

Title: Conservation and Amateur Vegetable Varieties Directive 2009/145/EC Lead department or agency: Food and Environment Research Agency Other departments or agencies:	Impact Assessment (IA)
	IA No: DEFRA1012
	Date: 21/01/2011
	Stage: Final
	Source of intervention: EU
	Type of measure: Secondary legislation
Contact for enquiries: Andy Mitchell 01223 342359 andy.mitchell@fera.gsi.gov.uk	

Summary: Intervention and Options

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

To implement, by 31 December 2010, Commission Directive 2009/145/EC which allows Member States to provide a less prescriptive framework for the national listing and marketing of conservation varieties and varieties of low intrinsic value (amateur varieties) of vegetable plant species. 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, Northern Ireland and Wales.

What are the policy objectives and the intended effects?

The policy objective is to transpose and implement this new Community Directive and to regularise existing listing requirements in a pragmatic way, in partnership with industry on a shared risk and responsibility basis; to provide a proportionate listing system and to provide a practical remedy for unlisted vegetable varieties; to continue to facilitate marketing of small packet vegetable seed to the amateur market and to recover costs of the service.

The Directive is intended to facilitate and promote the sustainable use of vegetable conservation varieties and amateur vegetable varieties by providing limited derogations from general listing and marketing requirements i.e. providing for less rigorous listing and marketing regimes in respect of such varieties.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

1. Transpose and implement new legislation and regularise existing listing requirements in a pragmatic way that minimises costs to business, in partnership with industry on a shared risk and responsibility basis, to provide a proportionate listing system and a practical remedy for unlisted vegetable varieties for the amateur market and a new route to market for conservation varieties. (Preferred Option)
2. Don't transpose the new legislation and continue to under-implement existing listing requirements. (Do nothing)
3. Transpose new legislation into UK law but don't implement, and continue to under-implement existing listing requirements.

Options 2 and 3 would invite infraction proceedings. Option 1 is the preferred option because it complies with Community and Treasury requirements, is endorsed by the Devolved Administrations and is supported in principle by customers (evidence gained through informal consultations).

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 12/2013
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:..... Date:.....

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.3

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	3	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0.223		0.0075	0.3

Description and scale of key monetised costs by 'main affected groups'

Conservation Varieties: £175 National Listing Application fee to cover assessing application and registering variety by Fera staff. Estimated £50 incurred by applicant to cover providing a description, seed sample submission and minor admin costs. Amateur Varieties: £100 National Listing Application fee to cover assessing application and registering variety by Fera staff. Estimated £50 incurred by applicant to cover providing a description, seed sample submission and minor admin costs.

Other key non-monetised costs by 'main affected groups'

none.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	3	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0	0

Description and scale of key monetised benefits by 'main affected groups'

The legislation simply facilitates the legal marketing of seed of conservation vegetable varieties and regularises existing listing requirements for the amateur market. All merchants in the amateur sector move from a costless regime of no enforcement. It is not adjudged that there are any significant economic or health risks that will be mitigated by regulation.

Other key non-monetised benefits by 'main affected groups'

Conservation Varieties: Provides a new route to legally market seed of conservation vegetable varieties after they are National Listed.
Amateur Varieties: Will regularise existing listing requirements in a pragmatic way, in partnership with industry on a shared risk and responsibility basis, and provide a legal and proportionate listing system and practical remedy for unlisted vegetable varieties.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

While the new Directive relaxes the normal listing requirements, its implementation still results in an increased burden for some UK stakeholders who market unlisted vegetable varieties for amateur use assuming they apply to list amateur varieties. There is also a risk that smaller and micro-sized enterprises may be adversely affected by the increased costs to list amateur vegetable varieties but it is anticipated that the proposed 2 – 3 year transitional period will alleviate this risk. The preferred option balances the risks of adverse reaction from interested sectors, infraction proceedings for under-implementation and undermining systems for National Listing and Plant Breeders' Rights. Also, the amateur sector may be deregulated within 4/5 years as part of EC simplification plans.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB: -	AB savings: -	Net: 0.1	Policy cost savings: 0	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/01/2011		
Which organisation(s) will enforce the policy?			Fera		
What is the annual change in enforcement cost (£m)?			£0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 0	Benefits: 0	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro see *	< 20 see *	Small see *	Medium 0.0014	Large n/a
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	13
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	13
Small firms Small Firms Impact Test guidance	Yes	13
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	14
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	14
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	14
Human rights Human Rights Impact Test guidance	No	14
Justice system Justice Impact Test guidance	No	14
Rural proofing Rural Proofing Impact Test guidance	No	14
Sustainable development Sustainable Development Impact Test guidance	Yes	14

