



SCOTTISH EXECUTIVE

Rural Directorate
Crops, Plant Health and Pesticides Policy Unit

Pentland House,
47 Robb's Loan,
Edinburgh, EH14 1TY

To: Organisations on the attached list

Telephone: 0131-244-6339
Fax: 0131-244-6509
caroline.boyd@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

Your ref:
Our ref:

21 August 2007

Dear Sir/Madam

Consultation on a Proposal to Revise Directive 92/34 on the Marketing of Fruit Plant Propagating Material and Fruit Plants

I am writing to consult you about a Commission Proposal to revise the above Directive.

This consultation is relevant to you if you market (including import) fruit plant propagating material or fruit plants intended for fruit production. Propagating material includes seeds and all parts of plants intended for propagation or production. The consultation applies to Scotland only. Equivalent exercises are being undertaken in England and Wales and in Northern Ireland.

A European Commission Proposal aims to update the requirements relating to the above activities. The Proposal is available via a link to the Defra website at <http://www.defra.gov.uk/corporate/consult/dir9234rev-fruitplants/index.htm>; or by writing to the address above. A first read through of the text has been started by the German Presidency and further meetings are planned by the Portuguese Presidency on 24 September and 16 November. It is likely that discussions will continue into 2008.

This consultation exercise provides an opportunity to contribute to the development of a UK negotiating position for discussions on the Proposal within the Council of the EU. Your input is important to ensure that the negotiating strategy is based on accurate information and reflects the best interests of all affected sectors. We will be developing positions on all aspects of the Proposal, but are particularly interested in views on the areas referred to in the consultation paper. We are also interested in views on the Partial Impact Assessment and whether the figures included in that document reflect reasonable estimates. This is particularly important, as the outcome of the Impact Assessment will have an influence on the final negotiating strategy.

If you wish to contribute, please:

- (i) read the consultation paper and Impact Assessment;
- (ii) consider the questions in the consultation paper;
- (iii) submit your comments to me using the contact details indicated overleaf, by 13 November 2007.

The Scottish Executive would be happy to hold a consultation meeting to discuss this issue, probably in early September. Please could you let me know, as soon as possible, if you would be interested in attending such a meeting. Alternatively if you do not wish to attend a meeting but have some initial comments could you pass these to me as soon as possible and I will pass them onto Defra to feed into the UK's discussions with the Council.

Responses should be received by 13 November at the latest. Responses/Comments should be sent to Caroline Boyd at the Scottish Executive, Rural Directorate – Crops, Plant Health and Pesticides Policy Unit, 1-B, Pentland House, 47 Robb's Loan, EDINBURGH, EH14 1TY Telephone 0131 244 6339 (e-mail caroline.boyd@scotland.gsi.gov.uk)

Yours faithfully

Mrs Caroline Boyd

THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Executive consultation papers and related publications (e.g., analysis of response reports) can be accessed at: [Scottish Executive consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Consultation on the Revision of the Fruit Plant Marketing Directive (92/34)

Responding to this consultation paper

We are inviting written responses to this consultation paper by 13 November 2007. Please send your response to: caroline.boyd@scotland.gsi.gov.uk, or if writing:

Caroline Boyd
Scottish Executive – Rural Directorate
Crops, Plant Health and Pesticides Policy Unit
1-B
Pentland House
47 Robb's Loan
EDINBURGH
EH14 1TY

If you have any queries contact **Caroline Boyd** on 0131 244 6339.

We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Executive consultation exercises, can be viewed online on the consultation web pages of the Scottish Executive website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Executive now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Executive are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider



any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Executive Library by 12 December 2007. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SE Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us put forward Scottish views on the proposals for the revision of the Fruit Plant Marketing Directive (92/34).

