permission of the rights holder, this usually amounts to infringement.

If the owner of IPRs does not want to use the protected material himself, or also wants others to be able to use it, he may license its use. Whatever the IPR, the owner can usually decide whether or not to license its use to someone else. However, there are a few areas where this rule does not apply. For example, there is a copyright exception allowing limited use without infringing copyright, and compulsory licences for use of patents may be possible.

IPRs are generally national in character. If a resource is being accessed, IPRs both in the country in which it is being accessed and in any country it is imported into will need to be considered. Further information on IPRs in general and on all the categories of IPRs can be found at:

- [The UK Intellectual Property Office](#); and
- The [World Intellectual Property Organisation](#) (WIPO) (the UN Specialised Agency dealing with Intellectual Property matters).

## **2. Patents**

A patent for an invention is granted by government to the inventor, giving the inventor the right for a limited period (up to 20 years) to prevent others from exploiting (making, selling, using, importing etc.) the subject matter of the patent without the owner's permission. When a patent is granted, the invention becomes the property of the inventor, which - like any other form of property or business asset - can be bought, sold, rented or hired. Patents are territorial rights; a UK patent will only give the holder rights within the United Kingdom and rights to stop others from importing the patented products into the United Kingdom.

Patents may be obtained for an invention that is new, that is:

- that knowledge of it is not in the public domain, nor has it been published or used anywhere in the world;
- it is not obvious in the light of what has been done before; and
- it has a practical application.

The basic criteria are the same for all areas of technology including biotechnological inventions. Patents are generally intended to cover products or processes that possess or contain new functional or technical aspects; patents are therefore concerned with, for example, how things work, what they do, how they do it, what they are made of or how they are made.

Plant and animal varieties as such cannot be patented. No patent can be valid if it covers the mere discovery of a plant or its derivatives as they exist in nature, nor if it covers knowledge that has already been made known. However, inventions concerning genetic manipulation of plant tissue may be patentable and rights can extend to the products of this genetic manipulation.

If an individual or organisation wishes to access genetic resources over which there is patent protection, the general rule is that the permission of the patent-holder will be required. (There may be exceptions to this related to research or compulsory licenses.)

Further information on patents is available from the [UK Intellectual Property Office](#) (IPO).

## **3. Plant Breeder's Rights**

Plant breeders' rights (PBRs) are a system of patent-like rights specifically designed to provide breeders with the exclusive right to sell commercially a new variety that is novel, uniform and distinctive. PBRs are governed at international level by the [International Union for the Protection of New Varieties of Plants](#) (UPOV). PBRs frequently provide for certain exceptions to exclusive rights: the farmer's privilege, and the research exemption or breeders' privilege. Under the farmer's privilege,

a farmer has the right to keep a part of the crop grown from PBR-protected seed and use it as seed for the next crop. The breeder's privilege authorises others to use a protected variety freely in research on or the development of new varieties.

Plant breeders' rights entitle the holder to prevent anyone doing any of the following acts respecting the propagating material of the protected variety without authority:

- production or reproduction (multiplication);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing;
- stocking for any of the purposes mentioned in (a) to (f) above; and
- any other act that may be prescribed by the provisions of the [Plant Varieties Act 1997](#).

If any individual or organisation wishes to access genetic resources covered by PBRs for any of the above purposes, it would be necessary to seek permission from the holder of the rights, who can give permission (through a license) on whatever terms and conditions the rights holder wishes to impose, subject to the safeguard of [compulsory licensing](#). The Plant Variety Rights Office has no powers to intervene in such matters apart from the case of compulsory licences. Plant breeders' rights do not extend to any act done for private and non-commercial purposes, for experimental purposes or for the purpose of breeding another variety, for which permission is not needed.

Further information is available on the [DEFRA website](#).

#### **4. Trade Secrets**

Many businesses will have "trade secrets" but they may not always recognise that they have them, and that they can be a valuable type of intellectual property. Protection for trade secrets arises from the law of confidentiality. A trade secret is information that is only known to a few people and where its disclosure to others would constitute a breach of confidence. The information:

- can be connected with another IPR, for example relevant know-how for working a patent;
- can be material existing before the other IPR has come into being, for example details of the invention for which a patent has not yet been sought; or
- it can be material that is already protected by an IPR, for example where copyright exists in material that is to be shown under a confidentiality agreement to a potential partner for its exploitation.