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Seed Company Catalogues
2	The Seeds (National Lists of Varieties) Regulations 2001 as amended http://www.opsi.gov.uk/si/si2001/uksi_20013510_en.pdf
3	The vegetable seed (England) Regulations 2002 as amended http://www.opsi.gov.uk/si/si2002/20023175.htm
4	The Seed (Registration, Licensing and Enforcement) (England) Regulations 2002 http://www.england-legislation.hmso.gov.uk/si/si2002/uksi_20023176_en.pdf
5	UK HM Government Transposition Guide: how to implement European directives effectively http://www.berr.gov.uk/files/file44371.pdf
6	Partial Impact Assessment DEFRA1012 of 01/07/2010 and associated consultation documents: http://www.defra.gov.uk/corporate/consult/veg-variety/index.htm
7	Responses received from consultation (available from the Defra library) and summary of responses available at: http://www.defra.gov.uk/corporate/consult/veg-variety/index.htm

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.09	0.075	0.06							
Annual recurring cost	0.0075	0.0075	0.0075	0.0075	0.0075	0.0075	0.0075	0.0075	0.0075	0.0075
Total annual costs	0.0975	0.0825	0.0675	0.0075	0.0075	0.0075	0.0075	0.0075	0.0075	0.0075
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	0	0	0	0	0	0	0	0	0
Total annual benefits	0	0	0	0	0	0	0	0	0	0

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Problem under consideration

How to transpose, into national legislation, Commission Directive 2009/145/EC on vegetable varieties providing derogations from normal listing and marketing requirements for vegetable varieties threatened by genetic erosion (conservation varieties) and varieties with no intrinsic value for commercial crop production (amateur vegetable varieties). Also to regularise the current under implementation of the National Listing provisions of the parent Commission Directive.

Rationale for intervention

Transposition should be in accord with Government policy to achieve the objectives of the Community legislation, on time and with minimal burden on UK business. Implementation should be proportionate, clear and not go beyond the minimum requirement by the directive.

Policy Objective

The policy objective is to transpose and implement this new Community Directive and regularise existing listing requirements in a pragmatic way, in partnership with industry on a shared risk and responsibility basis, to provide a proportionate listing system and a practical remedy for unlisted vegetable varieties while continuing to facilitate the marketing of small packet vegetable seed to the amateur market and recovering costs of the service. The proposed transposition arrangements have been done in such a way that minimises cost to business. Current unlisted vegetable varieties marketed for amateur use will be regularised through of the proposed new listing and marketing provisions for amateur vegetable varieties. The proposed listing and marketing provisions for conservation varieties will provide a new opportunity to legally market seed of conservation vegetable varieties for commercial production for which no provision currently exists.

Background

1. Before seed of the main agricultural and vegetable plant species can be legally marketed, the variety must be on the UK National List or the EU Common Catalogue, a compendium of the National Lists of all EU Member States. The seed must also meet quality standards prescribed in EU law. Vegetable seed may be marketed as certified seed, produced under a prescribed quality system, or as standard seed, meeting the same quality criteria but where seed production is not officially controlled. Almost all vegetable seed marketed in the UK is standard seed. Fera and the Devolved Administrations act jointly to implement National Listing, while for seeds marketing each administration has its own legislation.

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

3. There has been EU legislation since 1974 covering the national listing and marketing of vegetable seed, fully transposed in the UK through National Listing and Marketing Regulations as described above. Implementation in the UK has been confined solely to respond to complaints about marketing of unlisted varieties but not to otherwise enforce the listing requirement. At the time these decisions were taken, the market for varieties aimed specifically at amateurs was small and expected to further decrease, but over time it has grown significantly, perhaps by as much as 40% in the last two years. This recent growth has been facilitated by a resurgence of interest in vegetable growing and internet sales which have also allowed a wide range of new, small companies into the market. The market growth shows clear demand for amateur vegetable varieties. This approach has met public demand for choice of varieties, leaving the market to self-regulate in this respect, while providing adequate consumer protection through implementation of quality standards such as germination.

