

# Big Useful Document

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## Key Points

- EU plant variety rights will continue to be protected in the UK for their lifespan, all existing EU rights will be transferred onto the UK system 2 months before exit. This time period allows for the EU's two month appeal period and ensures the UK will not inherit any ongoing appeals.
- The UK will ensure EU seed can be marketed in the UK for an interim period, this allows businesses sufficient time to adapt to new UK regulations. To ensure exports to the EU can continue, the UK needs to gain third country equivalence with the EU.
- The UK will accept EU DUS where there is no UK capability to deliver it and test reports are of sufficient quality. Included in the UK's equivalence application is a request for mutual recognition of DUS reports with the EU.

You can find out more detail about these changes and how they might impact your business on [GOV.UK](#) webpages.

To help you determine what action you may need to take to prepare for a potential 'no deal', we have prepared [flow diagrams](#) covering different scenarios.

## Plant Variety Rights

### How do Plant Breeders' Rights (PBR) work now?

Plant breeders' rights are a form of intellectual property right allowing the holder to control seed and propagating material and to collect royalties. They are available for all species of plants and help encourage investment in breeding improved varieties.

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

**How will existing EU rights work in a no deal scenario?**

In the event the UK leaves the EU without a deal, there will be no change in protection in the remaining 27 Member States. In the UK, those rights granted up to two months before Exit would be recognised and given protection under UK legislation, without rights holders being required to do anything. This allows for the EU's two month appeal period, so that any ongoing appeals have no impact in the UK.

**Is there a cost for businesses in the UK bringing existing EU rights under UK legislation?**

There will be no costs for businesses. Animal and Plant Health Agency (APHA) are carrying out this process administratively.

**Will the grant date, and duration of protection of the UK right, be the same as the EU right?**

Yes. All the relevant information held on the public pages of the CPVO database will be copied into the UK's database.

**What about PBR applications made before exit day, but not granted before exit by the CPVO?**

For varieties with an application for EU PVR made by exit day, but not yet decided by CPVO, an application can be made for UK PBR. If made within six months of exit, the UK will take over the EU DUS report and give the same priority date as the EU application. The normal UK application and DUS takeover fees will apply. (It will also be possible to make an application beyond six months after exit, but the EU DUS report will not necessarily be taken over and the priority date will be the date of the UK application).

**What about varieties granted EU rights in the two month appeal period?**

For varieties granted EU rights within two months of exit, an application can be made for UK PBR. If made within six months of exit, the UK will take over the EU DUS report and give the same priority date as the EU application. The normal UK application and DUS takeover fees will apply. (It will also be possible to make an application beyond six months after exit, but the EU DUS report will not necessarily be taken over and the priority date will be the date of the UK application). The underlying reason for the two month cut off is the UK wishing to avoid protecting varieties which might be subject to appeal against CPVO's decision to grant rights. EU legislation allows a two month period for appeals.

**What happens if I want to apply for a new PBR after exit in a no deal scenario?**

For new varieties after exit, separate protection would be required in the UK and the EU to achieve the same geographic coverage:

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 breeders' rights.

For protection in the EU, the application would need to be made to the Community Plant Variety Office.

**What period will apply for first commercialisation and novelty?**

For varieties which have not been commercialised before exit, novelty will be retained if first commercialisation in the UK is no more than one year before an application for UK rights. Where first commercialisation is in the EU after exit, it must be no more than four years before the application.

For pending applications, see above, commercialisation must not have taken place in either the UK or the EU more than one year before the application for EU rights.

#### **What will be the cost of UK PBR?**

Fees for UK PBR can be found on GOV.UK [PBR](#). The UK operates a policy of full cost recovery.

#### **Who will make UK PBR decisions?**

APHA and the Devolved Administrations are strengthening the UK PBR applications and decision making process to take account of the increased volume and complexity expected after exit. Decisions are the responsibility of the Controller of UK Plant Breeders' Rights.

#### **What IT system will the UK use for applications for UK PBR?**

APHA will continue to use its existing IT system for UK PBR. Application forms are available on GOV.UK [PBR](#). Alternatively, applicants can apply using UPOV's online PRISMA system.

