

## **Plant variety rights and marketing of seed and propagating material if there's no Brexit deal**

### **Summary**

How plant breeders and businesses who trade in seeds and propagating material with the EU will be affected if the UK leaves the EU with no deal.

### **Detail**

If the UK leaves the EU in March 2019 without a deal, find out how this will affect businesses who trade in seed and propagating material with the EU and how plant breeders will be able to protect their intellectual property.

A scenario in which the UK leaves the EU without agreement (a 'no deal' scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome.

Negotiations are progressing well and both we and the EU continue to work hard to seek a positive deal. However, it's our duty as a responsible government to prepare for all eventualities, including 'no deal', until we can be certain of the outcome of those negotiations.

For two years, the government has been implementing a significant programme of work to ensure the UK will be ready from day 1 in all scenarios, including a potential 'no deal' outcome in March 2019.

It has always been the case that as we get nearer to March 2019, preparations for a no deal scenario would have to be accelerated. Such an acceleration does not reflect an increased likelihood of a 'no deal' outcome. Rather it is about ensuring our plans are in place in the unlikely scenario that they need to be relied upon.

This series of technical notices sets out information to allow businesses and citizens to understand what they would need to do in a 'no deal' scenario, so they can make informed plans and preparations.

This guidance is part of that series.

Also included is an [overarching framing notice](<https://www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario>) explaining the government's overarching approach to preparing

the UK for this outcome in order to minimise disruption and ensure a smooth and orderly exit in all scenarios.

We are working with the devolved administrations on technical notices and we will continue to do so as plans develop.

## **Purpose**

This notice sets out how trade in seed and propagating material between the UK and the EU would be affected if the UK leaves the EU in March 2019 without a deal, and how plant breeders would be able to protect their intellectual property.

## **Before March 2019**

### *Plant variety rights*

Plant variety rights are a form of intellectual property that allow the rights holder to control seed and propagating material and collect royalties. They are available for all species of plants and are essential for the economic success of plant breeding.

EU legislation provides a framework for protection of plant variety rights in all 28 EU countries, largely superseding the UK's longstanding national system. EU plant variety rights are managed by the Community Plant Variety Office (CPVO), an EU agency.

### *Seed and propagating material*

EU legislation for seed and propagating material assures the quality of material on the market. It applies mainly to food crops but also provides quality assurance for ornamental, amenity and forestry plants (forest reproductive material, or FRM). All crops must comply with the legislation, but the level of detail required varies with the type of crop.

For the main food and feed crops, the variety must first be registered on a National List. Officially controlled certification of seed and propagating material then takes place to assure identity and quality through testing and labelling.

Variety registration in the UK is led by the Animal and Plant Health Agency (APHA), which coordinates almost all testing. Two types of testing are carried out by a number of organisations across the UK:

- variety performance and quality
- distinctness, uniformity and stability (DUS). The EU allows mutual recognition of DUS testing between EU countries

Once a variety is registered on a National List, it is added to the EU's 'Common Catalogue', allowing it to be marketed across the EU.

### **After March 2019 if there's no deal**

#### *Plant variety rights*

If the UK leaves the EU in March 2019 without a deal, EU plant variety rights granted up to that point, including those held by UK businesses, would continue to be recognised in the remaining 27 EU countries. Those rights would also automatically be recognised and given protection under UK legislation, without rights holders needing to take any action.

Where EU rights have been applied for, but not granted before 29 March 2019, an application for rights in the UK would need to be made to APHA, following the normal process for UK plant variety rights, and using the same priority date and DUS test.

For new varieties, breeders would need to make two applications, where currently they make one, to achieve the same geographic coverage, as separate protection would be required in the UK and the EU. APHA is reviewing its processes to mitigate the resulting increased costs for plant breeding businesses, by increasing efficiency and where reasonable accepting DUS tests from the EU, see below.

For protection in the UK, an application would need to be made to APHA, following the normal process and payment of fees for UK plant variety rights.

For protection in the EU, an application would need to be made to the Community Plant Variety Office, following the normal process and payment of fees.

#### *Marketing seed and propagating material in the EU*

Varieties registered solely via UK National Listing would no longer be listed on the EU Common Catalogue and would not be marketable in the EU. UK certified seed and propagating material and UK DUS testing of plant varieties would no longer be accepted in the EU.