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Caroline Boyd

Address: Scottish Executive – Rural Directorate, Crops, Plant Health and Pesticides Policy Unit, 1-B, Pentland House, 47 Robb's Loan, EDINBURGH, EH14 1TY

E-mail: caroline.boyd@scotland.gsi.gov.uk



Organisations consulted

National Farmers Union Scotland

Horticultural Development Council

Horticultural Trades Association

Scottish Seed and Nursery Trades Association

Scottish Organic Producers Organisation

Scottish Crop Research Institute

Soil Association Scotland

Scottish Agricultural College

Federation of Small Businesses Scotland

Scottish Nuclear Stock Association

Cairnie Farming Company

Springhill Nurseries (Wholesale) Limited

Greenhill Propagation Limited

Butterworths' Organic Nursery

Gentech Propagation Limited

I Duncan Millar

J and C McDiarmid

J M Watson Fruit Growers Limited

James McIntyre and Sons

Messrs David McIntyre

R and J Bryce

Thomas Thomson (Blairgowrie)

W Cruickshank and Son

D and C Wilson

RESPONDENT INFORMATION FORM :

Consultation on Revision of the Fruit Plant Marketing Directive (92/34)

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)

(a) as an individual go to Q2a/b and then Q4

(b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3 The name and address of your organisation **will be** made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4 We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No

CONSULTATION PAPER: REVISION OF THE FRUIT PLANT MARKETING DIRECTIVE (92/34)

Purpose

1. The purpose of this paper is to consult on proposed changes to Directive 92/34, as outlined in the Commission's Proposal 5877/07 <http://www.defra.gov.uk/corporate/consult/dir9234rev-fruitplants/index.htm>. The outcome will contribute to the development of a UK negotiating strategy, to be used as the Proposal progresses through the Council process.

Background

2. Council Directive 92/34 and the associated Commission Directives, 93/48, 93/64 and 93/79 http://ec.europa.eu/food/plant/propagation/fruit/index_en.htm set minimum standards on the marketing of fruit plant propagating material and fruit plants intended for fruit production. These have been implemented in Scotland by the Marketing of Fruit Plant Material Regulations 1995 (SI 2653), as amended. These Regulations are available at http://www.opsi.gov.uk/si/si1995/Uksi_19952653_en_1.htm

3. In 2006 the Commission carried out a consultation http://ec.europa.eu/food/consultations/index_en.htm seeking views on possible changes to Directive 92/34. This was driven by changes to the Common Agricultural Policy and Rural Development Policy, which the Commission felt required a review of the marketing regime to reflect a greater emphasis on consumer interests and increased opportunities for suppliers and users of propagating material.

4. The Commission's main objectives were to clarify and simplify the existing legislative regime and to improve the legislation to reflect technical and scientific progress and the changes referred to above. A number of specific areas were addressed in the Commission's paper, including:

- Definition of 'marketing' and 'suppliers' and relevant conditions.
- Categories of propagating material and relevant conditions.
- Quality requirements and 'variety' definition and conditions.
- Links between categories of propagating material and international certification schemes (European and Mediterranean Plant Protection Organisation - EPPO).

5. On the basis of replies received and subsequent discussion in the relevant EC Standing Committee, the Commission has now published a Proposal outlining the specific revisions it intends to introduce. A comparison of the Proposal with Directive 92/34 is attached at the Appendix, but the key changes are:

- Propagating material for marketing must either be officially certified Pre-basic, Basic or Certified material, or officially inspected CAC (Conformitas Agraria Communitatis) material – the lowest category of material marketed. At present, propagating material must meet the minimum requirement for CAC material, but there is no obligation for all stocks to be officially inspected. Official certification schemes are possible, but no harmonised requirements have been introduced.
- A new requirement is introduced for CAC material to be officially checked, rather than monitored by at least random checks. Fruit plants must either be officially certified as Certified material, or officially inspected as CAC material. At present, fruit plants must meet the minimum requirements for CAC material.
- The accreditation requirement for suppliers is replaced with a registration requirement.

