Department
for Environment
Food & Rural Affairs

Post Implementation Review (PIR) and Evidence Analysis

The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017

June 2022

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Introduction

This document provides an analysis of the evidence collected to conduct the Post Implementation Review (PIR) of The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017. The Regulations establish minimum standards and a uniform certification scheme to ensure that fruit plant and propagating material produced and marketed meet certain quality standards.

Background

These Regulations provided the legislative basis for the compliance regime for implementing measures made under the following EU legislation - Commission Implementing Directives 2014/96/EU, 2014/98/EU and 2014/97/EU, and Council Directive 2008/90/EC on the marketing of fruit plant and propagating material. These Regulations were introduced to revoke and replace the Marketing of Fruit Plant Material Regulations 2010 (S.I. 2010/2079).

The Regulations are applied in England through (1) minimum requirements and the use of supplier documents for 'CAC' (Conformitas Agraria Communitatis) grade material and (2) the Fruit Propagation Certification Scheme (FPCS) for grades 'basic', 'pre-basic' and 'certified'. All fruit plant and propagating material marketed in England must meet the minimum requirements. Certification is optional, it requires higher standards to be met and is therefore an indicator of higher quality. If propagators do want to market 'basic', 'pre-basic' or 'certified' material, they must achieve this through the FPCS.

The FPCS aims to ensure that fruit plant and propagating material is healthy, true to variety and free from mixtures. In England, the FPCS is administered by the Nuclear Stock Association (NSA) on behalf of the Department for Environment, Food and Rural Affairs (Defra), with oversight provided by the Animal and Plant Health Agency (APHA). The FPCS provides classification of all certified fruit plant and propagating material produced and marketed in England and Wales, depending on the class of the parent seed, and the health of the crop.

The grade 'CAC' is the minimum category for sale of fruit plant material, sale of this grade requires propagators to meet minimum requirements set out in legislation and use supplier documents when selling stocks.

Summary of the Regulation's objectives

The overriding objective of the Regulations is to provide assurance that the quality of marketed fruit plant and propagating material delivered to buyers and growers meet specified minimum health and quality standards. This is achieved through the setting of

minimum requirements for marketing and the establishment of a uniform certification scheme, the FPCS.

Scope of the PIR

The Post Implementation Review (PIR) has been conducted in line with BEIS guidance on low impact measures and is a statutory requirement written into The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017. The first review period is the period of five years beginning the date on which these regulations come into force. Before the end of each review period, the Secretary of State must carry out a review of these regulations, set out the conclusions of the review in a report and publish the report.

The purpose of this PIR is to review The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017, to assess the effectiveness of the regulation following implementation, to evaluate the extent to which the regulation has achieved its original objectives, if the regulation objectives are still valid, if the regulation is still required and remains the best option for achieving those objectives, and if the regulation can be improved to reduce the burden on business.

Research Analysis

The evidence for this PIR was collected by Defra from the NSA that administers the FPCS and from APHA that provides oversight of the FPCS and adherence to the minimum marketing standards.

The following research questions were identified to assess the effectiveness of the Regulations:

1. Are the objectives of the regulation appropriate?
2. Has a certification scheme been established and applied across the industry in England?
3. Have minimum criteria for marketing been established and applied across the industry in England?
4. Are the requirements of the regulations successfully applied through the Fruit Propagation Certification Scheme (FPCS)?
5. Are the requirements of the regulations successfully applied through the minimum marketing criteria?
6. Does the industry have a common understanding of the requirements of the Regulations (applied through the minimum marketing criteria)?
7. Does the industry have a common understanding of the requirements of the Regulations (applied through the FPCS)?
8. Are the quality standards applied by the FPCS appropriate?
9. Are the quality standards applied by the minimum CAC requirements appropriate?
10. Can the objectives of the regulation be achieved in a less burdensome way?
11. Were the cost savings expected in the Regulatory Triage Assessment realised by businesses?

APHA holds some of the data on the implementation of the Regulation, however due to the nature of the minimum requirements, the data is not in a format that can be used for the PIR. Businesses must register with APHA to sell CAC grade (minimum grade) produce so inspections can be held, they are required to show proof of adherence to the minimum requirements during these visits but not otherwise expected to provide information on the amount of material propagated to APHA. Data collected from inspections cannot be used for this PIR as it cannot be filtered by the type of material inspected.

