

National listing and plant breeders' rights:

Summary of responses to the consultation on revision of fees to achieve full cost recovery for statutory services

March 2014

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Introduction

This document summarises responses to Defra's consultation on revision of fees to achieve full cost recovery for statutory services for National Listing of new varieties and Plant Breeders' Rights. Defra carried out the consultation for the UK on behalf of the Devolved Administrations of Northern Ireland, Scotland and Wales. The public consultation commenced on 28 October 2013 for 10 weeks and closed on 10 January 2014. This formal consultation built on discussion with representative industry organisations during development of the associated impact assessment. These discussions were mainly through the National Listing Taskforce, a Government-business partnership whose key aim is supporting the drive for further service cost-efficiency gains.

Background

EU Directives and resulting UK regulations for National Listing prescribe conditions for marketing new varieties of the main agricultural and vegetable species. The main requirements are that:

- A variety cannot be marketed in the EU unless it is listed in the EC Common Catalogue or in the National List of a Member State.
- A variety cannot be marketed in the EU unless it is new and, for agricultural species, an improvement on varieties already available.
- A variety must be distinct from existing varieties, sufficiently uniform and stable (DUS).
- Agricultural varieties must show an overall improvement in performance or 'value for cultivation or use' (VCU).

Plant Breeders' Rights (PBR) are a form of intellectual property protection designed specifically for new varieties of plants. They entitle the holder to control production and sale of reproductive material of the protected variety, either directly or through licences, and to collect royalties. To be eligible for PBR the main requirements are that:

- The variety must be novel.
- The variety must not have been previously marketed.
- The variety must be distinct, uniform and stable.

Issues under consideration

The issue under consideration is achieving full cost recovery for National Listing and Plant Breeders Rights by removing the current under-recovery. It is Government policy to achieve where possible full cost recovery for publicly provided services without cross-subsidisation and to transfer the cost from the taxpayer to the users who benefit directly. This gives fairer distribution of public resources and lowers public expenditure. The main purpose of the consultation was to explain the options for fee increases to achieve full cost recovery for these services and to seek further information on their impacts. The consultation document and associated impact assessment are at www.gov.uk/defra.

The options under consideration were:

- Option 1 Maintain the status quo, no increase in fees.
- Option 2 Increase fees to achieve full cost recovery in 2014.
- Option 3 Phased fee increases to reach full cost recovery in 2016

Copies of consultation responses

Requests for copies should be received at the address below or emailed within six months after the consultation responses document has been published. Only responses without a confidential marking can be released. Contact details are as follows:

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Analysis of responses

Defra would like to thank all those who participated in the consultation and is grateful for the responses. Defra welcomes the additional information and suggestions provided by the respondents. A list of those who responded is given in Annex A.

Defra received 15 responses, one of which requested to remain anonymous. These can be divided into three different business areas: rose breeders, minority crops such as herbage and pulse breeders, and breeders of the main agricultural crops such as cereals and oilseed rape. The rose breeders would prefer option 1, with most others preferring option 3 with some provisos.

Option 1

This was not deemed an acceptable option by Defra and the Devolved Administrations as it would not achieve full cost recovery.

Option 2

This option was not deemed workable by respondents as increasing the fees immediately could prove damaging to industry in both the short and long term. It would place significant burdens on companies, particularly Small and Medium sized Enterprises (SMEs). These burdens would not necessarily cause the SMEs to cease trading but might have a detrimental effect on their ability to trade within the EU.

Option 3

The main points made by respondents regarding option 3 were:

- Make further cost reductions in the three year recovery period so that the full fee increase shown under option 2 does not need to be realised.
- Make more efficient use of the Taskforce in ensuring that cost reductions are implemented and realised prior to full cost recovery.
- Phase VCU technical management and DUS fees in the same way as the administration fee and show greater transparency of costs to demonstrate that they relate accurately to the fees paid by industry.
- Extend the three year phasing period for minority crops, especially in the case of pulses, or exempt such crops altogether from any increase in fees.
- One respondent recommended a flat rate fee for all crops.

The way forward

Taking into consideration the responses to the consultation:

Option 3 is the only way forward in achieving FCR and the phasing approach for the main agricultural crops was accepted as the most appropriate course of action. Fera will continue to work with the Devolved Administrations and industry to seek further cost reductions and efficiencies to minimise future fee increases necessary to achieve full cost recovery.

The fees Taskforce was able to identify cost savings for Fera's administration, however, more time is required to review the VCU technical management process. The reason that phasing has been applied to the administration fee and not to VCU technical management and DUS fees is that the former represents the largest area of under recovery. Defra accepts the need for clear and justifiable costs and will continue to work with its delivery partners to increase transparency.

Concerns were expressed by the breeding industry with regard to the detrimental effect that the fee increases would have on breeding programmes for minor agricultural crops. However, a general exemption from fee increases for all such crops would undermine the objective of full cost recovery and would not be in the interest of the UK tax payer. Agri-Food and Biosciences Institute (AFBI) has reduced its herbage DUS costs by £40k, nearly 12%, and these reductions have been taken into account during the calculation of the fee increases.

Defra and the Devolved Administrations accept the concerns raised by several organisations regarding increases to DUS testing fees for field beans, highlighting the impact of the proposed 137%. The concern is that an increase of this size risks making this small breeding sector unviable at a time when, given changes in the Common Agricultural Policy, field beans are of increasing importance to UK farming.

The low number of applications for field beans, about five a year, makes it difficult to recover the full cost of growing reference varieties in the DUS trial, which are the same regardless of the number of applications. There are two UK companies with breeding programmes for winter field beans, which are relatively important in the UK, but because of the climate, are of little importance elsewhere. Full cost recovery would jeopardise these breeding programmes, at a time when joint public and private sector funded research projects are underway to increase production of protein crops and diversify arable production. The cost impact is small, with the freezing of DUS fees requiring a subsidy of about £15,000 a year. Fera and its delivery partners will continue their efforts to reduce the cost of testing while maintaining compliance with EU protocols.

Defra, with agreement from the Cabinet Committee and the Devolved Administrations, has modified option 3 to leave DUS test fees for field beans unchanged and to review this when the phasing period is complete in 2016. Fees for all other crops and sectors remain as the original proposal for option 3.

There continues to be a long term reduction in the number of applications for UK plant breeders' rights for ornamental plants, including roses, in favour of applications to the Community Plant Varieties Office (CPVO) for EU rights. The economies of scale arising from several thousand applications a year and 20,000 rights in force inevitably means that CPVO can offer better value for money than Fera, added to the significant benefit to breeders of rights across 28 EU Member States rather than the UK alone. CPVO is well established and has recently developed an online application system to help its customers. Fera is able to offer assistance in making applications to CPVO if necessary.

The proposed flat rate fee for all crops would not be acceptable as it would cause cross subsidisation between the different breeding sectors.

Fera has put arrangements in place to increase fees, under the modified option 3, from 1 April 2014. Increases will apply to the administration fee at the time of application after this date. Increases for DUS test fees and VCU technical management fees will apply after the sowing of trials in line with Fera's established pattern for invoicing.

Annex A: List of respondents

- Agricultural Industries Confederation
- British Association of Rose Breeders
- British Potato Trade Association
- British Society of Plant Breeders
- DLF Trifolium Ltd
- EUROSA
- J and R Black
- KWS UK
- National Farmers Union
- National Farmers Union Scotland
- R Harkness and Company
- Soya UK
- UK Plant Genetic Resources Group
- Wherry and Sons

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www.gov.uk/defra

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