4. The key derogation for conservation and amateur varieties of vegetables is to remove 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.

5. Although Directive 2009/145/EC provides derogations from normal listing requirements, this relaxation still represents an increase in the burden for some stakeholders and a likely significant call on Fera resources with an estimated 1500 currently unlisted vegetable varieties needing to be regularised and therefore listed using the new provisions for **amateur vegetable varieties**. Therefore although de-regulatory at an EU Level, the proposed implementation in fact introduces additional regulatory costs in the UK. The provisions for **conservation varieties** will create a new route to legally market seed of vegetable varieties for commercial production that fulfil the conservation variety criterion and for which no provision currently exists.

6. The UK Authorities intend to transpose the Directive fully but as simply as possible with the minimum financial burden on applicants; the preferred option 1. The options considered are explored below.

Description of Options considered

1. Transpose and implement new legislation and regularise existing listing requirements in a pragmatic way, in partnership with industry on a shared risk and responsibility basis. This will provide a proportionate listing system and a practical remedy for unlisted vegetable varieties for the amateur market and a new route to market for conservation varieties. (Preferred Option)
2. Don't transpose the new legislation and continue to under-implement existing listing requirements. (Do nothing)
3. Transpose new legislation into UK law but don't implement, and continue to under-implement existing listing requirements.

Consideration

Options 2 and 3 would invite infraction proceedings from the Commission, complaints from other Member States and would deny UK applicants the opportunity to list and legally market conservation vegetable varieties. These options have also been firmly rejected by the Devolved Administrations in Scotland, Wales and Northern Ireland.

Option 1 is the preferred option because it complies with Community and Treasury requirements in a cost effective and proportionate way without going beyond what is prescribed in the Directive. This option is endorsed by the Devolved Administrations and has been supported in principle by the vast majority of stakeholders canvassed through informal consultations. It is proposed that fees, where applicable, would be set on the same basis as those for commercial vegetable varieties but the overall cost of listing and marketing conservation varieties and amateur vegetable varieties would be significantly lower because of reduced DUS testing requirements, which together make up the greater part of overall listing costs, and release from the requirement for official inspections.

Costs and Benefits of option 1

Costs

Current national listing and seed certification fee levels for commercial varieties are set 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 vegetable varieties and amateur vegetable varieties where appropriate:

National Listing

An application fee (to cover registration, assessment and processing of applications)

£175 is proposed for each conservation vegetable varieties application and

£100 is proposed for each amateur vegetable varieties application.

The average corresponding fee for listing commercial vegetable varieties is currently £365 together with an additional DUS testing fee of up to £1,200 over two years i.e. savings of around £1465 for amateur varieties and around £1390 for conservation varieties.

Applicants for listing will incur costs estimated at around £50 per application for providing a description, a seed sample and minor administration costs.

A detailed breakdown of the chargeable activities making up the proposed application fees can be seen in Annex 3 that provides the implementation framework for listing and certification of conservation and amateur vegetable varieties.

Please note that these fees will be reassessed as part of Fera's overall review of statutory fees in 2011 and any significant changes will be highlighted as part of the consultation for revised fees.

Seed Certification

The Directive releases Member States from the requirement for official examinations for conservation vegetable seed and amateur vegetable 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. In England and Wales, official control will be exercised retrospectively through existing enforcement measures. This will take the form of a random 5 % post-control check.

Benefits

The proposed preferred option 1 offers the industry an opportunity to list and market conservation and amateur vegetable varieties at a cost well below that for the full requirements for listing and marketing.

Conservation vegetable varieties – Other than the full requirements for listing which they are likely to fail for lack of uniformity, there is no regulatory framework for varieties that potentially fulfill the main conservation variety criterion of 'threatened with genetic erosion'. The new legislation provides a simpler and more affordable route for the listing and marketing of conservation vegetable varieties and therefore encourages the preservation of such varieties. This legislation provides the opportunity to legally market seed of conservation vegetable varieties with consequent commercial benefits as well as contributing towards conservation, biodiversity and environmental objectives.