- The requirement for laboratories to be accredited is revoked.
- New definitions are included for ‘variety’ and ‘clone’; marketing is required by reference to the clone, where appropriate.
- There is no longer an option to maintain varieties on a supplier’s list (e.g. a catalogue).
- New record keeping requirements, with details of sales and purchases to be maintained for 12 months (rather than 3 years); the exemption for suppliers selling small quantities is replaced by an exemption for retail sales.

Discussion

6. No specific timetable has been published, but a first read through of the text started under the German Presidency on 13 June. This will continue under the Portuguese Presidency and probably into 2008. While there has been an opportunity for UK stakeholders to contribute directly to the Commission’s consultation exercise, views are now requested on the key issues identified above, to help develop a UK negotiating line in relation to the Proposal. The same Directive is subject to review under an EU simplification initiative, which includes the marketing Directives on seeds and propagating material. The two exercises are being carried out in parallel and there may be a further opportunity for comment under the simplification review.

7. Further information on each of the key issues is provided below and an assessment of possible impacts is outlined in the accompanying partial Regulatory Impact Assessment.

(a) Enhanced requirements for propagating material

8. In Scotland, the voluntary Soft Fruit certification schemes provide an opportunity for growers of soft fruit plants to have their crops certified. The scheme is largely based on international (EPPO) recommendations. There is no top fruit certification scheme in Scotland.

9. The Commission’s Proposal would require a Scottish Executive scheme to operate in line with any requirements introduced in Commission implementing legislation. This would most likely be in line with EPPO recommendations. There would be greater emphasis on official checks, with propagating material either having to be officially certified, or officially checked (as CAC material). It is estimated that the vast majority of strawberry propagating material, along with *Ribes* and *Rubus*, already derive from the UK certification schemes, but this is not the case for top fruit.

10. Greater official involvement would have resource implications for both the Scottish Executive and the participating growers, but this would be the case across the EU and there could be trading benefits and opportunities for UK propagators, as common standards and requirements would apply. Equally, there would be increased opportunities for propagators in other EU countries to access the UK market. For fruit growers, there may be access to a wider range of material than previously and a better understanding of its quality due to improved transparency of its designation.

(b) Enhanced requirements for fruit plants

11. At present, there is a requirement for the Scottish Executive to undertake at least random official checks of CAC material (including fruit plants). This is generally done at the same time as official checks for other purposes, such as plant passporting or surveillance monitoring for quarantine organisms. Strawberry and *Rubus* propagating material must be passported when intended for commercial growing on and *Pyrus*, *Malus* and *Prunus* must be passported to retail level. There is no passporting requirement for *Ribes*. The Scottish Executive currently funds surveillance work (including the random checks of CAC material), but official inspections (for plant passporting and soft fruit certification) are charged to growers.

12. The purpose of introducing compulsory official checks for CAC material would be to ensure that minimum standards for this category were being met. At present, such material largely falls outside the scope of official schemes in Member States and the Commission are concerned about the lack of consistency in material being marketed. The Commission also feel that bringing this category of material more directly under official control is necessary given that such material forms part of the chain which will lead to food products being sold to consumers, but also that such a move will provide greater marketing opportunities and possibly access to funding under EU Rural Development programmes.

(c) **Registration, rather than accreditation, of suppliers**

13. Accreditation involves a process of confirmation that certain requirements are being met by suppliers, whereas registration involves an entry on an official register to identify that certain activities are undertaken. The current system of accreditation is operated in such a way to minimise burdens on suppliers, in particular by allowing existing authorisations, in relation to plant passporting for example, to be taken into account. A registration system would represent a further step towards simplification, in line with the process which now operates for suppliers of ornamental propagating material. In practice, the switch to a registration system would have no impact on suppliers already accredited under the current system, other than possibly written confirmation that they are content for their existing accreditation to be considered as a registration. Under the Proposal, suppliers who market through retail sales only would be exempt from registration, which would exclude some suppliers who are covered by the accreditation system. The proposed arrangements are consistent with those operating in the ornamentals sector.

