

Our ref: **E544069**
1 October 2008

Dear Consultee

Consultation on Commission Directive 2008/62/EC on Conservation Varieties

1. I am writing to invite your views on the implementation of Commission Directive 2008/62/EC on conservation varieties. The Directive relates specifically to the conditions for listing and marketing of agricultural varieties and landraces which are not on the UK National List of Agricultural Varieties. I enclose, for your consideration and comment, a copy of the Directive and a framework document setting out how we envisage listing and marketing will operate. (The Partial Impact Assessment will soon be available on request or by downloading it from the Government's Website – Consultations) The listing provisions of the Directive will be implemented jointly on a UK basis by amendment of the Seed (National Lists of Varieties) Regulations 2001. The seed marketing provisions of the Directive will be implemented separately, but in parallel, by the UK Certifying Authorities. The certification and marketing of seed potato conservation varieties will be the subject of a separate consultation exercise.

This consultation applies to Scotland only. Parallel consultations are being undertaken in Northern Ireland, England and Wales.

An electronic copy of Scotland's consultation letter and associated documents are available on the Government website - <http://www.scotland.gov.uk/Consultations/Current>

Background

2. The Directive is intended to facilitate and promote the sustainable use of agricultural conservation varieties by providing limited derogations from general acceptance and marketing requirements i.e. providing for less rigorous listing and marketing regimes in respect of such varieties. A conservation variety is defined as a landrace or variety which is naturally adapted to local and regional conditions and threatened by genetic erosion.

3. The main derogations are in respect of:

- distinctness, uniformity and stability (DUS) criteria: **Official DUS is not required.** Acceptance as a conservation variety will include consideration of a description provided by the applicant which can be based on fewer characteristics.

- Value for cultivation and use (VCU): **Official VCU testing is not required.** Acceptance will include consideration of information provided by the applicant.
- Seed marketing standards: seed and crop standards are the same as those set out in the Seed Marketing Regulations, except for varietal purity, but will not be applied through the official certification scheme.

4. The Directive limits the marketing of conservation varieties to “regions of origin” or, in certain circumstances, similar designated regions. It is proposed that “regions of origin” should be drawn as simply as possible but appropriate for the variety or landrace.

5. The Directive also restricts the maximum quantity of seed that can be marketed of any one conservation variety and of all conservation varieties of a particular species. It is not anticipated that these limits will cause any difficulties.

6. Quantities of seed of conservation varieties placed on the market will need to be reported by producers/suppliers to the relevant Certifying Authorities who are required to report this information to the EC Commission.

7. Monitoring will be carried out by the Certifying Authorities as part of existing enforcement arrangements using a proportionate approach to minimise the potential burden.

8. The Commission will review and evaluate the implementation of this Directive by 31 December 2011.

9. The provisions of the Directive are expected to impact on only a small number of applicants wishing to list and/or to market conservation varieties of agricultural plant species. With no VCU requirement and less demanding DUS criteria, the cost of listing a conservation variety will be significantly lower than that for listing a standard agricultural variety.

We are inviting written responses to this consultation paper on the implementation of Directive 2008/62/EC by **24 December 2008**.

Please send your response by e-mail to: **Croppolicy@scotland.gsi.gov.uk** or if writing to:

Carol Scott
 Scottish Government – Rural Directorate
 CAP Reform & Crop Policy Branch
 Room 259
 Pentland House
 47 Robb’s Loan
 EDINBURGH
 EH14 1TY

If you have any queries about this consultation please contact: **Anne Watson** on **0131 244 4451**.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library by 4 February 2009. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Dr R N Waterhouse
Scottish Government – Rural Directorate,
CAP Reform and Crop Policy Branch,
Room 260, Pentland House,
47 Robb's Loan,
EDINBURGH,, EH14 ITY.

Yours sincerely

Anne Watson

Anne Watson (Mrs)

PROPOSED OUTLINE FRAMEWORK FOR LISTING AND MARKETING OF AGRICULTURAL CONSERVATION VARIETIES

Introduction

It is proposed that in order to achieve the main objective of this Community legislation, which is to encourage the conservation of old varieties and landraces and the traditional practices that they support, our implementing measures should be as simple and proportionate as possible with the minimum financial burden on applicants. To do otherwise could undermine the aims of the legislation.

Acceptance of Conservation Varieties and Landraces onto the UK National List

Refers to all species covered by the Directive INCLUDING seed potatoes.