#### **When applying for EU rights, will UK businesses require a procedural representative based in the EU?**

EU PBR legislation requires that an applicant is domiciled in the EU or has a procedural representative in the EU.

#### **Will UK businesses be given priority over EU businesses when it comes to dealing with UK PBR applications?**

APHA will deal with applications in date order.

## Common Catalogue and National List

#### **How does National Listing work now?**

For the main agricultural and vegetable crops, and amenity grasses, a variety must be registered on a National List before seed can be marketed. Once on a Member States' list, a variety is added to the EU Common Catalogue making it marketable across the EU.

National Listing in the UK is led by APHA. Two types of testing are required: Distinctness, Uniformity and Stability (DUS) for all crops and Value for Cultivation and Use (VCU, performance testing) for agricultural crops.

#### **What happens to the UK National List and Common Catalogue after exit in a no deal scenario?**

The UK National List will be deleted from the Common Catalogue at exit, so a variety must be listed in one of the 27 Member States to be marketable in the EU.

#### **Is there any mitigation for the UK National Listing requirement?**

APHA has run an administrative process to add Common Catalogue varieties to the UK National List, applications are now closed. This is possible under existing legislation but not after the UK has left the EU.

5000+ rights have been added to the UK National List.

Defra and the DAs are considering policy on re-opening the Common Catalogue to National list transfers during an implementation period

**Why is the UK adding Common Catalogue varieties to the UK National List for free when other Member States are charging for the reciprocal process?**

APHA has made a decision not to charge to limit the burden on UK businesses. We cannot comment on how other Member States are using the process.

**How will APHA ensure that Common Catalogue varieties added to the National List are what they say they are?**

APHA is checking the status of varieties before adding them to the National List and requiring a UK maintainer. The marketing regulations will continue to be enforced as now.

**Will UK National Listing apply to all the same species as now and will this be reviewed?**

The UK will be taking over all the EU legislation frozen at the point of exit. The list of regulated species may be reviewed at some point in the future.

**Does the maintainer of a listed variety have to be in the UK?**

At exit, UK legislation will be amended to require a maintainer in the UK.

**How is APHA going to monitor and enforce the marketing of varieties that are not listed?**

APHA will continue to enforce the marketing regulations as at present.

**Why can't we wait until there is a deal?**

It is APHA's responsibility to prepare for all eventualities. To wait for an outcome of the negotiations would not leave enough time to prepare in the event of no deal.

## Marketing in the UK

**What changes for marketing in the UK in a no-deal scenario for seed of agricultural crops?**

UK seed production and certification will continue as now.

The UK will recognise EU seed certification, except for seed potatoes, for an interim period of two years. This is because the UK is heavily reliant on EU seed and the interim period will give businesses time to adapt.

EU certified seed potatoes, and Common Catalogue varieties will continue to be recognised in England, Wales and Northern Ireland for one year after Exit. This will continue to be subject to the high grade region (Northern Ireland, Scotland and parts of England) requirements. Scotland will continue to operate its voluntary arrangement with industry on sourcing seed potatoes locally to maintain its higher phytosanitary status.

After two years, where an international scheme exists, normal international marketing rules will apply for imported seed (unless there is an alternative agreement with the EU). This means the variety must be on the UK National List and the seed certified under OECD rules and accompanied by an ISTA Orange International Certificate.

**Why the requirement for OECD certification and ISTA certificates following the interim period?**

The UK cannot continue to recognise EU seed labels and varieties. This recognition would be against World Trade Organisation rules as the UK would be deemed to be treating the EU as a favoured nation. The OECD Seed Schemes are internationally recognised and facilitate equal treatment.

**At what point can seed be marketed after applying for National Listing?**

Seed cannot be marketed until the variety is on the UK National List (or the Common Catalogue). The exception is test marketing under an authorisation for not yet listed varieties, where an application has been made but testing has not been completed. After exit, these arrangements will continue, but will only apply to marketing in the UK of varieties with an application for UK listing.