So, in general, using the law of confidentiality can be very useful to ensure that any information a business wants to keep secret remains secret. In order for trade secrets to remain protected, it is, though, very important to ensure that all who might get to know about the information that is being protected, such as other employees and collaborators in other businesses, understand and are bound by the conditions of confidentiality.

## **5. Geographic Indications**

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Further information on geographical indications may be found on the [WIPO website](#).

## **6. Terms in Access and Benefit-Sharing Agreements related to IPRs**

It is common for contractual agreements on access to genetic resources and benefit-sharing (sometimes known as 'Material Transfer Agreements') to contain a number of terms and conditions related to IPRs, including:

- restriction of the permitted uses of the material transferred, for example, 'for research purposes only';
- the obligation not to file patent or other IP applications or to seek permission prior to doing so;
- provisions to share intellectual property rights;
- provisions to share royalties and/or other benefits arising from intellectual property rights;
- licenses;
- the obligation to defer publication; and
- confidentiality.

Requirements for prior informed consent for access to genetic resources, for benefit-sharing and for the use of agreements containing mutually agreed terms including terms such as those mentioned above on IPRs are a common element of recent national laws on access to genetic resources and benefit-sharing.

## **7. WIPO IGC**

WIPO provides a forum for international policy debate and development of legal mechanisms and practical tools concerning the protection of traditional knowledge (TK) and traditional cultural expressions (folklore) against misappropriation and misuse, and the intellectual property (IP) aspects of access to and benefit-sharing in genetic resources.

In 1998 and 1999, WIPO consulted a wide range of stakeholders, such as indigenous peoples and local communities, NGOs, governmental representatives, academics and the private sector, to identify the IP needs and expectations of the holders of TK and cultural expressions. A comprehensive [report](#) of these fact-finding missions is available.

Currently, the WIPO [Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore](#) (the IGC), which met for the first time in 2001, is discussing [draft provisions](#) for the enhanced protection of TK and traditional cultural expressions against misappropriation and misuse. In October 2009 the IGC agreed a [mandate for further work](#) with a view to submitting to the 2011 General Assembly the text (or texts) of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs.

## **8. WTO TRIPS**

The [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS) requires a review of Article 27.3(b), which deals with both whether plant and animal inventions should be covered by patents and with how to protect new plant varieties. Broadly speaking, Article 27.3(b) allows governments to exclude some kinds of inventions from patenting, i.e. plants, animals and "essentially" biological processes (micro-organisms and non-biological and microbiological processes

are eligible to be patented). Plant varieties are also eligible for protection either through patent protection or a system created specifically for the purpose (“sui generis”), or a combination of the two.

The discussion in the TRIPS Council has gone into considerable detail with a number of ideas and proposals for dealing with these complex subjects. Paragraph 19 of the 2001 Doha Declaration additionally requires the TRIPS Council to look at the relationship between the TRIPS Agreement and the CBD and at the protection of traditional knowledge and folklore. Most recently discussed are proposals on disclosing the source of biological material and associated traditional knowledge.

Further information can be found on the [WTO website](#).

## I. DANGEROUS ORGANISMS

Access to dangerous micro-organisms is restricted by legislation on controlled technologies and requirements for export/import licenses. General information on the laws and institutional practises in the United Kingdom can be found on the website of the [UK National Culture Collection](#). Other useful links are the following:

- [Council Directive 2000/54/EC on the protection of workers from risks related to exposure to biological agents at work](#);
- [Council Regulation \(EC\) No. 428/2009](#) setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items; ;
- World Federation of Culture Collections [Information Resource on International Postal Regulations for Shipping Biological Materials](#);
- [Handling and distribution of micro-organisms and the law to disseminate information on our legal responsibilities while collecting and distributing micro-organisms](#) (Smith, D. Rohde, C. & Holmes, B. (1999). Microbiology Today 26, 14-16).

## J. HEALTH AND SAFETY LEGISLATION

The [Health and Safety Executive](#) operates and enforces legislation in Great Britain designed to ensure that risks to people's health and safety from work activities are properly controlled. Certain legislation may also affect access to genetic resources. In the UK, health and safety legislation requires employers to look after the health and safety of their employees; employees and the self-employed have to look after their own health and safety; and all employers and employees must take care of the health and safety of third parties such as members of the public who may be affected by their work activities.

Several areas of health and safety legislation have direct influence on access to genetic resources. These are listed below. Further information on any of the legislative acts listed below can be found on the [Health and Safety Executive website](#).

