

EXECUTIVE NOTE
THE VEGETABLE SEEDS AMENDMENT (SCOTLAND) REGULATIONS 2010
S.S.I 2010/425

1. The above instrument was made in exercise of the powers conferred by sections 16(1), (1A), (2), (3), (4) and (5), 17(1), (2) (3) and (4) and 36 of the Plant Varieties and Seeds Act 1964^a. The instrument is subject to negative resolution procedure.

Consultation

In accordance with section 16(1) of the Plant Varieties and Seeds Act 1964, the Scottish Government consulted with key stakeholders from the seed industry and a copy of the consultation was placed on the Government website.

No responses to the consultation exercise were received.

Policy Objectives

2. The purpose of the instrument is to amend the Vegetable Seed Regulations 1993 (S.I. 1993/2008) (“the 1993 Regulations”), to implement, in Scotland, Commission Directive 2009/145/EC (O.J. L 312, 27.11.2009, p.44.). This Directive provides certain derogations to allow acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions which are threatened by genetic erosion and of vegetable varieties which have no intrinsic value for commercial crop production but which have been developed for growing under particular conditions and for the marketing of seed of those landraces and varieties.

Background

3. The overall aim of the Directive is the sustainable use of plant genetic resources, for traditionally grown varieties and landraces and for varieties of no intrinsic value for crop production, but which have been developed for growing under particular conditions. In practice, this means encouraging the marketing of conservation (heritage) varieties and of varieties intended specifically for amateur gardeners (amateur varieties). In order to facilitate and promote the use of conservation and amateur varieties of vegetables, the Directive provides limited derogations from general acceptance and marketing requirements i.e. it allows for less rigorous listing and marketing regimes for these sorts of varieties.

4. The main derogations are in respect of:

- **National Listing:** removing the requirement for official testing for distinctness, uniformity and stability (DUS). Listing will be based mainly on a limited morphological description of the variety, provided by the applicant. Marketed seed must be of ‘sufficient uniformity’ and meet the other requirements for Standard Seed of vegetables given in the respective seed marketing regulations.

^a 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)

European legislation requires that each Member State provides a National List showing which varieties of the main agricultural and vegetable species have been approved and are eligible for marketing. A UK SI governs the UK's National List system ie the Seeds (National Lists of Varieties) Regulations 2001. Defra will prepare an amending SI to be laid in Westminster, using section 57(1) of the Scotland Act 1998, which will cover the UK National Listing requirements for Conservation and Amateur varieties.

- **Seed marketing standards:** seed and crop standards are the same as those set out in the Seed Marketing Regulations for either Certified Seed or Standard Seed, but will not be applied through the official certification scheme, however, the seed must have sufficient varietal purity and it will be monitored by official post control procedures.

3. The Directive limits maintenance and marketing of conservation varieties to a defined region of origin, although in certain circumstances additional areas of seed production may be approved by Scottish Government. This is to preserve the genetic identity of traditional varieties in their region of adaptation. It is proposed that the region of origin should be drawn as simply as possible, which in most cases will mean the UK. Conservation varieties will need a registered maintainer.

4. There is no region of origin limitation for amateur varieties, and no requirement for a maintainer. Once on the Common Catalogue, an amateur variety will be marketable throughout the EU.

5. To be eligible as a conservation or amateur variety, the variety must not be listed on the Common Catalogue or have been deleted from the Common Catalogue within the last two years, and it must not be the subject of European or national plant breeders' rights or have an application for rights pending.

6. The Directive restricts the maximum number of hectares used to produce seed of any one conservation variety, to between 10 and 20 hectares depending on the species. It is not anticipated that these limits will cause any difficulties. For amateur varieties, limits are applied through the maximum net weight per package of 5 to 250 grams, depending on the species. The area limits and packet sizes are given in Annexes I and II of the Directive.

7. Suppliers will be required to keep records of sales of conservation and amateur varieties and make these available to Rural Payments and Inspections Directorate (RPID) if requested.

8. Monitoring will be carried out by RPID 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 2013.

10. We are not aware of any breeders of vegetable seed existing in Scotland, and the provisions of this Directive are not expected to impact on the seed industry. Therefore, no Regulatory Impact Assessment has been prepared.