Amateur vegetable varieties – The preferred option provides the UK an opportunity to regularise existing listing requirements proportionately and in partnership with industry on a shared risk and responsibility basis. Given the UK's longstanding approach to the listing requirement for vegetable seed sold to amateurs, Fera will allow a transitional period of two to three years to allow companies time to list all varieties currently being marketed.

Risks and assumptions

While the new Directive relaxes the normal listing requirements, its implementation will still result in an increased burden for some UK stakeholders who market unlisted vegetable varieties for amateur use. Based on evidence gathered by Fera in pre-consultation discussions with a broad range of stakeholders, we anticipate that the approach proposed by the UK Authorities will be acceptable to the majority. There is a risk that smaller and micro-sized enterprises may be adversely affected by the increased costs to list amateur vegetable varieties but it is anticipated that the proposed 2 – 3 year transitional period for compliance will alleviate this risk. The potential impact on SME-sized businesses is of particular concern to the UK Government and is examined under the specific impact tests.

There is a risk, as examined in the specific impact assessments that the costs to list amateur vegetable varieties could be detrimental to smaller and micro-sized enterprises and this in turn could impact on the numbers of new amateur vegetable varieties coming to market as a result of transposition of this new legislation and the regularisation of currently unlisted vegetable varieties for amateur use. It is anticipated that a 3 year transitional period for compliance will alleviate this risk.

During informal consultations there was no evidence to suggest that there would be a significant number of applications for conservation vegetable varieties despite the provision of a simpler and more affordable route. Consultations conducted by Fera and the Devolved Administrations established that there were unlikely to be significant numbers of applications for conservation vegetable varieties.

Based on these risks the following assumptions are made for the basis of the calculation of costs;

The calculations (see below) used to determine the estimated costs to industry rely on four assumptions.

Assumption 1 – that the transposition of this new legislation will not impact on new varieties coming forward for listing after the transitional period of 3 years.

Assumption 2 – that applications will come forward in the first three years to regularise the current market of unlisted amateur vegetable species.

Assumption 3 - that few if any applications will be received for conservation vegetable varieties.

Assumption 4 – That there are currently approximately 1500 unlisted vegetable varieties.

Assumption 5 – There exists a degree of uncertainty over the number of applications to list amateur vegetable varieties on an annual basis after the backlog of unlisted varieties has been cleared. A broad approximation is given in the calculation basis. This broad approximation is based on discussions held with four medium-sized enterprises that cover 70-80 % of the UK small packet retail market and a number of small-micro sized enterprises. There was a high degree of uncertainty in responses when these enterprises were asked but a broad approximation of 50 applications per year for cost calculation estimates was determined. The majority of new applications would be made by the four market leaders. Fera also carried out research on new varieties appearing in annual seed catalogues of the main players. This research supports the broad approximation of 50 applications per year.

There is also a possibility that the listing requirement for amateur varieties and conservation varieties may be removed in about five years time as part of the Commission's plans to simplify legislation for all seed and propagating material. However, the UK is required to implement this new Directive and the preferred option balances the risks of adverse reaction from interested sectors (companies selling these varieties, the public and NGOs, and breeders of varieties for commercial production), infraction proceedings for under-implementation, and undermining systems for National Listing and Plant Breeders' Rights. The possible removal of listing requirements for amateur varieties and conservation varieties is not taken into account in the calculation of costs as there are no firm proposals at this early stage of the simplification process.

Calculation Basis

Transitional costs

Refers to the cost to regularise the current market of unlisted vegetable varieties over a transitional period of the first 3 years.

Cost per applicant = £100 application fee + £50 administration fee = £150

1500 x £150 = £225,000 over 3 years.

Unsure of level of uptake of industry over the three year period therefore have proposed the following ranges for number of applications for each year;

Year 0: approx. 700 – 500 (mean = 600)

Year 1: approx 500

Year 2: approx. 500 - 300 (mean = 400)

Annual Costs

Refers to the cost to list new applications as they arrive on an annual basis, not including the cost to regularise currently unlisted amateur vegetable varieties.

Cost per applicant = £100 application fee + £50 administration fee = £150

Suggest an average approximate 50 applications per year.

