



Law Society
of Scotland

Consultation Response

Plant Varieties and Seeds (PVS) Strategy

December 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental Law sub-committee welcomes the opportunity to consider and respond to the consultation on *Plant Varieties and Seeds (PVS) Strategy*¹ by Defra, Scottish Government, Welsh Government and DAERA. We do not seek to answer the consultation questions but have the following comments to put forward for consideration.

General remarks

We note that it is important for the Strategy to take account of the provisions of the Trade and Co-operation Agreement (including in relation to non-regression, environmental principles, rebalancing and governance mechanisms) as well as other international agreements relevant to plant varieties and seeds. While it is proposed that the Strategy will span 5 years, we highlight that there may be a need to keep the Strategy under review during this time given the changing legislative landscape around retained EU law as a result of the proposals in the Retained EU Law (Revocation and Reform) Bill and as further trade deals are agreed.

In October 2017, the UK and devolved governments agreed a set of principle for the establishment of common frameworks, including that “common frameworks will be established where they are necessary in order to: enable the functioning of the UK internal market, while acknowledging policy divergence”.² In late 2017, the Cabinet Office published a list of 111 points where EU law intersects with devolved matters in relation to Scotland (160 points overall where EU law intersects with devolved powers across the UK). This has been supplemented by the publication of various *UK Government’s Frameworks analysis* documents from 2017 to date, with the most recent dating from November 2021³. These analyses have set out the UK Government’s policy positions on whether a policy area requires a common framework or not, including whether a common framework has any associated primary legislation. The most recent analysis sets out 29 policy areas where common rules and ways of working are or will be implemented through a non-

¹ <https://consult.defra.gov.uk/plant-varieties-and-seeds-team/plant-varieties-and-seeds-pvs-strategy/>

² JOINT MINISTERIAL COMMITTEE (EU NEGOTIATIONS) COMMUNIQUE, 16 October 2017, accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

³ <https://www.gov.uk/government/publications/frameworks-analysis>

legislative Common Framework agreement - plant varieties and seeds is one of these areas. We anticipate that this Strategy will help to implement the Common Framework.

We therefore welcome the collaboration between the UK Government and devolved administrations in this area. While differentiation is a natural consequence of devolution, we support strong collaboration which will help to set an overall framework and provide clarity and consistency for those in the sector. Common frameworks can provide a means of avoiding undesirable fragmentation and the potentially disruptive impact of policy divergence.

It is imperative that the devolution settlement is respected and we consider that common frameworks, including the development of this strategy, can do so by managing regulatory divergence on a consensual basis between the devolved administrations.

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