

## EXECUTIVE NOTE

### THE SEED (SCOTLAND) (AMENDMENTS FOR CONSERVATION VARIETIES) REGULATIONS 2009 SSI 2009/223

1. The above instrument was made in exercise of the powers conferred by sections 16(1), (1A), (2), (3), (4), (5), (5A) and 36 of the Plant Varieties and Seeds Act 1964<sup>a</sup> and in accordance with section 16(1) of that Act they have consulted with representatives of such interests as appears to them to be concerned. The instrument is subject to negative resolution procedure.

#### Policy Objectives

2. The principal purpose of the instrument is to amend the Cereal Seed (Scotland) Regulations 2005 (S.S.I. 2005/328), the Fodder Plant Seed (Scotland) Regulations 2005 (S.S.I. 2005/329) and the Oil and Fibre Plant Seed (Scotland) Regulations 2004 (S.S.I. 2004/317) to implement, in Scotland, Commission Directive 2008/62/EC (O.J. No. L 162, 21.06.2008, p.13). Commission Directive 2008/62/EC provides for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for the marketing of seed of those landraces and varieties.

#### Background

3. 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. 'Conservation Variety' means the landraces or varieties which are naturally adapted to local and regional conditions and threatened by genetic erosion.

4. 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 (Implementation is covered in the Seeds (National List of Varieties)(Amendments) Regulations 2009 drafted by DEFRA).
- Value for cultivation and use (VCU): **Official VCU testing is not required**. Acceptance will include consideration of information provided by the applicant (Implementation is covered in the Seeds (National List of Varieties)(Amendments) Regulations 2009 drafted by DEFRA)..

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<sup>a</sup> Section 16 was amended by the European Communities Act 1972 (c.68), section 4(1) and Schedule 4, paragraph 5(1) and (2). See section 38(1) for the definition of "the Ministers". The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46)

- Seed marketing standards: For certification of Conservation Varieties, seed and crop standards set out in the Seed Marketing Regulations must still be complied with, with the exception of the requirements of minimum varietal purity and official examination requirements... Further the seed of a Conservation Variety shall only be marketed if it is produced and marketed in its approved region of origin.

5. It is proposed that the “region of origin” should be drawn as simply as possible but appropriate for the variety or landrace. Scottish Ministers may approve additional regions of origin where special circumstances are met.

6. The Directive 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.

7. 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.

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

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

10. 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.

## **Consultation**

11. As only one conservation species, Bere barley was identified as a possible candidate to be listed as a Conservation variety, our consultation was tailored to direct people who might be affected. 9 documents were despatched by post to key stakeholders and a copy of the consultation was placed on the Scottish Government Website.

12. The following bodies have been consulted during the preparation of the instrument –

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

- Orkney College
- Glen Ord Distillery
- Scotia Seeds

No responses to the consultation exercise were received.

### **Financial Effects**

13. 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.

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

15. A Regulatory Impact Assessment has been prepared.

## **FINAL REGULATORY IMPACT ASSESSMENT**

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

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

##### Objective

16. To transpose, into national legislation, Commission Directive 2008/62/EC on the conservation and sustainable use of agricultural landraces and varieties adapted to local growing conditions. These traditional varieties are at risk of going out of cultivation but are recognised as having a value in sustainable farming while supporting rural traditions and crafts.

##### Background

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

18. 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 new candidate varieties and existing registered varieties – the so-called “reference collection”.

19. 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 registered 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 inspection; and,
  - there must be a satisfactory seed test report.

20. 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 requirements to encourage the conservation 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.

21. The main derogations are in respect of:

- Distinctness, uniformity and stability (DUS) criteria: An official test for 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**

22. 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

23. Parallel consultations have been carried out in Northern Ireland, England and Wales. No inter-departmental consultation was required although other departments, e.g. the Department for Environment, Food and Rural Affairs (Defra), were copied in for information.

