

Summary: Intervention & Options

Department /Agency: Food & Environment Research Agency	Title: Impact Assessment of Implementation of Conservation Varieties Directive 2008/62/EC	
Stage: Full IA Consult.	Version: 1	Date: 22 April 2009
Related Publications: Commission Directive 2008/62/EC http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:162:0013:0019:EN:PDF		

Available to view or download at:

<http://www.defra.gov.uk/corporate/consult/conservation-varieties/index.htm>

Contact for enquiries: Fiona Hopkins

Telephone: 01223 342375

What is the problem under consideration? Why is government intervention necessary?

To Implement, by 30 June 2009, Commission Directive 2008/62/EC which requires Member States to provide a framework for the national listing and marketing of conservation varieties of agricultural plant species threatened with genetic erosion. The listing provisions will be implemented jointly on a UK basis by amendment to the National List Regulations. The marketing provisions will be implemented separately, but in parallel, by amendment to the seed marketing regulations in England, Scotland, N. Ireland and Wales.

What are the policy objectives and the intended effects?

To promote conservation of old varieties by allowing less prescriptive listing and marketing regimes than those currently applied to commercial varieties. The specific objectives are to achieve this aim in the most proportionate way, while recovering appropriate costs of the service.

The intended effects will be to facilitate the preservation and marketing of, for example, old long straw wheat varieties that have fallen out of commercial favour, because they don't produce high yielding crops but do, nevertheless, provide ideal straw for sustaining traditional thatching methods.

What policy options have been considered? Please justify any preferred option.

1. Do nothing. 2. Implement Directive with appropriate cost recovery. 3. Implement Directive with no cost recovery.

Option 1 would invite infraction proceedings and criticism from environmentalists and the public.

Option 2 is the preferred option because it complies with Community and Treasury requirements. The legislation is only likely to attract a very limited number of applications and at a much lower cost than currently required to list a commercial variety.

Option 3 would comply with Community legislation but would require Government subsidisation.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Defra will review the policy on an annual basis. The Directive also requires a formal review by the Commission by 31 December 2011.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option:
Preferred Option 2

Description: Implement Directive with full cost recovery.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' £175 National Listing Application fee to cover assessing application and registering variety by PVSD staff. Estimated £60 incurred by applicant to cover providing a description, seed sample submission and minor administration costs.	
	One-off (Transition)	Yrs		
	£ 235x25=£5,875	1		
	Average Annual Cost (excluding one-off)			
	£ N/A		Total Cost (PV)	£ 235x25 = £5,875
Other key non-monetised costs by 'main affected groups' Annual enforcement costs will be negligible. Any visits would be conducted as part of the existing enforcement programme. Will consist of a 5 % post-control check. Applications not expected to exceed 25 on a UK basis, (for England & Wales only 3-4 applications), this will amount to 1-2 extra inspections per year in E&W.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' It is not possible to derive a monetary value for the benefits. The legislation simply facilitates the legal marketing of seed threatened by genetic erosion already grown for personal use.	
	One-off	Yrs		
	£ N/A			
	Average Annual Benefit (excluding one-off)			
	£ N/A		Total Benefit (PV)	£ N/A
Other key non-monetised benefits by 'main affected groups' Will allow the legal marketing of seed of Conservation Varieties after they are National Listed.				

Key Assumptions/Sensitivities/Risks This legislation will facilitate the conservation of old varieties, with potential for sustaining traditional rural practices and crafts, which might otherwise disappear. Key identified risk of failure to meet prescribed seed standards discussed in paragraph 16 of the evidence base.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ N/A	
--------------------	----------------------	--	--	--

What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			30/06/2009		
Which organisation(s) will enforce the policy?			defra/fera and DA's		
What is the total annual cost of enforcement for these organisations?			£ negligible		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ 1,325	Decrease of	£ 0	Net Impact	£ 1,325

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Proposal

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 new variety can be marketed unless it is recognisably 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. National Listing is performed on a UK basis.

4. Seed Certification is a statutory quality assurance process which ensures that seeds are sufficiently pure, healthy, viable and correctly labelled. Seed certification is performed on a devolved basis. The marketing of seed of the main agricultural species in England is regulated by the Seed Marketing Regulations. Only seeds which have been certified may be marketed. The certification process places the onus on the applicant to make decisions about their crop and seed and is based on a three building block approach.

- 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 2004.
- A satisfactory crop report must have been lodged.
- A satisfactory seed test report must have been lodged.

Purpose and intended effect of the legislation

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. traditional long straw wheat varieties used in thatching and heritage varieties used by crofters to sustain their particular way of life.

6. The main derogations are in respect of:

- distinctness, uniformity and stability (DUS) criteria: acceptance as a conservation variety may be considered on fewer DUS characteristics - to be provided by the applicant in a technical questionnaire supporting the application for variety acceptance. In some circumstances, specified unofficial information may also be taken into account in assessing varieties making DUS testing unnecessary.
- Value for cultivation and use (VCU): VCU testing is not required for conservation varieties.
- Seed Certification standards: seed standards will be those for final generation seed i.e. the lowest legally prescribed standards. The Directive also removes minimum varietal purity standards and the requirement for official examinations for conservation seed.

7. These derogations are intended to have the effect of encouraging the marketing of seed of conservation varieties by providing a cheaper and quicker route to National Listing and by ensuring that the cost of seed production is kept at the lowest possible level.

Costs

8. Current national listing and seed certification fee levels for contemporary varieties were agreed earlier last year by Ministers 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

Applications for National Listing are dealt with on a UK basis by Fera's Plant Varieties and Seeds Office in Cambridge.