50 x £150 = £7,500 per year.

Informal consultations with industry suggested that the four medium sized enterprises, representing 70-80 % of direct retail sales to the amateur market would account for 35-40 new applications per year. The remaining 10–15 applications would come from small to micro-sized enterprises.

* It is felt that given the small numbers involved it would be unreasonable to attribute level uptake to each enterprise size below medium. Therefore;

35 – 40 x £150 = £5,250 - £6,000 per year for the medium sized enterprise sector

/ 4 = £1,312.50 - £1,500 per medium sized enterprise per year (mean= £1,406.25)

10 – 15 x £150 = £1,500 - £2,250 per year for the small – micro sized enterprise sector

Total costs over a 10 year period:

£225,000 (total transitional costs) + (£7,500 (average annual cost) x 10 years) = £300,000

Applying the discount rate of 3.5 % to the total costs over a period of 10 years results in a total cost of £283,032. This has been left as £300,000 in the summary page given the levels of approximation.

Calculation of Admin Burdens

The total admin burden over a period of 10 years based on £50 administration costs per application and applying the discount rate of 3.5 % results in a net amount of £94,344. This has been rounded to £100,000 in the summary page given the levels of approximation.

Specific Impact Tests

The outcome of specific impact tests can be found at Annex 2. The competition assessment and small firms impact are summarised here;

Summary of Competition Assessment

This Directive could potentially and indirectly limit the number and range of amateur vegetable seed suppliers by raising costs for micro and small-sized organisations and raising the costs for new entrants to this market. The Directive could also potentially restrict the number of amateur varieties on the market thereby limiting consumer choice. Larger companies are likely to be able to list more of their varieties currently marketed than the smaller companies. A period of grace would allow the current vegetable varieties to remain available without limiting consumer choice. Smaller and micro-sized enterprises could be adversely affected by additional listing costs without the proposed transitional period of 2 to 3 years.

Summary of Impact on SME

A range of small- and medium-sized businesses were visited and consulted by Fera. In principle, all could agree to the following:

- A modest fee for listing amateur varieties
- An online application with minimum description as required by the directive.
- Seed submission for the reference collection

These companies visited all thought that a transitional period would be necessary to catch up with the backlog of unlisted varieties and to use up existing stocks of pre-printed packets. All had concerns about the lengthy prescribed wording for small packages and would prefer 'amateur variety' (Fera intends to resolve this concern by allowing pragmatic phraseology). The three large-sized businesses specifically said they would not expect to be charged for additional testing as this was not required in the directive.

The micro-business and charitable organisations recognise that this Community legislation goes some way to address the regulatory burden of the basic community legislation by providing derogations from the normal National Listing provisions. However, the cost of compliance could be prohibitive to these organisations and detrimental to the promotion of sustainable use of plant genetic resources. The micro-business could find it difficult to afford the listing fee proposed without the 2/3 year transitional period.

There is potential for the scope and choice of varieties to be reduced if the costs of listing are prohibitive and if no period of grace for listing was permitted.

Preferred option with description of implementation plan

In summary Fera proposes to implement Commission Directive 2009/145 in line with the preferred option 1 - To transpose and implement new legislation and regularise existing listing requirements in a pragmatic way, in partnership with industry on a shared risk and responsibility basis, to provide a proportionate listing system and a practical remedy for unlisted vegetable varieties for the amateur market and a new route to market for conservation varieties.

The implementation plan for this option can be found in Annex 3.

Post Consultation Addendum

As a result of the formal written consultation the specific impact test for Small Firms has been amended to reflect new information in relation to the scope of the market and its retail value. The results from the small firms impact test can be seen on page 13.

A suggestion was made that a cooperative organisation representing the interests of those involved in marketing seed of amateur vegetable varieties could enable associated parties to spread costs. During informal pre-consultation meetings with a range of stakeholders, Fera had made a similar point about the

benefits of collaborative action by applicants to share the cost and responsibility for registration. It remains open to companies and individuals to organise themselves in this mutually beneficial way.