In order to market UK seed and propagating material in the EU, businesses would need to meet two requirements:

- The variety would need to be listed on the Common Catalogue - breeders would need to add them to the EU Common Catalogue through registration in an EU country.
- Seed would need to be certified, and the certification would have to be from the EU or from a third country recognised by the EU as equivalent for seed certification.

In the event of a no deal, the UK would apply to the EU to recognise its certification processes as equivalent, but we cannot guarantee this recognition would be in place at the point the UK leaves the EU. Approval can take a minimum of 12 months so we are exploring approaches to speed up this process. There will be further communications on this in the coming months.

The UK has applied to join the international scheme for FRM that will allow the UK to apply to the EU for recognition of its certification process and marketing of FRM in the EU.

Through these actions, Defra is attempting to reduce the impact on businesses looking to export seed to the EU.

### *Marketing seed and propagating material in the UK*

Varieties that are already registered on the EU Common Catalogue, but not on the UK list, are currently being added to the UK National List, which would allow them to be marketed in the UK. Any business wanting to add varieties to the National List in this way should contact APHA. Email and phone numbers are on GOV.UK.

In a 'no deal' scenario, Defra intends to allow varieties on the EU Common Catalogue to be marketed in the UK for an interim period of two years after the UK leaves the EU, and to apply the same interim period to the marketing of EU certified seed and propagating material.

After this, businesses would need to comply with new UK arrangements. The main food and feed crop varieties marketed in the UK would need to be on the UK National List. The [normal process and fees for National Listing would apply](<https://www.gov.uk/guidance/national-lists-of-agricultural-and-vegetable-crops>). Seed and propagating material from outside the UK would need to comply with normal international requirements. APHA is reviewing its processes to reduce costs and mitigate the impact.

For forest reproductive material (FRM), the intention would be to recognise EU standards as equivalent to UK standards and allow material to be marketed in the UK. Existing national schemes would continue to be used to register and certify material within the UK.

### *DUS testing*

Defra plans to continue to accept EU DUS reports, providing they are of comparable quality to UK DUS reports. The exception will be agricultural species currently tested by the Agri-Food and Biosciences Institute (AFBI), National Institute of Agricultural

Botany (NIAB) and Science and Advice for Scottish Agriculture (SASA). For these species, only DUS reports from approved UK science organisations will be accepted.

### **More information**

Current guidance, application forms and protocols for plant breeder's rights, national listing and seed certification can be found [here](<https://www.gov.uk/government/collections/guides-and-forms-for-plant-varieties-and-seeds-applications>).

For more information on importing and exporting of plants if there's no Brexit deal, please see the [technical notice on this area](<https://www.gov.uk/government/publications/importing-and-exporting-plants-if-there-is-no-brexit-deal>).

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

It is part of the government's ongoing programme of planning for all possible outcomes. We expect to negotiate a successful deal with the EU.

The UK government is clear that in this scenario we must respect our unique relationship with Ireland, with whom we share a land border and who are co-signatories of the Belfast Agreement. The UK government has consistently placed upholding the Agreement and its successors at the heart of our approach. It enshrines the consent principle on which Northern Ireland's constitutional status rests. We recognise the basis it has provided for the deep economic and social cooperation on the island of Ireland. This includes North-South cooperation between Northern Ireland and Ireland, which we're committed to protecting in line with the letter and spirit of Strand two of the Agreement.

The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU Member States. The UK would stand ready in this scenario to engage constructively to meet our commitments and act in the best interests of the people of Northern Ireland, recognising the very significant challenges that the lack of a UK-EU legal agreement would pose in this unique and highly sensitive context.

It remains, though, the responsibility of the UK government, as the sovereign government in Northern Ireland, to continue preparations for the full range of potential outcomes, including no deal. As we do, and as decisions are made, we'll take full account of the unique circumstances of Northern Ireland.

Norway, Iceland and Liechtenstein are party to the Agreement on the European Economic Area and participate in other EU arrangements. As such, in many areas, these countries adopt EU rules. Where this is the case, these technical notices may also apply to them, and EEA businesses and citizens should consider whether they need to take any steps to prepare for a 'no deal' scenario.