

Explanatory Memorandum to The Seed (Conservation Varieties Amendments) (Wales) Regulations 2009

This Explanatory Memorandum has been prepared by the Department for Rural Affairs and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) Description –

These Regulations implement Commission Directive 2008/62/EC and provide a framework for the marketing of Conservation Varieties of agricultural plant species. Conservation Varieties are landraces and varieties which are naturally adapted to local and regional conditions and are threatened by genetic erosion.

(ii) Matters of special interest to the Subordinate Legislation Committee –

None.

(iii) Legislative Background

These Regulations are made in exercise of powers conferred by sections 16(1) to 16(5A) and section 36 of Plant Varieties and Seeds Act 1964. Those powers are now exercisable in respect of Wales, by the Welsh Ministers.

The Seed (Conservation Varieties Amendments) (Wales) Regulations 2009 amend the following Regulations:

- The Fodder Plant Seed (Wales) Regulations 2005
- The Cereal Seed (Wales) Regulations 2005
- The Beet Seed (Wales) Regulations 2005 and
- The Oil and Fibre Plant Seed (Wales) Regulations 2004.

This statutory instrument follows the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

Before seeds of agricultural varieties can be legally marketed, they have to be listed on the National List or on the EC Common Catalogue. In order to be included on the Common Catalogue (National List), agricultural plant species have to meet a minimum level of distinctness, stability and uniformity (DUS) and display satisfactory value for cultivation and use (VCU). DUS and VCU testing are part of the Seed Certification process, which ensures that marketed seeds are pure, healthy, viable and correctly labelled.

Commission Directive 2008/62/EC provides, by the way of derogation from the above described requirements, for the listing and marketing of Conservation Varieties. 2008/62/EC describes Conservation Varieties as species not included on the Common Catalogue (National List) and defines them as landraces (species biologically adapted to the environment they live in) or varieties naturally adapted to local and regional conditions that are threatened by genetic erosion. The Directive's main objective is to ensure biodiversity and encourage the conservation of plant genetic resources together with traditional practices they support.

The Seed (Conservation Varieties Amendments) (Wales) Regulations 2009 present the legislative framework for the marketing of Conservation Varieties of fodder plant seeds, cereal seeds, beet seeds and oil and fibre plant seeds in accordance with Directive 2008/62/EC. These regulations provide clear measures in regards to the marketing conditions, quantitative restrictions and labelling of conservation varieties.

Seed of Conservation Variety can be placed on the market if it descends from seed produced according to well-defined practices for maintenance of variety and complies with the established requirements for certification, with the exception of minimum varietal purity and the requirements concerning official examination.

Seed of Conservation Variety can only be produced and marketed in the region of origin. (Region of origin refers to the area in which the variety has historically been grown and to which is naturally adapted.)

The total quantity of seed of Conservation Variety marketed in each Member State cannot exceed 10% of the total market.

Labelling must follow the accepted EU standards and include the words "conservation variety" and region of origin.

The impact of these regulations is not expected to be extensive. Applications for marketing of conservation varieties are likely to be around 25 on a UK basis, (only 3-4 in England and Wales), according to 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 Certifying Authorities who are in close liaison with potential applicants.

(v) **Implementation**

It is intended that these Regulations should come into force on 30 June 2009. Similar legislation has already been implemented in England on 27 May 2009 and is under consideration in both Scotland and Northern Ireland.

(vi) **Consultation**

Consultation with Welsh stakeholders was undertaken by Defra on an England and Wales basis between October and December 2008. Consultees included individuals and organisations involved in the seed industry, plant genetic authorities, conservation bodies and thatching organisations. The proposal was generally well received by the majority of stakeholders.

(VII) **Regulatory Impact Assessment**

1. Options

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

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.

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.

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.

2. Benefits

The Seed (Conservation Varieties Amendments) (Wales) Regulations 2009 will provide a simple and affordable fast-track route for the marketing of Conservation Varieties which might otherwise have gone out of agricultural production. This legislation will encourage the preservation of such varieties and help sustain the cultural and traditional practices that they support.

3. Costs

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. 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.

4. 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.