EXPLANATORY MEMORANDUM

1. i. **Title**

The Seeds Potatoes (Fees) (England) Regulations 2004 [SI 2004 No.1316]

ii. **Laying Authority and Purpose**

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

iii. **Department responsible**

Department for Environment, Food and Rural Affairs.

2. **Description**

The Regulations authorise charging for seed potato inspections undertaken by the Department's Plant Health and Seeds Inspectorate in connection with the classification of those potatoes for marketing purposes. Two new fees are added to those currently authorised (by the regulations that the above Regulations will replace). These are for inspections of pre-basic seed potatoes and the Defra-managed 'approved stock scheme'.

3. **Matters of special interest to the Joint Committee on Statutory Instruments/Select Committee on Statutory Instruments**

The services to which the two new fees relate are described in more detail in the following paragraph. Both fees are set at £81.00 per hour or part thereof and represent the cost of inspecting the seed potatoes and issuing seals and labels for them. Fees for these inspections were previously charged (at the same rate) until their suspension in January 2000 pending the outcome of a review into the legal basis for charging (also explained in more detail in the following paragraph).

4. **Legislative Background**

4.1 The requirements for different categories of seed potatoes to be classified before they can be marketed, including detailed provisions for their inspection by the Secretary of State, are laid down by the Seed Potatoes Regulations 1991 (SI 1991/2206) ("the 1991 Regulations"). The authority to charge in connection with classification of seed potatoes is currently

contained in the Seed Potatoes (Fees) Regulations 1998 (SI 1998/1228). The purpose of the Regulations is to add two new categories of inspection to those referred to in the 1998 Regulations.

4.2 The first additional category of inspection for which a charge is authorised is the inspection of pre-basic seed potatoes. This category was given a statutory basis by the Seed Potatoes (Amendment) (England) Regulations 2000 (SI 2000/1788), which amended the 1991 Regulations.

4.3 The second new fee is for the inspection of seed potatoes under a scheme or arrangement as provided for by paragraph 4(c)(ii) of Part II of Schedule 1 to the 1991 Regulations. This provision allows the Secretary of State to lay down growing conditions for crops of seed potatoes for the purpose of approving them for entry into the main seed potatoes classification scheme the following season. This allows the produce of those seed potatoes to be marketed.

4.4 The scheme currently operated under paragraph 4(c)(ii) of Part II of Schedule 1 to the 1991 Regulations is known as the 'approved stock scheme'. Its object is to provide an entry into the main classification scheme for seed potatoes of varieties that have not previously been classified, because they are new varieties or breeders' advanced selection material not on the UK National List or in the EC Common Catalogue, or of established varieties of which only unclassified stocks exist.

4.5 Until their suspension in January 2000, charges were made for inspections of pre-basic seed potatoes and seed potatoes under the approved stock scheme without a specific statutory basis. The charges were suspended following a decision by the Department to conduct a review of a number of plant health and other services for which charges were being made to determine whether express statutory authority should be provided in respect of those charges. The conclusions of the review in respect of charging for inspections of these categories of seed potatoes were that legislation should be introduced. (The outcome of the review was announced to Parliament by means of a written statement on 30 March 2004 (HC Hansard, Vol 419, Part 66)).

4.6 The Regulations are made under section 16(1) and (1A)(e) of the Plant Varieties and Seeds Act 1964 (c.14).

5. **Extent**

The Regulations apply in respect of England only.

6. Policy background

6.1 The Regulations supplement the 1991 Regulations by providing the fee structure for services provided by the Department in connection with those regulations. The policy objective is to regulate the marketing of seed potatoes in England and to give effect to EC Council Directive 2002/56 on the marketing of seed potatoes. The Directive requires that all seed potatoes marketed in Member States shall have been certified to confirm that specified minimum standards have been met. These standards relate to trueness to variety, and freedom from impurities and specific diseases.

6.2 Interest in this policy is restricted to the industry concerned and has been low. The industry have been meeting the cost of seed potato services for some years. The proposals to introduce legislation in respect of the fees for the two particular services described above have not met with any particular comments.

7. Impact

A Regulatory Impact Assessment has been prepared and is attached.

8. Contact

Angus Barrett, Defra, Room 339, Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX. Tel: 01904 455214 Fax 01904 455214.

Department for Environment, Food and Rural Affairs
May 2004

REGULATORY IMPACT ASSESSMENT

1. TITLE

CHARGING FOR PLANT HEALTH SERVICES PROVIDED IN RESPECT OF SEED POTATOES AND PLANT HEALTH EXPORT CERTIFICATION

2. PURPOSE AND INTENDED EFFECT

2.1 Objective

To assess a proposal to reintroduce the charges made to industry for (1) export certification of plants and plant products and (2) inspections of pre-basic seed potatoes entered into the Seed Potato Classification Scheme and the approved stocks scheme in respect of seed potatoes.