### **1. The Health and Safety at Work etc. Act 1974 (HSWA)**

All work except domestic service is subject to regulation under the [HSWA](#). **Employers** have general duties to ensure, so far as is reasonably practicable, the health, safety and welfare at work of employees, and to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that other persons who may be affected by the work are not exposed to risks to their health and safety. **Self-employed** people have general duties to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that they and other persons are not exposed to risks to their health and safety from the work. **Employees** have a general duty to take reasonable care for the health and safety of themselves and of other persons who may be affected by their work, and to co-operate with their employer or any other person to enable them to comply with any health and safety duties.

## **2. The Management of Health and Safety at Work Regulations 1999 (MHSWR)**

The [MHSWR](#) provide a framework for controlling health and safety at work. As well as calling for risk assessments, they also require employers to have access to competent help in applying the provisions of health and safety law; to establish procedures to be followed by any worker if situations presenting serious and imminent danger were to arise; and for cooperation and coordination where two or more employers or self employed persons share a workplace.

## **3. Control of Substances Hazardous to Health Regulations 2002 (COSHH)**

The [COSHH Regulations](#) provide a framework of actions designed to control the risk from a range of hazardous substances including biological agents. Schedule 3 of COSHH contains provisions specifically relating to biological agents.

Hazardous substances are anything that can harm health when a person works with them if they are not properly controlled (e.g. by using adequate ventilation) and can include substances used directly in work activities (e.g. glues, paints, cleaning agents), substances generated during work activities (e.g. fumes from soldering and welding), naturally occurring substances (e.g. grain dust, blood, bacteria and other genetic resources). Biological agents may be hazardous substances. Biological agents are bacteria and other micro-organisms. They are controlled by COSHH if they are directly connected with the work or if exposure is incidental, such as with farming, sewage treatment or healthcare. Under COSHH, biological agents are categorised according to hazard and categories of containment.

The essential elements of the COSHH Regulations as they relate to work with biological agents are:

- risk assessment;
- prevention of exposure or substitution of an agent with one that is less hazardous (where the nature of the activity permits);
- selection of control measures;
- maintenance, examination and testing of control measures, e.g. protective equipment such as safety cabinets;
- provision of information, instruction and training for employees;
- monitoring exposure at the workplace (if a suitable procedure is available);
- health surveillance of employees (where appropriate, and if there are valid techniques for detecting indications of disease) when it can lead to action that will be of benefit to the health of employees;
- notification of 'first use' of biological agents in Hazard Groups 2, 3 and 4; and
- notification of the consignment or importation of biological agents in Hazard Group 4.

For further information, see the [HSE website](#)

## **4. The Reporting of Incidents, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)**

[RIDDOR](#) requires employers, the self-employed and people in control of premises to report certain dangerous occurrences, occupational injuries and diseases.

## **5. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009**

The legislative controls for the domestic carriage of dangerous goods, including biological agents are contained in [these Regulations](#).

## **6. Advisory Committee on Dangerous Pathogens**

The [Advisory Committee on Dangerous Pathogens \(ACDP\)](#) is a UK-wide advisory non-Departmental Public Body made up of a Chairman and up to 17 experts. The membership is tripartite, including scientific experts, employer representatives and employee representatives. Its current terms of reference are:

*"To advise the Health and Safety Executive, and Ministers for the Department of Health and the Department for Environment, Food and Rural Affairs, and their counterparts under devolution in Scotland, Wales and Northern Ireland, as required, on all aspects of hazards and risks to workers and others from exposure to pathogens".*

## **7. Legislative controls over the safety of GMOs used in containment.**

The Health and Safety Executive operates and enforces legislation in Great Britain that controls the safety, to humans and the environment, of [activities involving genetically modified organisms \(GMOs\) in containment](#). GMOs are micro-organisms, plants and animals that have had their genetic material altered by artificial means. This is variously known as genetic modification, modern biotechnology, genetic engineering, gene technology, or recombinant DNA technology. 'Containment' covers the contact of the GMOs with humans and the environment is limited by the use of barriers so that harm is avoided. Contained use includes facilities such as:

- laboratories;
- animal houses used, e.g. for breeding modified mice;
- fencing to restrain farm animals;
- plant growth rooms and glasshouses;
- industrial fermentors used for large scale production of things such as enzymes for washing powders.