Full guidance to the Conservation and Amateur Vegetable Varieties Listing and Certification processes will be available in time for implementation anticipated for early 2011. Fera and the Devolved Authorities are currently considering the size of submitted samples required and this will be made available in the full guidance.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>The Commission will review and evaluate the implementation of this Directive by 31 December 2013. The UK will contribute towards this review obligation.</p> <p>Fera will reassess the fees as part of Fera's overall review of statutory fees in 2011.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The objective is to evaluate the impact of this regulation on consumers and gauge level of uptake.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>Level of uptake will be analysed and compared with seed company vegetable variety catalogues. Stakeholders will also be informally consulted.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>Direct comparison between currently listed amateur vegetable varieties and listed amateur vegetable varieties in 2013. There are currently no provisions for conservation vegetable varieties and therefore data on uptake to list vegetable conservation varieties will be reviewed.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Number of listed amateur and conservation vegetable varieties.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>Receipt of listing applications and information provided by producer and companies by 30 April each year about the amount of seed marketed or produced each year.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.

Annex 2 – outcome of Impact Tests

Statutory Equality Duties

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.

Economic Impacts

Competition

This Directive could have an impact on competition and inadvertently limit the number and range of amateur vegetable seed suppliers by raising costs for micro and small-sized not for profit organisations and new entrants to this market. This Directive could also limit completion, and consumer choice, by making it more costly to introduce new amateur varieties. Larger companies are more likely will to be able to absorb these costs and to list more of their currently marketed varieties. A period of grace would allow existing vegetable varieties to remain available without limiting consumer choice or threatening the livelihoods of smaller and micro-sized companies and enterprises that would be adversely and disproportionately affected by the necessary additional cost of listing these varieties.

Small Firms

The small packet industry is dominated by four medium-sized businesses. These four businesses between them control 70 % - 80 % of the UK small packet retail market.

Approximately 73 million vegetable seed packets in total are marketed per year by the four main medium-sized businesses (as a result of formal consultation, it has emerged that this figure also includes seed packaged in the UK for export). This sector is still growing so this figure has for estimating purposes been rounded up to 75 million. On the basis that these 4 companies account for 75% of the seed packaged in the UK (the mid-range value of the estimates of 70% to 80%), the total market, for estimating purposes has been approximated at 100 million packets. As a result of further information gathered through the consultation, we have reduced the average retail cost of a packet of vegetable seed from £2 to £1.80 per packet. Therefore, the revised estimated total retail market value for vegetable seeds packaged in the UK could be around £180,000,000 per year.

As part of its evidence gathering exercise, Fera has visited a number of small-sized businesses employing less than 50 people and a micro-sized business employing less than 10 people. Fera has also visited two micro-sized charitable enterprises employing less than 10 people.

Engagement with Stakeholders

Fera has informally consulted a wide range of stakeholders including the (medium sized) market leaders, small-sized businesses that retail small packets of amateur vegetable seed, a micro sized business in Wales and two micro-sized charitable enterprise.

The medium-sized businesses would, in principle, all accept the following requirements:

- A modest fee for listing amateur varieties
- An online application with minimum description as required by the directive.
- Seed submission for the reference collection

The companies visited all thought that a transitional period would be necessary to catch up with the backlog of unlisted varieties and to use up existing stocks of pre-printed packets. All specifically said they would not expect to be charged for additional testing as this was not required in the directive and they would challenge.

Fera officials visited a small-sized business dealing mainly in repackaging modern (F1) material in foil packs which they onward market without changing the name of the variety. The legislation is unlikely, therefore, to impact too heavily on them. They made the point that this legislation could, if applied too prescriptively, have an adverse effect on the preservation of genetic diversity and also felt that it would be very difficult to regulate small companies marketing over the internet. They indicated that they probably could produce minimum descriptions based on CPVO or UPOV characteristics – preferably on line and would be willing to provide seed samples for a reference collection.

Fera and WAG colleagues have also visited a micro-sized business in Wales specialising in the marketing of amateur vegetable seed. The business supports the aim of the directive and is concerned with preserving biodiversity and localisation of food and seed production. The business recognised that the Directive addresses the regulatory burden of the basic community legislation by providing derogations from the normal National Listing provisions but considered that the Directive still represents a disproportionate burden that they would have difficulty to comply with regardless of which option is selected.