(d) Removal of accreditation requirement for laboratories

14. Although there is a requirement for laboratories to be accredited, criteria for accreditation have never been established. In addition, suppliers already have the flexibility to decide when to have samples tested and which laboratory to send them to. The revocation of the accreditation requirement would therefore have little practical impact at present, but it would remove the possibility of more stringent requirements being introduced in future and would better reflect the situation which exists at present. It would also be consistent with requirements for the ornamental sector.

(e) New requirements on marketing of ‘varieties’ and ‘clones’

15. Unlike the ornamentals sector, it is obligatory to market fruit plants and propagating material with a reference to their variety, which must be commonly known and protected, officially registered, or entered on a supplier’s list. There is no official register of fruit varieties in the UK, so varieties must meet one of the other options. The Commission are proposing to remove the supplier’s list option. In addition, they want to include new definitions for ‘variety’ and ‘clone’. This is to address the situation whereby material may now be marketed by clone, and to respond to misleading or inaccurate variety descriptions which have sometimes been found in monitoring or during EC Comparative Trials. In the absence of an official register, the use of supplier’s lists (i.e. trade catalogues) is a popular option in the UK to describe varieties being marketed. The proposed changes would provide greater clarity and consistency with regard to varieties being marketed, but would involve greater costs for suppliers, who would be required to use only varieties with plant breeders rights or that are officially registered/have an official description.

(f) Revised record keeping requirement

16. At present suppliers are required to maintain records of production and marketing activity for three years. The Commission’s Proposal would require that records of sales and purchases be maintained for 12 months. This would be consistent with the arrangements which apply to the ornamentals sector and would reduce the burden on suppliers.

Issues for consideration

17. Taking into account the information provided on paragraphs 8-16 please indicate, with reasons where possible, whether you support the following changes being proposed by the Commission:

- Propagating material for marketing to be either officially certified as Pre-basic, Basic or Certified material, or officially inspected as CAC material. At present, propagating material must meet the minimum requirement for CAC material, but there is no obligation for all stocks to be officially inspected. Also, official certification schemes are possible, but no harmonised requirements have been introduced.
- On certification, do you support: (a) an uniform, prescriptive EU certification scheme, with harmonised requirements between all member states; (b) greater equivalency and transparency of scheme conditions, to facilitate trade, but retaining flexibility for member states to operate their own schemes; (c) retention of the current situation, where there is no obligation to introduce certification schemes and requirements are left for member states to decide.

- On CAC, to what extent would you like to see strengthened controls and requirements in place, particularly in relation to: (a) varietal identity; (b) health requirements; (c) official inspections.
- Fruit plants intended for marketing to be either officially certified, or officially inspected (when intended for marketing as CAC material). Such plants must currently meet the minimum requirements for CAC material and official monitoring is undertaken on the basis of random checks. Suppliers to be registered rather than accredited.
- Revocation of the requirement for laboratories to be accredited.
- Marketing by reference to ‘clones’ as well as by variety, where this is appropriate.
- Revocation of the option to use supplier’s lists to describe varieties.
- Revised record keeping requirements, with details of sales and purchases to be maintained for 12 months (rather than 3 years).

18. What are your views on the compatibility of the Proposal with the Ornamentals Directive (98/56) http://eur-lex.europa.eu/LexUriServ/site/en/oj/1998/l_226/l_22619980813en00160023.pdf Some features (e.g. registration rather than accreditation) from 98/56 have been incorporated into the Commission’s Proposal, but the two regimes will remain significantly different. For instance:

- 98/56 applies to all species, but of propagating material only (not plants for end use).
- Importers rather than official bodies are responsible for ensuring that ornamental material imported from third countries is of equivalent quality.
- Additional requirements for individual ornamental genera/species are to be introduced only where there is a demonstrated need, rather than routinely.