**Will vegetable seed of not yet listed varieties authorised in EU 27 Member States be marketable in the UK?**

Vegetable seed can be marketed for a 2 year interim period under authorisations granted by an EU Member State.

**What changes for marketing of fruit propagating and planting material in the UK in a no-deal scenario?**

For fruit, the UK will allow the marketing of EU propagating and planting material for a two year interim period without any changes in labelling. After this, the variety must have a PBR application (in the UK or EU), or be ‘Commonly known’ or of ‘no intrinsic value’ and comply with revised labelling requirements.

It is the UK’s decision whether to accept EU material for certification and CAC (Conformitas Agraria Communitatis).

Table of requirements for marketing EU seeds and other propagating material in the UK

Crop Group	Marketing Requirements
Agricultural seed (except seed potatoes)	The UK will accept EU certified seed for a two-year interim period of varieties on the EU’s Common Catalogue.
Seed potatoes	England, Wales and Northern Ireland will accept EU certified seed potatoes for a one-year interim period of varieties on the EU’s Common Catalogue.

	Scotland will continue to operate its voluntary arrangement with industry on sourcing seed potatoes locally to maintain Scotland's higher phytosanitary status.
Vegetable seed and propagating material	The UK will accept varieties on the EU Common Catalogue for a two-year interim period.
Fruit propagating material and planting material	<p>The UK will continue to recognise EU-certified and Conformitas Agraria Communitatis (CAC) material for a two-year interim period.</p> <p>Varieties accepted for marketing in the EU will continue to be marketable in the UK.</p>
Ornamental species	You can continue to market EU material in the UK, including after the two-year interim period.
Forest Reproductive Material (FRM)	The Forestry Commission will treat basic material registered as FRM in EU Member States as equivalent to basic material registered in the UK

## Marketing (exporting seed to the EU) in the EU

**Will I be able to export seed to the EU after Brexit?**

As part of the UK's No Deal planning, Defra, on behalf of the UK, has submitted two applications to the European Commission, requesting third country equivalence for certification of seed and other propagating material, and to request plant health derogations for seed and ware potatoes which would ensure exports continue as they do now.

On 16 September the EU formally rejected the second application submitted on 6 September, meaning that seeds and propagating material cannot be exported to the EU from Day 1 after Brexit. The EU re-confirmed that it will determine its position on seed equivalence and other sectors following the final outcome of the negotiations on the agreement of the withdrawal of the UK from the EU. The UK Government is ready to resubmit the application and open technical discussions as soon as the UK leaves the EU.

The UK has requested that the EU Commission expedites the approvals process. However, it can take 1-2 years for equivalence to be granted. This will leave a gap where businesses will be unable to export seed and other propagating material to the EU.

### **Why has the animal application been progressed by the European Commission and not seeds equivalence?**

Third country listing is a decision for the EU. The Commission Contingency Action Plan for November 2019 addressed live animals and animal products so Defra quickly applied for listing and will re-apply ahead of Brexit. The action plan did not make similar provisions to 'swiftly list' the UK as a third country for seeds which is inevitably delaying this.

### **What are the requirements for each type of seed?**

Please use our flow diagrams to determine export requirements:

<https://planthealthportal.defra.gov.uk/eu-exit-guidance/eu-exit-guidance-plants-varieties-and-seeds/>

## DUS Testing

Should the UK leave with no deal, the EU will stop accepting UK DUS reports after a No Deal Brexit. The UK is reliant on EU testing for a large number of species where we do not have DUS testing capability. The UK will therefore accept EU DUS reports after a No Deal Brexit for the majority of crops/species, provided they are of comparable quality to UK testing. The exception will be agricultural, amenity and vegetable species where there is UK DUS testing capability.

In this case, APHA will organise DUS testing by the Agri-Food and Biosciences Institute (AFBI), SASA, or the National Institute of Agricultural Botany (NIAB).

**For vegetable species**, the UK will introduce a **single administration fee** when a joint application is made for National Listing and Plant Breeders' Rights and SASA will reduce its DUS testing costs until 2021. This will mitigate the increase in cost resulting from the need for UK listing and PBR in a no deal scenario and the requirement for UK DUS testing.

