

The NAGOYA PROTOCOL

explained



The Nagoya Protocol on Access and Benefit Sharing was adopted in October 2010 in Nagoya, Japan and October 2015 marks the point where it will be enforced in the UK, Mercy Morris explains more

Access and Benefit Sharing (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; this was ratified (agreed by the UK and Irish parliaments and passed into law) in 1994 and 1996 respectively.

One part of the CBD dealt with access to, and fair distribution of, the benefits from genetic resources. This recognises two key concepts: that it is important for there to be access to genetic resources, and that it is equally important that benefits arising from use of those resources are shared with the owners.

The basic assumption underlying this is that governments have the authority ('sovereign rights') to regulate access to genetic resources in areas under their jurisdiction; however, this does not mean that they own the resources.

The primary concepts within the Nagoya Protocol (access to resources, prior informed consent, mutually agreed terms, equitable sharing) have been present since the original Convention, signed in 1992. What the Nagoya Protocol adds is a more robust framework as to how this will be achieved.

The initial ABS system was intended to work as an agreement between two parties (the provider and the user), governed by mutual agreement within the terms of the CBD and national law. However lack of national laws, lack of clarity or transparency, misunderstandings, and misuse led to a situation that was largely unworkable. 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.

EU & UK REGULATIONS

The Nagoya Protocol entered into law in the EU on the 12th October 2014, on the same date EU ABS Regulation 511/2014 also came into force. The negotiation process within the EU for the member state implementing acts will result in the UK Statutory Instrument, and from October 2015 (EU) articles 4, 7 and 9 will come into force. Some of the key obligations of member states within the EU will only enter into application on the 12th October 2015; these include all the possible measures that competent authorities can take in cases of non-compliance, and penalties for non-compliance. Enforcement in the UK will be handled by the National Measurement and Regulation Office (NMRO) who currently handle the EU Timber Regulation, which has similar aspects. Enforcement is expected to have a mixture of civil and criminal aspects,