The NSA administers the FPCS on behalf of Defra under contract with APHA. Limited data is collected on the scheme and the format of this was of limited use for the purposes of the PIR analysis. Information is collected on the number of applications for which the NSA provided administrative support and the number of inspections; however, each application and inspection covers a different amount of propagating material, so any trends do not necessarily correlate with the amount of propagating material being grown.

The overarching questions have been addressed through feedback surveys from stakeholders in England who have a direct experience of propagating fruit plant and propagating material in line with the Regulations. The survey was sent to all 19 applicants of the FPCS, the larger propagators of the minimum grade material and stakeholder representative groups and altogether 3 responses were received. The survey was kept open for a month and reminders of the deadline were sent out. All the propagators of minimum grade material could not be contacted as there is not a central repository of fruit propagators, the names and email addresses were instead provided by APHA inspectors based on their inspections.

As a result of the low response rate, definitive conclusions cannot be drawn from the survey responses. However, as one of the responses was from an individual who leads a membership organisation of fruit propagators, the views may be representative of the wider stakeholder group, though further research would be necessary to confirm this.

Research questions and answers (from data gathered and responses to the stakeholder survey):

Are the objectives of the regulation appropriate?

All three respondents stated the objectives of the Regulations are appropriate.

Has a certification scheme been established and applied across the industry in England?

A certification scheme has been established in England it is administered by the NSA and inspections are carried out by APHA. From data provided by the NSA, Table 1a shows the number of certification applications submitted and table 1b shows the number of inspections carried out. These data show a certification scheme has been established as applications were submitted for a range of species and associated inspections were held.

It is difficult to draw firm conclusions from these data about the application of the certification scheme across England as the NSA and APHA could not provide data on the proportion of certified material relative to the overall amount of material propagated or the success rate of the applications submitted. Investigating options for improving the data available for future analysis will be recommended as part of this review.

Table 1a shows a decrease in the number of FPCS applications across most genera/species since 2018, with a total percentage decrease of 55.7% from 2018-2021. Table 1b shows a decrease in the number of growing season inspections across most species since 2017, with a total percentage decrease of 33.5% from 2017-2021.

It is difficult to draw conclusions about the establishment and application of the certification scheme from these data as each application could relate to a different amount of propagating material. Comparison data from Scotland (Tables 1c and 1d) also show decreases, this could be driven by reduced demand for certification rather than issues with the establishment or application of the certification scheme.

Table 1c shows the number of plants grown through micropropagation (in-vitro) in Scotland decreased across all genera/species, with a total percentage decrease of 96.1% from 2017-2021.Table 1d shows the number of field-grown raspberries grown by area in Scotland decreased at the basic 1 grade by 100%, with no stocks since 2019 and there was no material grown at the basic 2 grade. The area of raspberries grown at the certified grade increased from 0.5ha to 2.3ha between 2017 and 2020 while the number of stocks increased from 7 to 16.

Have minimum criteria for marketing been established and applied across the industry in England?

APHA have confirmed that based on audits, minimum criteria for CAC grade material have been established and applied across industry in England.

Are the requirements of the Regulations successfully applied through the Fruit Propagation Certification Scheme (FPCS)?

The survey results provide some indication that the requirements of the Regulations are successfully applied through the FPCS, all respondents to the survey stated they agreed the FPCS provided assurance on the quality of fruit plant and propagating material. However, these results should be treated with caution as they are based on only three stakeholder responses.

Are the requirements of the Regulations successfully applied through the minimum marketing criteria?

There were mixed views on how successfully the minimum criteria applied the Regulations. One respondent did not answer this question, one respondent agreed the minimum criteria did provide assurance to buyers and one respondent felt the standards

were too low to provide sufficient assurance of quality. The difference of opinion on the level of quality assurance provided by the minimum criteria may be due to the minimum criteria requiring less stringent quality standards to be met than the certification scheme and stakeholders having different views on what is considered sufficient assurance of quality. This feedback on the minimum criteria will feed into future work to be explored further.

