

# **PARTIAL REGULATORY IMPACT ASSESSMENT**

## **Implementation of Conservation Varieties Directive 2008/62/EC**

### **Purpose and intended effect of the proposal**

#### Objective

1. To transpose, into national legislation, Commission Directive 2008/62/EC on the conservation of agricultural plant varieties which has a direct bearing on heritage varieties that are at risk of going out of cultivation but which continue to have a sustainable value in the preservation of genetic resources that support rural traditions and crafts.

#### Background

2. Before seeds of the main agricultural varieties can be legally marketed, the variety must be listed on a National List or on the EC Common Catalogue and the seed must have attained minimum certification standards prescribed in Community law.

3. National Listing is a legal requirement for new varieties of the main agricultural species. It seeks to ensure that no seed of a new variety can be marketed unless it is clearly different from other varieties and an improvement on varieties already being sold. To be added to a National List, a variety must be distinct, sufficiently uniform and stable (DUS) and have satisfactory value for cultivation and use (VCU). The DUS tests require a comparison between the candidate varieties and existing varieties – the so-called reference collection.

4. Seed Certification is a statutory quality assurance process which ensures that seeds are sufficiently pure, healthy, viable and correctly labelled. The marketing of seed of the main agricultural species in Scotland is regulated by the Seed Marketing Regulations. Only seeds which have been certified may be marketed. The certification process requires the following -

- A variety must be listed on a National List or in the EC Common Catalogue, in accordance with the Seeds (National Lists of Varieties) Regulations 2001 as amended. (2007)
- A certificate has been issued for which:
  - there must be a satisfactory crop result and
  - there must be a satisfactory seed test report.

5. The purpose of Commission Directive 2008/62/EC is to ensure the conservation of plant genetic resources threatened by genetic erosion. The Directive provides, by way of derogation from existing requirements (above), for less prescriptive listing and certification regimes to encourage the preservation and use of older varieties which may not match contemporary varieties in terms of yield and disease resistance but do have value in sustaining cultural and traditional practices

e.g. Bere Barley is a traditional cereal variety used by crofters in the Highlands & Islands to sustain their particular way of life.

6. 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): VCU testing is not required for conservation varieties. Acceptance will include consideration of information provided by the applicant.
- Seed Certification 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.

### **Rationale for Government Intervention**

7. If the Government did not intervene, this would result in Scotland and the UK failing to implement the EC Directives. Failure to promptly implement EC Directives would represent a breach of the UK's treaty obligations and would lead to infraction proceedings being taken against it.

### **Consultation**

#### Within Government

8. Parallel consultations are being undertaken in Northern Ireland, England and Wales. No inter-departmental consultation is required although other departments (eg Defra) may be copied in for information, as appropriate.

#### Public consultation

9. Although the legal requirement for marketing seed is well established, the rationale for any proposed changes to include a conservation variety must be explained fully to those affected. This will be achieved through a consultation of the users of the service, which will be undertaken in accordance with Scottish Government good practice.

### Options

10. **Option 1** Do nothing.
- Option 2** Proportionate implementation of the Directive on a full cost recovery basis.
- Option 3** Proportionate implementation of the Directive without cost recovery.

### Costs & Benefits

#### Sectors and Groups Affected

11. Based on current knowledge, it is anticipated that there may be only be 1 application from Scotland and applications from the rest of the UK are not expected to exceed 5. The application in Scotland may relate to bere barley from Orkney and an estimated 3 applications for thatching wheat varieties in England and Wales. These figures have been provided by technical experts from each Certifying Authorities who are in close liaison with potential applicants. It is expected that these applications will be made by newly registered enterprises in the first year.