19. Is there a case for treating fruit material differently to ornamental material, or would you prefer to see greater compatibility between the regimes? The Commission’s view is that they should be treated differently, as fruit plants are ultimately intended to harvest products intended for human consumption. Also they believe that the measures they have proposed will result in greater compatibility with other EU regimes (such as rural development). Some of the requirements have been updated to ensure compatibility with the Vines Directive (68/193 and 2002/11) http://ec.europa.eu/food/plant/propagation/vine/index_en.htm. What are your views?

20. Overall, the Proposal introduces some simplification measures (e.g. registration rather than accreditation), but the main objective is improved consistency and harmonisation. This will result in additional administrative burdens (e.g. co-operating with official inspections) and policy costs (e.g. official inspections of all CAC stocks, loss of the supplier’s list option for recording variety details). Potential benefits include a more level playing field, with greater access to other markets for propagators and improved access to sources of fruit planting material for growers. Do you believe that there is an appropriate balance between burdens and benefits?

21. What are your views on the Partial Impact Assessment provided, in particular:

- The estimates of costs and benefits provided in Table 2.

22. Do you have any other comments on the Proposal?

Conclusion

23. A Proposal to update Directive 92/34 on the production and marketing of fruit propagating material and fruit plants is progressing through the Council process. Views are sought on the Proposal, and a partial Impact Assessment which has been prepared, to help develop a UK negotiating strategy.

What to do next

24. Views and contributions are welcome from all individuals and organisations with an interest in the Proposal. Please:

- (i) read the consultation paper and partial Impact Assessment;
- (ii) consider the questions at paragraphs 17 -22 in this consultation paper;
- (iii) submit your comments using the contact details provided in the covering letter.

25. The Scottish Executive would be happy to hold a meeting to discuss the issues raised in the consultation, probably in early September. Please respond as soon as possible if you would be interested in attending such a meeting.

26. Please send your replies by 13 November 2007 at the latest.

Comparison of Directive 92/34 and the EU Commission’s Proposal

92/34	Proposal
1. Exemptions	
Automatic exemption for trials; selection; conservation material.	The exemption for trials; selection; conservation material is replaced with an authorisation process.
2. Responsible official body	
3. All tasks can be delegated	Only official inspections can be delegated
4. Marketing	
No reference to responsibility.	Pre-basic, Basic and Certified material to be produced under the responsibility of the supplier.
Propagating material to meet CAC standards. Pre-basic, Basic and Certified <u>may</u> be certified, but there is no obligation.	Propagating material to be marketed must be officially certified as Pre-basic, Basic or Certified, or CAC which has been officially inspected.
Fruit plants to meet CAC	Fruit plants to be officially certified as Certified material or officially inspected as CAC.
No reference to official checks	CAC fruit plants to be officially checked
-	Compliance with requirements on GMOs and Food and Feed Regulations
5. -	Specific requirements shall be introduced for prebasic and basic on maintenance of the variety and clone
6. Supplier checks	
7. Suppliers can carry out themselves, or have carried out by another supplier of the responsible body	To be carried out by the supplier.
8. Keep records of the activities in this section, plus production and marketing records; to be kept for 3 years	Sales and purchases for 12 months.
9. Suppliers who distribute from premises other than their own shall keep records of sales and deliveries only	-
10. Exemption for suppliers selling small quantities to final consumers	-
11. Accreditation	
Suppliers to be accredited	Suppliers to be registered
Laboratories to be accredited	No accreditation for laboratories
12. Small producers do not need to be registered.	Retailers do not need to be registered
13. Official Monitoring	
Official inspections of propagating material and fruit plants, but this can be by random checks for CAC.	No option for random checks of CAC
14. Varieties	
-	New definition of ‘Variety’ and ‘Clone’
Material to be marketed with reference to the variety to which they belong	Material to be marketed with reference to the clone to which they belong, where appropriate
Varieties to be commonly known, and	Varieties to be legally protected; or officially