- 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).
- 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 (£4.80 per ha for official inspection and £36.00 per seed lot for official examination) will not be charged. Seed certification and enforcement is conducted on a devolved basis. However, England provides certification and enforcement services on behalf of the Welsh Assembly Government under the terms of a bilateral concordat. Therefore this Impact Assessment pertains to the situation in England and Wales. In England and Wales, official control will be exercised retrospectively through existing enforcement measures. This will take the form of a 5 % post-control check but with applications not expected to exceed 25, this will in practice amount to 1 extra enforcement inspection per year in England and Wales.

The enforcement programme follows Hampton principles with 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). PHSI 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.

This Assessment concerns the impact of this Directive in relation to National Listing on a UK basis and the certification and marketing of small seeds for England and Wales. The marketing and certification of potatoes was the subject of a separate consultation exercise.

Level of Uptake

9. Uptake is not expected to exceed 25 applications on a UK basis, (only 3-4 in England and Wales), based on current knowledge. This figure comprises an estimated 20 applications for seed potatoes in the UK (the majority in Scotland and the subject of a separate consultation exercise), an estimated 3 applications for wheat thatching varieties in England and Wales and one bere barley for Orkney in Scotland. These figures have been provided by technical experts from each Certifying Authorities who are in close liaison with potential applicants. It is anticipated that these applications will be made by newly registered enterprises in the first year.

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.

Consideration

11. **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.

12. **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. 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. 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.

13. **Option 3:** would meet compliance criteria but would offend Treasury 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 Defra.

Benefits of the Legislation

14. The legislation will provide a simple and affordable fast-track route for listing and marketing conservation varieties which might otherwise have gone out of agricultural production. The legislation will encourage the preservation of such varieties and help sustain the cultural and traditional practices that they support e.g. old long straw wheat varieties used in thatching and bere barley grown by generations of Scottish crofters for use in bannocks and for malting.

Enforcement

15. Enforcement in England and Wales will be exercised through the existing enforcement regime for contemporary varieties and will take the form of random post control checks on a proportion of seed lots.

Risk Management

16. Full technical and scientific consideration has been given to the risk of failure to achieve seed standards. Failures to achieve specified marketing standards, detected through routine random post-control checks, will be dealt with on a case by case basis through appropriate and proportionate enforcement action.

Monitoring and Review

17. The new procedures will be monitored continuously through standard enforcement practices and will be reviewed annually until the required review at Community level in 2011.

Specific Impact Tests

18. The outcome of specific impact tests can be found at Annex A.

Post Consultation Addendum

19. To address concerns expressed by some stakeholders it has been agreed that the application process will be tightened up. Applications will be accompanied by a seed sample and, in the case of cereal varieties, 20 ears to support authentication of the variety. For potato varieties applicants may, at the discretion of the listing authorities, need to submit 5 tubers with applications. Therefore sample handling and administration costs are raised by £10 to £60 to accommodate this potential additional sample. This estimated cost to applicants includes the cost of providing a historical description, submitting seed samples, ear and tuber samples where applicable and general administration costs.

Applications for listing as a conservation variety will be considered by the National List and Seeds Committee, decisions will be published in the Plant Varieties and Seeds Gazette.

Full guidance to the Conservation Varieties Listing and Certification processes will be available in time for implementation on 30 June 2009.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annex A – outcome of Impact Tests

Competition Assessment

This Directive is not expected to have a significant impact on competition, mainly because the amounts of seed marketed will be very small relative to the total market. It will allow the legal marketing of seed of varieties threatened by genetic erosion.

The objective of the legislation is to conserve plant genetic resources by allowing limited commercialisation of conservation varieties. This will give a very small increase in competition, but given the reduced National Listing requirements for conservation varieties, the European Commission has recognised that the extent of competition with modern varieties should be limited. This will be achieved through restrictions on the amount of seed which can be marketed of any one conservation variety and the total for all conservation varieties of a particular species. Given the limited interest and commercial scope for conservation varieties, it is highly unlikely that the quantitative limits will be reached.

There will also be restrictions on the region in which seed of a conservation variety can be produced and marketed. This restriction safeguards the genetic integrity of conservation varieties, preventing seed production and marketing outside of the area where a variety has traditionally been grown and become adapted. Growing the variety outside of its region of origin risks changing its genetic makeup, which would counter the objective of preventing genetic erosion. The restrictions are not a barrier to competition as the end product would only be marketable if the integrity of the variety is maintained. Additionally the proposed approach to regions of origin is designed to facilitate marketing as widely as the need to maintain genetic integrity allows.

Small Firms Impact Test

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

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

Sustainable Development

The results of the specific Impact Tests demonstrate that the economic, environmental and social impact of this legislation has been considered. The conclusion is that this legislation will affect only a very small number of stakeholders and any impact will be minimal and beneficial. This legislation is not expected to lead to any significant changes in the way the industry currently works.

Carbon Assessment

This Directive will not directly lead to a change in carbon emissions. The nature and scale of this industry will remain the same. Presently the seed is already being grown for personal use and this Directive will allow the varieties to be National Listed and facilitate legal marketing of the seed.

Other Environment

As the nature and scale of the industry will remain the same no further environmental implications are anticipated.

Health Impact Assessment

This Directive will not directly impact on human health or well-being and will not result in health inequalities.

Race/Disability/Gender Equality

There are no limitations on meeting the requirements of the Directive on the grounds of race, disability or gender. The legislation does not impose any restriction or involve any requirement which a person of a particular racial background, disability or gender would find difficult to comply with. Conditions apply equally to all individuals and businesses involved in the activities covered by the Directive.

Human Rights

The legislation is consistent with the Human Rights Act 1998.

Rural Proofing

The legislation will benefit Rural Communities as it is anticipated that the majority of activities and opportunities associated with this legislations will be carried out in Rural Communities in support of niche rural practices e.g. growing straw for thatching or bere barley for regional/local foods and beverages.