12. Current national listing and seed certification fee levels for contemporary varieties were agreed by Ministers and implemented earlier this year on the basis that fees should recover the costs of providing the related service, without cross-subsidisation or deterring uptake of the service. It is proposed that the same approach is applied to cost recovery for conservation varieties where appropriate:

#### National Listing

- Application fee (to cover registration, assessment and processing of applications) - **£175 is proposed**. The fee for contemporary varieties is currently £365 but this includes a VCU management fee of around £190 which is not required for conservation varieties). The applicant would also be responsible for any costs to provide the variety description.
- DUS testing fee – not applicable (saving up to £1,200 over two years)

#### Seed Certification

- The Directive releases Member States from the requirement for official examinations for conservation seed meaning that the current fees for contemporary seed crops (£4.25 per ha for official inspection and £30.55 per seed lot for official examination) will not be charged.
- In Scotland, official control will be exercised by a combination of existing certification requirements and retrospectively through existing enforcement measures. This will include a 5 % post-control check for varietal identity and purity (in practice expected to be one additional post control plot per year as applications are not expected to

exceed 5 per year) and 1 extra enforcement visit per year to monitor that seed quality meets the Directive minimum requirements and appropriate records are being maintained.

- There is also likely to be a cost for seed testing each seed lot to ensure that it meets the appropriate standards. These test can be carried out at the Official Seed Testing Station for Scotland (OSTS), or at one of the Licensed Seed Testing Stations (LSTS) that are available. The current fee at the OSTS is £45.80 for a EC minimum Standards test (Purity germination, weed search and moisture)
- The enforcement programme follows risk based visits and sampling arranged across all registered companies. Newly registered enterprises marketing conservation varieties will form part of this overall programme. An audit visit to such an enterprise would only take a couple of hours at the most (sampling about 1/2 an hour). RPID/SASA would fit this in with other enforcement activities in the area to make the most efficient use of their time. The cost would be negligible and would require disproportionate effort on the part of Government to set fees to recover this small amount.

### Costs & Benefits

13. **Option 1** is discounted because it would:

- invite infraction proceedings against the UK
- would deny UK applicants the opportunity to list and market heritage varieties
- could contribute to genetic erosion and,
- could draw significant criticism from environmental lobby groups and the public.

### Benefits

14. **Option 2.** The Directive's provisions will not impact on breeders and producers of contemporary varieties. This legislation is, therefore, only likely to attract a very limited number of applications.

15. **Option 3** As option 2.

### Costs

16. **Option 2** is the preferred option because it would ensure compliance with Community and Treasury requirements in a cost effective and proportionate way without going beyond what is prescribed in the directive.

17. It is proposed that fees, where applicable, would be set on the same basis as those for contemporary varieties but the overall cost of listing and marketing conservation varieties would be significantly lower because of reduced DUS and VCU requirements, which together make up the greater part of overall listing costs, and release from the requirement for official inspections.

18. **Option 3** would offend Government Finance guidelines on cost recovery and could draw criticism from breeders and producers of conventional varieties who currently have to pay for the cost of the service provided by Scottish Government.

### **Other costs**

19. There will be no additional costs to citizens, the environment or Government

### **Small/Micro Firms Impact Test**

20. The Directive's provisions are optional in as much as no seed producers are compelled to make applications for listing conservation varieties or to market them. This Directive simply facilitates the legal marketing of such seed. Small firms will not be adversely affected by this legislation. In fact this legislation will assist small businesses with a niche market e.g. Bere Barley seed production in Orkney for local food and malting uses by allowing them to legally market their seed.

### **Legal Aid**

21. This Directive does not introduce new criminal sanctions or civil penalties; therefore there are no implications for legal aid.

### **“Test Run” of Business Forms**

22. No new business forms are being introduced.

### **Competition Assessment**

23. The Competition Filter has been applied and the conclusion, that there is no significant risk of impact from competition. (**See Appendix 2**) A detailed assessment has therefore not been prepared.

### **Enforcement, sanctions and monitoring**

24. Enforcement will be exercised through the existing enforcement regime for contemporary varieties and will take the form of routine record auditing and sampling of a proportion of seed lots. It will be reviewed annually until the required review at Community level in 2011.

**COMPETITION FILTER TEST QUESTIONS**

<b>Question</b>	<b>Answer Yes/No</b>
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No