This legislation could be at odds with the broader aims of encouraging the growth of this sector by potentially restricting the availability of some amateur varieties. There is potential for the scope and choice of varieties to be reduced if the costs of listing are prohibitive and if no period of grace for listing is permitted.

Environmental Impacts

Greenhouse Gas

This Directive will not directly lead to a change in carbon emissions. The nature and scale of this industry will remain the same.

Wider Environmental Issues

As the nature and scale of the industry will remain the same no further environmental implications are anticipated. It is anticipated that the transitional stage proposed will maintain consumer choice of amateur vegetable varieties and honour the overall intention of this directive by promoting the conservation of these vegetable varieties and maintaining varietal biodiversity.

Social Impacts

Health and Well-being

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

Justice

This Directive does not introduce new criminal sanctions or civil penalties, therefore there will be no impact on the justice system - including impacts on the courts, and tribunals, prisons and probation, the legal aid budget or the prosecuting bodies and judiciary.

Human Rights

The legislation is consistent with the Human Rights Act 1998.

Rural Proofing

There is no identified impact on rural communities at this stage.

Sustainable Development

The results of the specific Impact Tests demonstrate that the economic, environmental and social impact of this legislation has been considered. The overall impact of the monetised and non-monetised costs and benefits and sustainability issues considered (environmental standards & intergenerational impacts) is considered to be moderately negative. Overall the net benefit in terms of costs is negative as the industry will be incurring an overall additional cost to list amateur and conservation varieties of vegetable species. Against an overall key benefit that regularises existing listing requirements and facilitates the

legal marketing of seed of these varieties. The proposed transitional period of 2 to 3 years allow these costs to be mitigated and also allows consumer choice of vegetable varieties to be maintained while the industry goes through the listing process.

Annex 3

PROPOSED FRAMEWORK FOR THE NATIONAL LISTING AND MARKETING OF CONSERVATION AND AMATEUR VARIETIES OF VEGETABLES

National Listing - Conservation Varieties

1. It is proposed that electronic applications for listing vegetable conservation varieties should be made to Fera giving the following details:

- Proposed variety name
- Region of origin (normally the UK)
- Description of the variety based as a minimum on the characteristics in Section 5 of the CPVO Technical Questionnaire for the species. If a description is not available, assistance in producing one may be given by a recognised plant genetic resource authority e.g. NIAB, SASA.
- Summary of the history of the variety, explaining why it is relevant to the conservation of plant genetic resources
- Name and address of the maintainer of the variety
- Application fee, likely to be £175.

2. A seed sample of the variety (the size of sample will be advised in due course) should be sent direct to SASA, who hold the National List Vegetable reference collection.

3. Fera will carry out initial checks, seek a report from SASA on the authenticity of the submitted seed, and prepare a summary for consideration by the National Lists and Seeds Committee.

4. The decision proposed by the National Lists and Seeds Committee will be published in the Plant Varieties and Seeds Gazette, giving the usual period for making formal representation. If no representations are received, the decision will be confirmed to the applicant and published in the next edition of the Gazette.

5. For acceptances onto the UK National List, the decision will be notified to the European Commission for addition to the Common Catalogue, with an indication that it is a conservation variety.

National Listing - Amateur Varieties

• It is proposed that electronic applications for listing vegetable conservation varieties should be made to Fera giving the following details:

- A Technical Questionnaire (yet to be finalised) detailing the proposed variety name and describing the variety using as a minimum the characteristics in Section 5 of the CPVO Technical Questionnaire for the species. If a description is not available, assistance in producing one may be given by a recognised plant genetic resource authority e.g. NIAB, SASA.
- Application fee, likely to be £100.

• A seed sample of the variety (the size of sample will be advised in due course) should be sent direct to SASA, who hold the National List Vegetable reference collection.

• If all criteria are met, proposed acceptance will be published in the Plant Varieties and Seeds Gazette, giving the usual period for making formal representation. If no representations are received, the decision will be confirmed to the applicant and published in the next edition of the Gazette.

- For acceptances onto the UK National List, the decision will be notified to the European Commission for addition to the Common Catalogue, with an indication that it is 'a variety developed for growing under particular conditions'.