Should the UK leave the EU with a deal in place, the UK will accept EU DUS reports for the agricultural, amenity and vegetable species tested by NIAB, AFBI and SASA provided that testing was initiated before Brexit.

### **How does DUS work now?**

Through CPVO's quality assurance, the EU has harmonised DUS testing and facilitated mutual recognition and exchange of reports between Member States and CPVO.

## Seed and Ware Potatoes

The EU has stated that after a No Deal Brexit, seed potatoes from the UK will not be marketable in the EU. From a plant health perspective, the EU has stated that UK exports to the EU would be subject to EU import requirements, including existing prohibitions on seed and ware potatoes from third countries.

As part of the UK's No Deal planning Defra, on behalf of the UK, submitted an application to the European Commission. This was for third country equivalence for certification of seed and other propagating material, and to request plant health derogations for seed and ware potatoes which would ensure exports continue as they do now.

Unfortunately, the European Commission has informed UK Government that it will not consider this application before the ongoing withdrawal negotiations have been completed. This means that in the event of a No Deal, you will not be able to export ware potatoes or market UK seed potatoes to the EU.

However, as we are keen to reach an agreement with the EU on this issue as soon as possible to give our businesses certainty, we resubmitted our third country equivalence application on 6 September. On 16 September the EU formally rejected the UK's equivalence application. The EU re-confirmed that it will determine its position on seed equivalence following the final outcome of the negotiations on the agreement of the withdrawal of the UK from the EU. The UK Government is ready to resubmit the application and open technical discussions as soon as the UK leaves the EU.

The approval process can take up to 2 years, during which time you will not be able to export most types of seed and propagating material to EU countries. We are acutely aware of the issues this will cause the industry, so have asked the EU to expedite the process, however it is their decision to take.

Without plant health changes in place for seed and ware potatoes, and arrangements with individual Member States for certification of seed potatoes, you will not be able to export or market UK seed and ware potatoes in the EU after a No Deal Brexit.

### Seed and ware potato exports to the Canary Islands

In relation to phytosanitary standards and trade with the EU, the Canary Islands are treated as a third country. As such, exports to the Canary Islands will not be affected in the event of no deal, with current export processes and requirements continuing as they do now. But it should be noted that third countries have a sovereign right to change their import requirements whenever they feel appropriate and we cannot guarantee that all exports to third countries will not be disrupted in this context. The



Canary Islands have made several changes to their import requirements for seed potatoes in the last c.6 years.

### Seed and ware potato imports into the UK from the EU

The UK is heavily reliant on EU seed for many crops, without which there would be significant impacts in the farming, food manufacturing and retail industries.

Although the UK is self-sufficient in terms of quantity of seed potato production, it is not able to supply all the varieties growers in the UK require. We therefore need to maintain supply of seed potatoes from the EU to meet this demand.

EU certified seed potatoes, and Common Catalogue varieties will continue to be recognised in England, Wales and Northern Ireland for one year following a No Deal Brexit. This will be subject to the restriction in the high grade regions (Northern Ireland, Scotland and parts of England) to allow basic seed only to be marketed. In addition, Scotland will continue to operate its voluntary arrangement with industry on sourcing seed potatoes locally to maintain Scotland’s higher phytosanitary status.

The requirements for imports of seed and ware potatoes entering the UK from the EU in a no deal scenario from a plant health perspective are set out in the table below:

Common name	Origin	Requirement
Seed potatoes	EU countries	Pre-import notification and accompanied by a phytosanitary certificate
Ware potatoes	EU countries subject to emergency measures (Spain, other than Balearic Islands, and certain areas of Portugal) and Poland	Pre-import notification; accompanied by phytosanitary certificate and with a registration number which has been issued by the plant health authority, in line with existing arrangements
	Other EU countries	Accompanied by registration number in line with existing arrangements

The plant health requirements for imports of seed and ware potatoes from other countries other than the EU will not change in a No Deal scenario. These requirements are set out below:

Common name	Origin	Requirement
Seed potatoes	Switzerland	Pre-import notification and accompanied by a phytosanitary certificate
	All other non-EU countries	Prohibited