Financial Effects

5. It is proposed that fees, where applicable, would be set on the same basis as those for contemporary varieties but the overall cost of marketing conservation varieties would be significantly lower as there is no requirement for official inspections.
6. There will be no additional costs to citizens, the environment or Government.
7. A Business Regulatory Impact Assessment has not been prepared as there are no large scale retail sales of vegetable seeds here in Scotland.

Consolidation

These Regulations make a further amendment to the 1993 Regulations. The Scottish Government is in the process of consolidating the 1993 Regulations as amended. The consolidation is, however, a very large exercise and it was not possible to finish it by the date the Directive was due for transposition ie 31 December 2010. It was therefore decided that a further amendment to the 1993 Regulations was the most suitable way to proceed in order to meet the deadline for transposition of the Directive in the meantime.

Scottish Executive: Rural & Environment Directorate

26 November 2009

Transposition Note

Commission Directive 2009/145/EC

Article	Objective	Transposition
1 and 2	Sets out scope of Directive and definitions	Regulation 3
3-9	Sets out criteria for acceptance of conservation varieties by Member States onto their national catalogues	These will be transposed by the Seeds (National Lists of Varieties) (Amendment No.2) Regulations 2010 made under section 57(1) of the Scotland Act
10	Defines the characteristics of “Certified Seed of a Conservation Variety”	Regulation 3(2)(a)
11	Defines the characteristics of “Standard Seed of a Conservation Variety”	Regulation 3(2)(c)
12(1) and (2)	Makes provision that seed testing is to be carried out and the testing is to be in accordance with international methods	Regulations 3(2)(a) and (c) and 12(b)
12(3)	Prescribes lot and sample weight for tests	Regulation 3(1)(d) and 7
13	Provides that seed of a conservation variety can only be produced in its region of origin or an additional region	Regulations 3(1) (a) and 3(1)(d) , 3(2)(a) and 3(2)(c)
14	Provides that marketing of seed of a conservation variety can only take place in region of origin or additional region	Regulation 5 (new 5A(4))
15	Provides that Member State to ensure that quantity of conservation variety seed marketed does not exceed limits set out in Annex 1 of Directive	Administrative implementation
16	Producers to provide information to Member States about seed production and Member States to allocate quotas for marketing purposes to producers if necessary	Regulation 5 (new 5A(5) to (8))
17	Provisions on sealing of	Regulation 8

	packages	
18	Provisions on labelling	Regulation 9
19	Provides for official post control of seed to verify varietal identity and purity	Regulation 3(1)(d), 5 (new 5A(1), (2) and (3)), regulation 6 (2) (new 6(3)(aa)), regulation 10(e)(new Schedule 2 paragraph 3A(b))
20	Official monitoring to take place	Regulation 6 and Part II of Schedule 1 of The Seed (Registration, Licensing and Enforcement)(S) Regulations 2006, provides for monitoring to take place.
21-25	Sets out criteria for acceptance of amateur varieties by Member States onto their national catalogues	These will be transposed by the Seeds (National Lists of Varieties) (Amendment No.2) Regulations 2010 made under section 57(1) of the Scotland Act
26	Defines characteristics that seed of an amateur variety must meet	Regulation 3(2)(c)
27	Makes provision that seed testing is to be carried out and the testing is to be in accordance with international methods	Regulation 3(2)(c) and regulation 12(b)
28	Seed of an amateur variety only to be marketed in small packages as set out in Annex II of Directive	Regulation 5 (new 5B (4))
29	Provisions on sealing of packages	Regulation 8
30	Provisions on labelling	Regulation 9
31	Provides for official post control of seed to verify varietal identity and purity	Regulation 3 (2)(c) and regulation 5 (new 5B(1), (2) and (3))
32	Official monitoring to take place	Regulation 6 and Part II of Schedule 1 of The Seed (Registration, Licensing and Enforcement)(S) Regulations 2006, provides for monitoring to take place.
33	Reporting requirements (suppliers and Member States)	Regulation 6 and Part II of Schedule 1 of the Seed Registration, Licensing and Enforcement (Scotland) Regulations 2006/313
34	Obligation on Member States	Administrative

	to notify organisations	implementation
35	Evaluation by Commission	Not transposed
36-38	Final provision – transposition deadline, entry into force etc.	Not transposed