protected; or officially registered; or entered on a suppliers list	registered; or commonly known (if an application has been made and it already appears in a catalogue or is subject to an application elsewhere, or is already being marketed as CAC material)
15. Varieties can be officially registered if marketed prior to 1993, provided they have an official description. To expire by 2000, unless officially registered	Limited to CAC, but with no time limit
16. Labelling	
-	Label to indicate GM modification
17. Record keeping	
Records of production and marketing activity, to be maintained for three years.	Records of sales and purchases to be maintained for 12 months
18. Exemption for suppliers selling small quantities to final consumers	Exemption for retailers (non-registered suppliers)
19. Notifications	
2000/29 organism. or a quality affecting organism at higher than normal levels	A 2000/29 organism, or any quality affecting organism in the Schedules
Transitional measures	
-	Time limited transitional period allowing marketing in their own territory of Certified and CAC material from parent plants in existence at the time the Directive was introduced

Regulatory Impact Assessment

1. Title

Marketing Requirements for Fruit Propagating Material and Plants – revision of Directive 92/34/EEC on the Marketing of Fruit Plant Propagating Material and Plants

2. Purpose and intended effect

Objectives

To update the existing regime to take account of scientific and technical developments and to improve harmonisation and consistency. The intended effect would be to improve consistency in relation to the quality of material being marketed, with benefits for both propagators and their customers.

Background

Existing requirements on the marketing of fruit propagating material and plants are outlined in Directive 92/34/EEC. The Directive includes certain obligations on those who produce and market propagating material (propagators) and fruit plants and sets out monitoring requirements. The Commission wish to update them, to take account of scientific and technical developments, and to improve consistency and harmonisation.

Rationale for government intervention

Government intervention is necessary to ensure compliance with the minimum conditions specified, to facilitate trade and to minimise the risk of spreading harmful organisms. The intended effect would be improved consistency in relation to the quality of material being marketed, with benefits for both propagators and their customers.

3. Consultation

Within Government

Yes – discussions with colleagues in colleagues in Regional Delivery Division who undertake inspections and as consultation undertaken throughout the UK with colleagues in Defra, PHD, National Assembly of Wales and Department of Agriculture and Rural Development Northern Ireland.

Public consultation

Yes – interest in this topic limited to specific sectors of the Scottish horticultural industry involved in and with soft fruit plants and propagating material but all in this particular area were sent copies of the consultation paper.

4. Options

The Commission has undertaken an Impact Assessment and an EU wide consultation process, which identified four options:

- i. replacing the existing legislation with general legislation on marketing
- ii. retaining the existing legislation
- iii. self regulation, using voluntary agreements, codes of practice etc
- iv. updated legislation to introduce simplifications, incorporate the results of scientific and technical developments, and to improve harmonisation regarding the different categories of material being marketed. This would include measures to simplify current arrangements (e.g. registration rather than accreditation of suppliers), but also measures to improve the overall quality and consistency of material being marketed, which in some cases would increase the burden on suppliers and Government. In particular, all propagating material and fruit plants must either be officially certified or officially inspected as so-called CAC (Conformitas Agraria Communitatis) material. Harmonised conditions would be introduced for these different categories, whereas only requirements for CAC have been established at present, with any certification arrangements being left for Member States. Only random checks are required for CAC material at present.

An EU wide consultation exercise was undertaken, following which the Commission has decided to pursue option (iv). This is the only option being considered and therefore this Regulatory Impact Assessment considers the evidence relating to this option, as well as the option of maintaining the status quo (option (ii)).

Benefits

Option (ii) – status quo

The no change option would mean that suppliers would not be faced with revised procedures or additional costs.

Option (iv) – updated legislation

This option would address any obsolete requirements in the current Directive (e.g. laboratory accreditation) and provide the opportunity to introduce revised requirements on the basis of experience in other sectors (e.g. registration of suppliers, rather than accreditation). Transparency would be improved and trade and introduction of new varieties would be facilitated between Member States and with third countries. At present, comparisons of the variety purity and health status between Member States' certified material is very difficult. There would be reduced risk of harmful organisms being distributed and improved protection in relation to plant breeders rights (through clearer variety requirements). End-users should receive higher quality material, which would require reduced pesticide applications, with financial and other benefits for operators (including reduced costs) and consumers (through a better quality end product and reduced residues). There would be improved consistency with other EU regimes. In terms of administrative burdens within the UK, there would be some increase to £60,000, mainly as more time would need to be spent co-operating with official inspections.