Ware potatoes	Algeria, Bosnia and Herzegovina, Egypt, Israel, Libya, Morocco, Serbia, Switzerland, Syria, Tunisia and Turkey	Pre-import notification and accompanied by phytosanitary certificate
	Other non-EU countries	Prohibited

## Plant Health Requirements

### Importing into the UK from the EU

The majority of plants and plant products (including fruit, vegetables and cut flowers) **imported** from the EU will continue to enter the UK freely, as currently, in a no deal scenario. Any plants and plant products currently managed under the EU plant passport scheme will be subject to UK import controls and need to enter the UK with a phytosanitary certificate (PC). This replaces the EU plant passport's assurance and traceability, and maintains biosecurity.

Importers of EU plants and plant products will need to pre-notify the relevant authorities of the consignment before it reaches the UK border. As part of the pre-notification, they will need to provide scanned copies of relevant documents, including the PC. They then need to send the original copy of the PC to the relevant authority. This is the same process as for goods imported from third countries currently.

Consignments of EU plants and plant products will not be stopped at the border, preserving the flow of goods from the EU to the UK. The relevant plant health authority (APHA in England and Wales) will carry out a documentary and identity check remotely in order to provide assurance that import requirements have been met. These checks will be charged for by the relevant plant health authority.

For more information on plant health requirements when importing plants and plant products after Exit, please visit:

<https://planthealthportal.defra.gov.uk/eu-exit-guidance/eu-exit-guidance-plant-health/>

### **Exporting plant health controlled plants and plant products to the EU**

In the event of no deal, **the UK will need to meet EU plant health import requirements and gain plant health derogations from the EU to export controlled plants and plant products to the EU.**

For more information on plant health requirements when exporting plants and plant products after Exit, please visit:

<https://www.gov.uk/guidance/importing-and-exporting-plants-and-plant-products-if-theres-no-withdrawal-deal#exporting-plants-and-plant-products-to-the-eu>

## RoW (rest of world) exports

Exports to third countries outside of formal trade agreements (FTAs) should be unaffected if the UK leaves without a deal.

Trade agreements that the UK is part of as an EU Member State will no longer apply if there is a No Deal EU Exit. The UK Government is seeking continuity of existing EU trade agreements, which the UK participates in as a member of the EU, for after we leave the EU. We have been working with our trading partners to have bilateral agreements ready in place for when we need them.

We are making progress in transitioning existing EU trade agreements. To date, the UK has secured 16 trade continuity agreements with 46 countries, which account for £100 billion of UK trade (an increase from £39 billion since the end of March). This equates to over 50% of the UK's agri-food exports covered by those countries with which we are seeking continuity. It remains the government's priority to conclude trade continuity agreements for when the UK leaves the EU, or as soon as possible thereafter. We are exploring a range of options to ensure continuity of effect for trade agreements, where they have not been ratified and brought into force in time.

Businesses should continue to check the regularly updated guidance on GOV.UK [\[LINK\]](#) which lists the signed agreements and the status of those not yet signed. If the UK leaves the EU without these agreements in place, trade with these countries will take place under WTO rules. Businesses should familiarise themselves with the detailed and wide-ranging EU Exit guidance available on GOV.UK to understand how to prepare in case of a no deal scenario.

In a deal scenario, the EU has undertaken to notify its treaty partners that the UK is treated as a Member State for the purposes of EU international agreements during any Implementation Period. Discussions with all partner countries have demonstrated a commitment to finding a pragmatic way to ensure that the UK continues to be covered by EU international agreements. A number of countries have already publicly welcomed this approach.

Additional guidance on trade agreements is available here:

<https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries-in-a-no-deal-brex>

If your business is based in Northern Ireland, Scotland or Wales you can find additional guidance below.

Scotland: <https://www.sasa.gov.uk/eu-exit-guidance>

Northern Ireland: <https://www.daera-ni.gov.uk/plant-health-plantstمبر-brexit-qa>

Wales: <https://gov.wales/preparing-wales-brexit/environment-agriculture-and-food>