#### Public consultation

24. Although the legal requirement for marketing seed is well established, the rationale for any proposed changes to include a conservation variety had to be explained fully to those affected. We hope this was achieved through the consultation, which was undertaken in accordance with Scottish Government good practice.

25. As only one conservation variety, Bere barley was identified in Scotland as a possible candidate to be registered as a Conservation Variety, our consultation was tailored directly to those people who might be affected.

- Scots Timothy Seed Growers Association, Perth
- National Farmers Union Scotland, Newbridge
- Malt Distiller's Association of Scotland, Elgin
- Scottish Seed Trade Association, Perth
- Agricultural Industries Confederation (AIC), Association - Scottish Council, South Lanarkshire.
- Orkney College, Kirkwall
- Glen Ord Distillery, Muir of Ord
- Scotia Seeds, Angus

- British Society of Plant Breeders, Ely

26. Documents were despatched by post to 9 key stakeholders and a copy of the consultation was placed on the Scottish Government website.

27. No responses to the consultation documents were received.

### **Options for consideration in respect of Council Directive 2008/62**

28. **Option 1** Do nothing

Doing nothing would invite infraction proceedings against the UK. It would also 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.

**Option 2** Proportionate implementation of the Directive on a full cost recovery basis

29. The Directive's provisions will not impact on producers of contemporary varieties. This legislation is, therefore, only likely to attract a very limited number of applications. This option would ensure compliance with Community and Treasury requirements in a cost effective and proportionate way without going beyond what is prescribed in the Directive. 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 examinations. This is the preferred option.

**Option 3** Proportionate implementation of the Directive without cost recovery.

30. As with Option 2, the Directive's provisions will not impact on producers of contemporary varieties. This legislation is, therefore, only likely to attract a very limited number of applications. However, this option 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.

## **Costs & Benefits**

### Sectors and Groups Affected

31. Based on current knowledge, it is anticipated that there may only be 1 application from Scotland. 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 of the 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.

32. 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. If a description already exists and the variety only requires to be checked off against the description then a charge of £50 will be made. However, £100 will be charged if a variety requires a completely new description to be produced.
- 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 to enter a crop for inspection, £14.25 per hectare for a crop inspection and £30.55 per seed lot to issue a certificate/post control plot) 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 tests can be carried out at the Official Seed Testing Station for Scotland (OSTS), or at one of the Licensed Seed Testing Stations (LSTS). 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. There are no charges for enforcement activities.

## **Costs & Benefits**

33. As previously mentioned, the Directive's provisions will not impact on producers of contemporary varieties. This legislation is, therefore, only likely to attract a very limited number of applications. Option 2 would ensure compliance with Community and Treasury requirements in a cost effective and proportionate way without going beyond what is prescribed in the Directive. It is proposed that fees-

- Seed testing - £46 per 30 tonne seed lot
- Labels - £100 per 1000 labels

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 examinations.

## **Other costs**

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

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

35. 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**

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

## **“Test Run” of Business Forms**

37. No new business forms are being introduced.

## **Competition Assessment**

38. The Competition Filter has been applied and the conclusion was that there is no significant risk of impact on competition (**see Appendix 2**). A detailed assessment has therefore not been prepared.

## **Enforcement, sanctions and monitoring**

39. 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.



## **Post implementation review**

40. The effect of these Regulations will be continually monitored by the UK regulatory authorities and any issues or difficulties identified with implementation will be raised with the Commission and other member states on 31 December 2011

## **Summary and recommendation**

41. This SSI will transpose Council Directive 2008/62 to include conservation varieties in three of the five seed marketing regulations (cereals, oil and fibre and fodder.) Vegetable seed is not applicable and a consultation of beet seeds is scheduled for this summer and 2008/62 will be transposed then.

42. This Regulatory Impact Assessment estimates that 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.

In view of the above, it is recommended that the SSI is introduced into Scottish law.

## **Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by

**Cabinet Secretary for Rural Affairs and the Environment  
Scottish Executive**

**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