Are the quality standards applied by the FPCS appropriate?

All three respondents agreed that the quality standards of the minimum requirements and the FPCS were appropriate.

Are the quality standards applied by the minimum CAC requirements appropriate?

The two respondents who answered this question both agreed the minimum CAC requirements were appropriate. The respondent who suggested minimum requirements could be made more effective by raising the standards in response to a previous question, acknowledged under their response to this question that the minimum standards provide a "*'base' level for plant health and at least provides traceability and a level of regulation"*.

Does the industry have a common understanding of the requirements of the Regulations (applied through the FPCS)?

Two respondents agreed that their business had a common understanding of requirements of the Regulations related to the FPCS. The respondent from the membership organisation agreed the industry had a common understanding of the FPCS requirements.

One respondent provided additional feedback that "*further education of fruit growers is required* because *most fruit growers rightly assume that the plants they buy will be healthy, but they have no real understanding about what goes on in the background to make this possible"*.

Does the industry have a common understanding of the requirements of the Regulations (applied through the minimum marketing criteria)?

One respondent agreed they had a common understanding of the minimum marketing criteria while another stated that the industry did not have a common understanding of the minimum marketing criteria, stating "*better communication and publicity"* were needed but *"encouraging greater use of the FPCS would be better"*. The respondent also added that the minimum requirements "*could be made more effective by raising the standards"*. This respondent completed the survey on behalf of their membership organisation, all the members of which use the FPCS which require a higher standard of quality to be met. This feedback on the minimum criteria will feed into future work to be explored further.

Can the objectives of the regulation be achieved in a less burdensome way?

None of the respondents had experienced or were aware of any unexpected consequences or costs incurred because of the Regulations.

One respondent suggested reducing the isolation distances would provide more flexibility for industry but acknowledged isolation distances were an important part of providing health and quality assurance.

Were the cost savings expected in the Regulatory Triage Assessment realised by businesses?

The only respondent to answer this question selected the ‘don’t know’ option when asked about any cost savings associated with the transition from the voluntary to the statutory certification scheme.

Conclusion and next steps

Overall, feedback suggests that The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 are necessary to provide assurance on the quality of marketed material and therefore achieve their overarching objectives.

Though based on a limited number of responses, the survey results indicate that the FPCS is effective in achieving the objectives of the regulation. There was feedback that the objectives of the regulation may be achieved in a less burdensome way if the required isolation distances were reduced.

Some feedback suggests the minimum criteria could be more effective in achieving the objectives of the regulation by raising the standards. Further exploration is required to determine whether it would be appropriate to raise these standards and what the impact would be of doing so; any options for raising standards will be subject to cost benefit analysis so an informed decision can be made.

The feedback from this review will feed into the wider strategy work ongoing in the Plant Varieties and Seeds team as further stakeholder input will be required. Restarting the annual liaison group suggested by one of the survey respondents could be a way to gather this input.

As a result of this PIR, Defra proposes that The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 are still valid and relevant but recommends that the stakeholder liaison group is restarted to gather views on the regulation to feed into the longer-term strategy work being undertaken. Defra also proposes that discussions are held between APHA and the NSA to request FPCS data is collected in a format better suited to provide insight into the uptake of the scheme, such as number of plants or area of propagating material. In addition to this, investigation into whether data about the

proportion of certified material relative to all fruit plant and propagated material could be gathered would be beneficial to future policy analysis.

Table 1a. Number of Fruit Propagation Certification Scheme (FPCS) applications by genera/species (England). Data from Nuclear Stock Association (NSA).

Genera/species	Number of FPCS Applications			
	2018-2019	2019-2020	2020-2021	% Change
Fragaria	120	32	45	-62.5
Rubus	158	51	66	-58.2
Ribes	43	18	22	-48.8
Vaccinium	0	0	0	0.0
Top fruit	6	3	3	-50.0
Total	327	113	145	-55.7

Table 1b. Number of Fruit Propagation Certification Scheme (FPCS) growing season inspections by genera/species (England) . Data from Nuclear Stock Association (NSA).