Marketing Conservation and Amateur Varieties of Vegetables in England and Wales

Commission Directive 2009/145/EC provides limited derogations from general marketing requirements. While seed must meet the quality standards specified in seeds marketing regulations, this is not achieved through the official certification system. The responsibility for meeting quality standards lies with those marketing the seed, who may choose how to achieve this. As a result, there will be no certification fees.

Conservation Varieties

1. Conservation varieties may be marketed as Certified or Standard Seed.

1.1 Companies and individuals producing or marketing seed of conservation varieties in England and Wales must be registered with Fera under the Seeds Registration Licensing and Enforcement Regulations. Fera will issue a registration number to be used on all correspondence relating to an application.

1.2 The variety must have been accepted onto the UK National List as a vegetable conservation variety.

1.3 The seed must be produced from a crop grown in the region of origin specified for the variety at the time of National Listing. Additional regions for crop and seed production may be authorised by Fera.

1.4 The seed may only be marketed and used in the stated region of origin.

Notification of seed crops

2. Producers are required to write to Fera's Cambridge Office with the following information for each seed crop to be produced by 30 April in each year of production.

- Variety
- Species
- Region of origin
- Field identification
- Crop area (hectares)
- Address of crop
- Address of company responsible for the crop and marketing of seed produced from it.

Quantitative restrictions

3. Fera will monitor the quantitative restrictions set out in Annex I of the Directive through the information supplied by 30 April each year. It may be necessary to restrict the seed crop areas approved for production if the limits are likely to be exceeded.

Seed marketing procedures

4. The seed may be marketed as Certified or Standard Seed and must meet the corresponding standards specified in the Vegetable Seed Regulations. The seed must have sufficient varietal purity.

4.1 Seed must be produced in homogenous lots, not exceeding the maximum lot weight specified in the regulations.

4.2 A sample of every seed lot must be taken and retained for two years and kept available for official monitoring. The retained sample must meet the minimum weight specified in the regulations.

4.3 Seed must be marketed in sealed packages or containers. Each package or container must be labelled with a supplier's label containing the same information as for Certified or Standard Seed as appropriate, with the addition of the words 'conservation variety' and stating the region of origin for the variety.

Reporting, record keeping and official monitoring

5. By 30 April of each year, companies marketing seed of conservation varieties must provide Fera with information about the amount of seed of each variety marketed in the preceding 12 months.

5.1 Applicants are required to retain records for a minimum of three years of their transactions in seeds and of the treatment, testing and other operations undertaken in relation to the marketing of conservation varieties.

5.2 Plant Health and Seed Inspectors may, as part of their enforcement duties, visit applicants to audit records and to take samples of marketed seed.

5.3 Seed crops of a conservation variety may be check inspected by officials.

Amateur Vegetable Varieties

1. Amateur varieties can only be marketed in small packets as Standard Seed and on the condition that the variety has been accepted onto the UK National List or EU Common Catalogue as an amateur vegetable variety 'developed for growing under particular conditions' or, in the case of varieties in common knowledge, is pending acceptance.

1.1 Companies involved solely in marketing small packets need not be registered with Fera. However, companies and individuals must comply with the regulations in other respects including the requirement to retain seed samples for two years.

Quantitative restrictions

2. Marketing of amateur varieties is subject to the quantitative restrictions (maximum weight of small packages) set out in the Vegetable Seed Regulations.

Seed marketing procedures

3. The seed must have sufficient varietal purity and meet the quality standards specified for Standard Seed.

3.1 Seed must be produced in homogenous lots, not exceeding the maximum lot weight specified in the vegetable seed marketing regulations.

3.2 A sample of every seed lot must be taken and retained for two years and kept available for official monitoring. The retained sample must meet the minimum weight specified in the vegetable seed marketing regulations.

3.3 Seed must be marketed in sealed packages or containers.

3.4 Each package or container must be labelled with a supplier's label containing the information prescribed in the regulations for Standard Seed with the addition of the words 'amateur variety'.

Reporting, record keeping and official monitoring

4.1 Applicants are required to retain records for a minimum of three years of their transactions in seeds and of the treatment, testing and other operations undertaken in relation to the marketing of amateur varieties.

4.2 Plant Health and Seed Inspectors may, as part of their enforcement duties, visit applicants to audit records and to take samples of marketed seed.