Costs

Option (ii) – status quo

Obsolete requirements would remain in force, as well as omissions in the legislation, causing practical and possibly financial difficulties for suppliers. The absence of fully harmonised arrangements would be out of step with other parts of the supply chain in this area and would mean that equivalence with third countries could not be established. Introduction of new material and comparisons of quality between different Member States' certified material would remain difficult. The opportunity to simplify appropriate conditions would be lost.

Option (iv) – updated legislation

There would be increased costs through greater official involvement and more onerous requirements in relation to CAC material being marketed.

At present, the only chargeable costs on marketing requirements relate to participation in voluntary certification schemes, but the revised legislation would require that all propagating material and fruit plants to be marketed must be officially certified or officially checked. Official inspections associated with certification in Scotland are currently charged at the rate of £94.50 for up to 0.5ha for *Rubus*, £95 for up to 0.5ha of *Fragaria* and £68.31 for up to 5,000 *Ribes* plants. Under the proposed new regime, chargeable inspections would be extended to those growers producing fruit propagating and planting material outside the scope of the certification scheme. At present, such inspections are generally carried out at the same time as those for other purposes (such as plant passporting) so there is no significant additional cost involved in such cases. There is no plant passporting requirement for *Ribes* however.

Summary of costs and benefits

A key objective of the proposed consultation exercise, apart from determining a UK negotiating position on the Proposal, will be to establish the scale of costs and benefits associated with the various options. In particular, the costs and benefits associated with option (iv) need to be assessed, given that the Commission are proposing this approach. A Cost: Benefit Analysis (CBA) was carried out in 2002 to determine the impact of a harmonised certification scheme in the UK, particularly on the strawberry sector. A key conclusion at the time was that the case for a harmonised certification scheme was largely dependent on the scale of any price differential between

UK and other propagating material. However, there was not a strong case either for or against such a scheme, with only marginal net costs or marginal net benefits, depending on the scale of price differential. Other conclusions were that UK propagators would have greater access to EU markets, but equally EU propagators would have easier access to the UK market. Fruit growers would probably benefit most as there would be greater transparency and access to material, possibly at lower cost.

5. Costs and benefits

Sectors and groups affected

The main groups affected are those individuals and organisations producing and marketing fruit propagating material and plants. Plant breeders have an interest in the variety requirements. There is also a consumer and environmental interest, given the production methods for fruits and the fact that they are part of the chain which results in fruit for human consumption.

Details for UK top fruit (mainly apples, pears, plums, cherries) and soft fruit (mainly strawberry, raspberry, blackcurrant) production are in the tables below. The value of UK production is recorded in Agriculture in the UK 2005 as being £115 million for top fruit and £235 million for soft fruit. In Scotland in 2005 the value of soft fruit production was over £58 million.

Table 1: Top/soft fruit area planted and growers involved with top/soft fruit production – from statistical records of Defra/Welsh Assembly Government/Scottish Executive/Agriculture and Rural Development Northern Ireland

Top fruit	Area Planted (ha)	No. of growers
England and Wales	22,000	6,400
Scotland	40	91
Northern Ireland	1,500	250

Soft fruit	Area Planted (ha)	No. of growers
England and Wales	7,500	2,300
Scotland	1,700	500
Northern Ireland	22	30

In relation to propagating material, it is estimated that over 90% of soft fruit material produced in England and Wales is certified under the current voluntary Plant Health Propagation Scheme, while less than 50% of top fruit material produced is certified. For soft fruit, around 5 million strawberry plants, 100,000 *Ribes* plants (blackcurrant, gooseberry etc) and 350,000 metres of *Rubus* plants (raspberry, blackberry) are entered for certification annually, by around ten propagators. For top fruit, around 7,000 plants are entered for certification annually, currently by two propagators. The total cost of the Plant Health Propagation Scheme is around £170,000 annually.