Genera/species	Number of FPCS Growing Season Inspections				
	2017-2018	2018-2019	2019-2020	2020-2021	% Change
Fragaria	116	69	84	62	-46.6
Rubus	117	98	94	76	-35.0
Ribes	21	20	19	22	4.8
Vaccinium	0	0	0	0	0.0
Top fruit	3	4	2	2	-33.3
Total	257	191	208	171	-33.5

Table 1c. Number of plants grown through micropropagation (in-vitro) at pre-basic grade (Scotland). Data from Science & Advice for Scottish Agriculture (SASA).

Genera/species	Number of plants grown through micropropagation (in-vitro) at pre-basic grade					
	2017	2018	2019	2020	2021	% Change
Rubus (blackberry)	20,763	0	0	0	0	-100
Rubus (raspberry)	3548	17984	3463	308	0	-100
Fragaria (strawberry)	250166	411265	145274	57570	10650	-95.7
Total	274,477	429,249	148,737	57,878	10,650	-96.1

Table 1d. Number of field-grown raspberries grown by area and number of stocks (Scotland). Data from Science & Advice for Scottish Agriculture (SASA).

Grade	Number of field-grown raspberries grown by area and number of stocks									
Year	2017		2018		2019		2020		% Change	
	Stocks	Area (Ha)	Stocks	Area (Ha)	Stocks	Area (Ha)	Stocks	Area (Ha)	Stocks	Area (Ha)
Basic 1	6	0.4	6	0.4	0	0	0	0	-100	-100
Basic 2	0	0	0	0	0.0	0	0	0	0	0
Certified	7	0.50	7	0.63	13	1.58	16	2.28	128.6	356
Total	13	0.9	13	1.03	13	1.58	16	2.28	23.1	153.3

Post Implementation Review (PIR)

Title: The Marketing of Fruit Plant and Propagating	Post Implementation Review
PIR No: 595	**Date: 01/06/2022**
Original IA/RPC No: N/A	**Type of regulation: Domestic**
Lead department or agency: Defra	**Type of review: Statutory**
Other departments or agencies:	**Date measure came into force:**
Animal and Plant Health Agency	**01/06/2017**
	Recommendation: Keep
Contact for enquiries: **Defra-Plant-Varieties-and-Seeds@defra.gov.uk**	**RPC Opinion: N/A**

1. What were the policy objectives of the measure?

To provide assurance on the quality of marketed material and that Fruit Plant and Propagating Material delivered to buyers and growers meet specified minimum health and quality standards through the setting of minimum requirements for marketing and the establishment of a uniform certification scheme (FPCS – Fruit Propagation Certification Scheme).

2. What evidence has informed the PIR?

Data from the Nuclear Stock Association, the company that administers the Fruit Propagation Certification Scheme (FPCS) on the number of applications received. Stakeholder feedback from a survey sent out by Defra to propagators who grow at the minimum grade and FPCS applicants. The data held by APHA and NSA was insufficient to draw definitive conclusions from and there were only 3 response to the survey, from a small stakeholder group.

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

The available data provides some indication that the policy objectives have been in achieved but there are areas of improvement that need to be explored further, particularly the options for raising the minimum criteria.

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: Jake Morris (G7 Social Researcher) Date: 24/05/2022
Signed: Nancy Race (G6 Economist) Date: 07/06/2022
Signed: Lord Benyon, Minister Date: 28/06/2022

Further information sheet

4. What were the original assumptions? (Maximum 5 lines)
The legislation was expected to have limited impact because participation in the certification scheme was voluntary, and the minimum standards were not changed. There was already a similar voluntary certification system in place, the only additional burden on businesses was related to the labelling and sealing of marketed material if businesses wanted to participate in the certification scheme, the costs of which were outweighed by savings made under the statutory rules (due to fewer sampling, testing and inspections required).
5. Were there any unintended consequences? (Maximum 5 lines)
No
6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)
One respondent suggested reduced isolation distances could make adhering to the regulations less burdensome, but this will require further stakeholder input and impact assessment.
7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)
The UK approach is in line with similar measures in EU members states because the directive from which this legislation was transposed has not changed.