The current legislation which applies to the contained use of GMOs is the [Genetically Modified Organisms \(Contained Use\) Regulations 2000](#), the main requirements of which include risk assessment; establishment of a local Genetic Modification Safety Committee; notification to the Competent Authorities (via HSE acting as a post box) of all premises where GMOs are used; notification to the Competent Authorities via HSE of activities of low, medium or high risk; and application of suitable containment and control. One implication of these Regulations is that any individual or organisation seeking access to various categories of GMO would not be entitled to access and use GMOs unless these Regulations were followed with respect to a range of activities including their acquisition, safe storage, handling and use. For example, people planning to work with a GM virus will have to follow certain steps before they can begin working. They need to:

- carefully assess risks to human health and safety and the environment;
- prepare a notification and have it reviewed by a GM Safety Committee; and
- obtain a consent from the Competent Authority if the activity is of sufficiently high risk to require one.

When products are to be released deliberately, including those first developed in containment and then subsequently released, legislation on the deliberate release of GMOs must be taken into account. Deliberate release and the marketing and approval of products is regulated in the EU by [Council Directive 2001/18/EC on the Deliberate Release into the Environment of Genetically Modified Organisms](#). The use of GMOs in food and animal feed is regulated in [Council Regulation 1829/2003 on Genetically Modified Food and Feed](#). [Defra](#) is responsible for implementation of Regulation 2001/18 in the UK, and responsibility for Regulation 1829/2003 rests with the [Food Standards Agency](#).

## K. JURISDICTION

The UK comprises the countries of England, Scotland, Wales and Northern Ireland. This website also includes information on the [Overseas Territories](#) and the [Crown Dependencies](#) of the UK. Genetic resources found on the land and inland waters of these areas lie within the sovereign jurisdiction of the UK, as do genetic resources found in the marine environment in inland, coastal and territorial waters and the Exclusive Economic Zone.

### 1. DEVOLUTION

Devolution is the transferring of political decision-making from the centre to sub-national units. Following the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998, certain executive and legislative powers were devolved from Westminster to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Executive respectively. While this is a process which is constitutionally reversible, and the sovereignty of the UK Parliament remains unaffected by the devolution settlements so that it retains full legislative power even over devolved matters, convention will now restrict the exercise of legislative power to areas reserved to Westminster. (These areas are defined by each Act but typically cover issues such as the constitution, political parties, foreign affairs, public service, defence and treason.) The specific areas of devolved competence vary for Scotland, Wales and Northern Ireland, but, in very general terms, cover many environmental issues, some aspects of economic development, agriculture, fisheries, food and forestry and local government. Thus many aspects of policy relevant to access to genetic resources and benefit-sharing fall within the jurisdiction and competence of the respective parliaments and assemblies in Scotland, Wales and Northern Ireland. Consequently, any individual or organisation seeking access particularly to publicly-owned or managed *ex situ* genetic resources, or to genetic resources on public land in [Scotland](#), [Wales](#) and [Northern Ireland](#), should check the relevant legal provisions.

### 2. CROWN DEPENDENCIES

The [Crown Dependencies](#) are not part of the United Kingdom but are internally self-governing dependencies of the Crown. The Crown Dependencies are the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey.

The constitutional position of the Crown Dependencies in relation to the United Kingdom is not enshrined in a formal constitutional document. It is rather the outcome of historical processes and accepted practice. The most recent statement of the relationship between the United Kingdom and the Crown Dependencies is to be found in Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, published in 1973 (known as the Kilbrandon Report). The Report, however, acknowledged that there were areas of uncertainty in the existing relationship which itself was complex and did not purport to draw up a fully authoritative statement.

The United Kingdom Government is responsible for the defence and international relations of the Crown Dependencies, and the Crown is ultimately responsible for its good government. The people of the Crown Dependencies cannot, however, vote in elections for the United Kingdom Parliament and it would be unprecedented for the United Kingdom to legislate for them on taxation and other domestic matters without the agreement of the Crown Dependencies' authorities. Legislation on taxation matters has always taken the form of laws enacted by the Islands legislatures.

#### **a. Isle of Man**

The Isle of Man (population 73,000) is an ancient kingdom, which finally became subject to the English Crown in 1765 following a long history of possession, and disputed claims to possession, by Norse, Scottish and English kings. It did not, however, become part of the United Kingdom.

The Lieutenant Governor is Her Majesty's personal representative on the Island. Other Crown offices include those of First and Second Deemster (judges) and Attorney General, the latter, like the Law officers in the Channel Islands, being the legal adviser both to the Crown and the Island government.

The island has its own legislative assembly (Tynwald), its own administrative, fiscal and legal system and its own courts of law. Royal Assent is required for all primary legislation and this power vests in the Queen in Council, but in most cases is exercised by the Lieutenant Governor under delegated authority.