Scotland is not a major top fruit producer. However, the value of Scottish soft fruit (mainly strawberry, raspberry, blackcurrant) production in 2005 was recorded as being £58 million. In Scotland, 11 propagators participate in a soft fruit scheme, with 7,400 *Ribes* plants, 22 hectares of *Rubus* and 140,000 Foundation (i.e. high grade) soft fruit plants entered for certification in 2006. The cost of the scheme is £6,000 annually. This amounts to around 50% of soft fruit plant material produced in Scotland. The other 50% is inspected under the plant passporting arrangements.

Northern Ireland does not have a certification scheme.

The estimated position on costs and benefits of the various options is summarised below (Table 2):

(Table 2: Estimates of Policy and administrative costs associated with the Proposal for the UK)

Option	Administrative costs	Policy costs - industry	Policy costs - Government	Benefits – industry
(ii) status quo	£45,000 pa. (mostly associated with time spent co-operating with official inspections). £1,884 in Scotland.	£176,000 pa (official inspections charged under certification schemes). £6,000 in Scotland.	£169,000 pa (random official inspections of CAC material, not chargeable under this regime). £6,000 in Scotland.	No change.
(iv) updated legislation	£60,000 pa (£15,000 increase mostly associated with additional time co-operating with official inspections, due to enhanced requirements). £2,500 in Scotland	£401,000 pa (official inspections of certified and CAC material). £12,000 in Scotland	£0,000 (official inspections would be routinely required of all material – these would be charged to industry).	Increased trade opportunities for propagators and access to cheaper plants for fruit producers – value equivalent to say 0.5% of UK fruit production (£1.4 million). There are some administrative benefits associated with the Proposal (e.g. registration rather than accreditation, reducing record keeping requirements), but the cost savings associated with such changes are likely to be negligible, either because they reflect commercial practice or have little practical impact.

Small Firms Impact Test

Businesses affected by the Proposal largely fall into the category of small businesses. The Proposal inherently provides for different sizes of businesses, as the impact of requirements such as monitoring and labelling etc will be proportionate to the number of plants being produced and marketed. Additionally, some specific exemptions (e.g. from registration and official checks) are provided for small businesses operating locally. However, further comments from trade organisations or individual businesses are welcomed as part of the consultation process.

Legal Aid Impact Test

The Proposal does not create new criminal sanctions or civil penalties.

Test Run of business forms

Whether or not any new forms will be introduced as a result of the recast of Directive 92/34 will depend on the outcome of this process. If new forms do result it is currently envisaged that they will be straightforward and easy to complete.

Competition Assessment

The following initial assessment has been made.

Would the Proposal:

- Directly limit the number or range of suppliers?
- Indirectly limit the number or range of suppliers?

The Proposal imposes certain obligations and responsibilities on suppliers, but does not directly or indirectly restrict the number or range of suppliers able to operate in the market place. Any business or individual can apply for official registration and providing they comply with the specified requirements, and have their plant material officially certified or inspected, they can market their material in accordance with the Directive.

- Limit the ability of suppliers to compete?
- Reduce suppliers' incentives to compete vigorously?

The Proposal is more likely to enhance competition, as it will provide a minimum baseline for the marketing of plant material, and will improve consistency and transparency in relation to the standards to be met.

Enforcement, sanctions and monitoring

Government officials would ensure compliance with the revised legislation which would require that all fruit propagating material and fruit plants to be marketed must be officially certified or officially checked. If not complied with producers would be unable to market the produce and this would be monitored as part of existing system. At present, comparisons of the variety purity and health status between Member States' certified material is very difficult. There would be reduced risk of harmful organisms being distributed and improved protection in relation to plant breeders rights (through clearer variety requirements). End-users should receive higher quality material, which would require reduced pesticide applications