1. It is expected that applications for listing will be made by those parties intending to market such seed and who will be indicated on the National List as the maintainer of the variety or landrace.
2. It is proposed that an administration fee be charged to cover the cost of processing the application and assessing the evidence supplied by applicants. This fee will be substantially lower than the current fee of £365 as various areas of existing work will not be required e.g. organising and monitoring progress with official DUS and VCU testing. The administration fee is expected to be a one-off payment of £175.
3. It is anticipated that conservation varieties and landraces will be accepted on to the National List without official DUS testing, and consequently no statutory DUS fee will be required. Instead, the applicant will be required to submit a satisfactory description, giving as a minimum the characteristics required for technical questionnaires of CPVO DUS protocols. These are generally the simplest, most useful morphological characteristics used in DUS testing and are a small subset of the full protocol. For uniformity, most conservation varieties (those where uniformity is assessed on the basis of off-types) will need to meet a reduced standard of 10%, but otherwise, the uniformity requirement is the same as for official DUS testing. It is recognised that the burden of providing evidence will mainly fall on the applicant but this is unavoidable and far less costly and much quicker than official testing. For seed potatoes, it is expected that SASA will provide a description on request by the applicant.
4. A reference sample of the seed will need to be submitted with the application. Once added to the National List the onus would be on the maintainer to supply the National Authorities with seed, true to type, if it was required for future testing or comparison purposes. For seed potatoes, this will not be required unless the variety has not been sourced from the SASA variety collection.
5. The applicant will also be expected to provide information about the history and use of the variety or landrace, allowing its status as a conservation variety to be confirmed. This will be supported, as appropriate, by data and information available to the National Authorities from recognised organisations (e.g. AFBI, NIAB, SASA¹).
6. It is proposed that regions of origin should be drawn along national boundaries or, where appropriate, within national boundaries. The objective is to balance the desire for a

¹ AFBI (Agri-Food and Biosciences Institute), NIAB (National Institute of Agricultural Botany), SASA (Science and Advice for Scottish Agriculture)

simple system against a sufficiently accurate designation of where a particular variety or landrace has been grown historically. Regions of origin will need to be notified to the Commission and to all UK certifying authorities.

Seed production and marketing

Refers to all species covered by the Directive EXCLUDING seed potatoes. (The certification and marketing of seed potato conservation varieties will be the subject of a separate consultation exercise.)

7. It is proposed that official monitoring of seed production and marketing should be as simple as possible to minimise the burden on producers. While seed must meet the standards specified in seeds marketing regulations, except for variety purity, there is no requirement for this to be achieved through the official certification system. However, current thinking on the Directive in Article 10 (3) is that the seed must comply with the requirements of certified seed except for the minimum varietal purity and the requirements for official examination etc. The responsibility for meeting seed quality standards lies with those marketing the seed, who may choose how to achieve this. There will be no fees for crop entry and seed lot certification, but a seed testing fee of £45.80 may apply.

8. The system outlined below is proposed to meet the requirements of Chapter 3 of the Directives, concerning seed production and marketing.

Companies producing and marketing seed of conservation varieties will be registered and required to keep records in the usual way.

Each season, those wishing to market conservation varieties will be asked for information on crops intended for seed production. These details will be sufficient to locate and identify each crop if necessary.

Those wishing to market seed of conservation varieties will need to provide results of the seed testing for each seed lot together with other seed lot details such as weight.

There will be no statutory requirement for official or licensed crop inspection, or the use of official or licensed samplers. It will be the applicant's responsibility to ensure that seed meets the required quality standards. Applicants should note that the seed and crop standards in the marketing regulations apply. Applicants could choose to use licensed crop inspectors, seed samplers and seed testing stations as part of their process.

Seed testing: the testing will need to be carried out to International Standards.

Maximum lot sizes will be the same as those in existing Seed Marketing Regulations.

Producers will be required to send the sample used for seed testing purposes to SASA.

Varietal Identity and Purity will be monitored by an appropriate level of official post-control.

Seed will be packed, sealed and labelled as required by the existing Seed Marketing Regulations. The only difference is that a brown suppliers label will be used. This will be monitored through the current audit programme.

All other requirements of the Marketing Regulations will apply.

There are restrictions on the maximum quantities of conservation varieties that can be authorised for marketing in any one Member State. The limit for each conservation variety is set at either 0.3% or 0.5% (depending on species²) '*of the total seed of the same species used in that Member State in one growing season*' or sufficient seed to sow 100 ha. The limit for all conservation varieties of a particular species is 10% of total seed usage of that species. It is felt that these limits are sufficiently high so as not to have any detrimental limiting effect in practice.

SASA will collate information on seed crops and marketing in Scotland and then forward it to The Plant Variety Rights Office and Seeds Division who will compare it to total seed marketing of each species, and making the information available to the Commission and other Member States on request.

² All species limited to 0.5% except: peas, wheat, barley, maize, (potato – handled in a separate consultation), swede rape, and sunflower where the limit is 0.3%.

Commission Directive 2008/63/EC -

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:162:0013:0019:EN:PDF>

List of Consultees

- Agricultural Industries Confederation (AIC) Association - Scottish Council
- Alison Mackinnon
- British Society of Plant Breeders
- Malt Distiller's Association of Scotland
- National Farmers Union Scotland
- Orkney College
- Scotia Seeds
- Scottish Seed Trade Association
- Scots Timothy Seed Growers Association