The Isle of Man has adopted a Cabinet-style Government with a Chief Minister elected by Tynwald and 9 Ministers chosen by the Chief Minister from Members of Tynwald. Tynwald comprises the House of Keys (the Lower House) with 24 elected members and the Legislative Council (the upper House) with 8 Members elected by the House of Keys. The Legislative Council also includes the Attorney General and the Lord Bishop of Sodor and Man, as ex-officio members. The President of Tynwald also presides over the Legislative Council and he is elected by Tynwald.

## **b. Channel Islands**

### **(i) Bailiwick of Guernsey**

The Bailiwick of Guernsey (population of 61,000) principally comprises the Islands of [Guernsey](#), [Alderney](#) and [Sark](#). Alderney and Sark are in varying degrees separate from the Island of Guernsey, each having its own legislative assembly. The Bailiwick of Guernsey was part of the Duchy of Normandy when Duke William, following his conquest of England, became King William 1 of England in 1066. It has since been subject to the English Crown as a successor to the Dukes of Normandy. Guernsey did not, however become part of England nor, later, of the United Kingdom.

The Lieutenant Governor is Her Majesty's personal representative in the Bailiwick. The most important of the other offices held under the Crown are those of Bailiff and Deputy Bailiff, who in Guernsey share the duties of presiding over the legislature and over the Royal Court and who head the Island's administration; and those of Attorney General and Solicitor General, who are legal advisers both to the Crown and to the Island Authorities.

The separate legislative assemblies of the Bailiwick are the States of Guernsey, the States of Alderney and the Chief Pleas of Sark. The Islands have their own administrative, fiscal and legal systems and the courts of law. Primary legislation passed by the Bailiwick's assemblies requires the approval of the Queen in Council.

### **(ii) [Bailiwick of Jersey](#)**

Jersey (population 85,000) was part of the Duchy of Normandy when Duke William, following his conquest of England, became King William 1 of England in 1066. It has since been subject to the English Crown as successor to the Dukes of Normandy. Jersey did not, however, become part of England nor, later, of the United Kingdom.

The Lieutenant Governor is Her Majesty's personal representative in the Island. The most important of the other offices held under the Crown are those of Bailiff and Deputy Bailiff, who share the duties of presiding over the legislature and over the Royal Court of Jersey, and who head the Island administration; and those of the Attorney General and Solicitor General, who are legal advisers both to the Crown and the Island authorities.

The Island has its own legislative assembly (the States of Jersey), its own administrative, fiscal and legal system and its own courts of law. Primary legislation passed by the Jersey Assembly requires the approval of the Queen in Council.

## **3. OVERSEAS TERRITORIES**

The 13 UK Overseas Territories (OTs) and the two Sovereign Base Areas (SBAs) are listed below, grouped into broad geographical areas:

- PACIFIC: Pitcairn Islands
- INDIAN OCEAN: British Indian Ocean Territory

- SOUTH ATLANTIC:
- British Antarctic Territory; Falkland Islands; St Helena and its Dependencies Tristan da Cunha and Ascension; South Georgia and the South Sandwich Islands
- WIDER CARIBBEAN: Anguilla; Bermuda; British Virgin Islands; Cayman Islands; Montserrat; Turks and Caicos Islands
- EUROPE: Cyprus Sovereign Base Areas; Gibraltar

The territories are semi autonomous each with its own written constitution. The OTs have locally elected governments (with the exception of British Antarctic Territory, British Indian Ocean Territory, South Georgia and the Sovereign Base Areas) to whom most domestic matters have been devolved under the constitution. This includes the enactment of local legislation, tax raising powers, the control of domestic public finance, the economy and areas such as education, social services, housing, public works and the environment. Their Head of State is Her Majesty the Queen who appoints a resident Governor or Commissioner (in those with no indigenous population) to represent her in each territory. The Governor is responsible on behalf of the UK Government for the conduct of international relations, the defence of the territory from external threats, the maintenance of internal security including police and prison services, the administration of justice and the public service. The exact relationship between the Overseas Territories and the UK differs from territory to territory. The UK remains responsible for international relations and thus for the fulfilment of obligations under international agreements, such as the CBD. However, where OTs choose to join in the UK's instrument of ratification of an international agreement (which is not automatic), implementation is a matter for the locally elected government. The UK Government and the Overseas Territory Governments have recently adopted an Environment Charter setting out mutual Guiding Principles for the preservation and management of the environment and commitments on both sides for achieving these.