2.2 Issue

Invoicing for these services was suspended in 1999 whilst a review was undertaken. This review, which subsequently included certain other services provided by the Department, concluded that the legislative bases were not properly in place for the services described above. The Department is now looking to put these charges on the proper legal footing with the intention that the provision of these services is, as far as possible, cost neutral for the Department.

This Regulatory Impact Assessment applies to England only. Equivalent services are provided in other parts of the UK by the devolved administrations and separate arrangements will be made by those departments for any assessment. A separate assessment is also being made by the Forestry Commission who provide export certification services in respect of forest trees and forest products across the whole of the UK.

The plant health services for which the Department intends to re-introduce charging are:

- Export certificates for plants and plant products - These certificates are provided as evidence that consignments of plants and plant products meet importing countries' phytosanitary conditions.
- Seed potatoes: approved stock scheme – This is a minor scheme for seed potatoes which facilitates entry of stocks into the main Seed Potato Classification Scheme (SPCS).

- Seed potatoes: fees for inspection of pre-basic seed potatoes – This involves the inspection of pre-basic seed potatoes, entered into the SPCS. Charging was not suspended for other classes of seed potatoes entered into the SPCS.

2.3 Risk Assessment

There are a number of risks if the legislation is not reintroduced. The first is in connection with allocating the proper resources to this work. By achieving cost recovery, the Department is better able to keep pace with industry demands for the services. A further risk is that not charging could be considered by the European Commission as subsidising industry and therefore contrary to EU law on State Aids. Charges are presently levied by some European counterparts for equivalent services. Finally, if the offence provisions that relate to information supplied to obtain a certificate are not brought into force there is an increased risk that the UK's obligations under the International Plant Protection Convention may be breached.

3. OPTIONS

3.1 Identifying the options

Three options have been identified:

Option 1 - Do nothing

Although invoicing was suspended in 1999, the Department has continued to provide the services detailed above. In so doing, this has increased the running costs of plant health services and presented a conflict with the other areas for which charging has been ongoing.

Option 2 - Reintroduce charges, applying the same fee rates to all

Charges would be reintroduced at the same rates that were applied before suspension for each of the three services, except that a previous concession for small exporters would be removed.

Option 3 - Reintroduce charges, including a reduced rate for small exporters

This is the charging basis that applied prior to the suspension in 1999. Under the export certification arrangements, small exporters would be charged at a rate equal to half that charged to other exporters. The definition of a small exporter is one who is not registered for VAT or whose value of exports in the last financial year was less than £5,000. In addition to small businesses, this concession is intended to apply to, for example, private individuals making a non-commercial

export, amateur plant enthusiasts, or a university or other non-commercial scientific establishment. For the two seed potatoes schemes, the same fee rates would apply to all participants.

3.2 Issues of equity or fairness

Customers for the export certification services range from private individuals and small nurserymen through to major grain exporting companies. In respect of seed potatoes, the UK industry comprises growers, breeders, merchants and ware potato growers who rely on seed potatoes of a known health status. It is envisaged that the measures would impact equally across the industry irrespective of size. However, option 3 would alleviate some of the burden in terms of costs that would fall on small exporters.

4. BENEFITS

The benefits of doing nothing (Option 1) are that industry would continue to gain access to the services without charge.

The benefits of reintroducing charging at the same rates for all (Option 2) are that:

- Cost-recovery - the services, which are only used by exporters or the seed potato industry, will be self-funding. The costs will be borne by those who stand to make a financial gain rather than being funded by the tax-payer.
- Consistency – prior to suspension in 1999, charges were already being made for these services. The fees are therefore not anything new to industry and form part of an existing charging scheme for the wider range of plant health services.
- Fairness – the work involved in preparing an export certificate is about the same regardless of the size of the exporter. Differences do arise in terms of the amount of technical time needed and these, together with inspection times for seed potatoes, can be accounted for by continuing to charge for technical input by the quarter hour, with a minimum fee.
- Legal – the risk of Commission action in relation to State Aid rules would be removed.

The additional benefits that would accrue from charging a lower rate to small exporters (Option 3) are:

- A reduction in financial burdens for small businesses and individuals –profit levels in this part of the industry tend to be small and exports are not a large feature of the business. In addition, individuals often wish to make a one-off export and could be dissuaded from doing so if the charges were the same as that paid by industry.

- A return to the status quo which existed prior to suspension and was operating well.

5. COSTS

If Option 1 is pursued, the annual loss of income to the Department will be in the order of £405,000. This is on the present basis of providing the seed potato services to 72 growers and providing 14,000 phytosanitary certificates for exports each year. There would be no additional costs to the industry.

In the case of Option 2, industry would be required to meet the actual costs of providing export certificates or inspecting seed potatoes (pre-basic and approved stocks scheme). Assuming the same demand as above, the total cost for industry over a year would amount to £430,000. Of this, £429,000 is in relation to export certificates and approximately £1,000 for the two seed potato services.

For Option 3, the total costs to industry would equate to the £405,000 charged for providing the present level of services.

6. CONSULTATION WITH SMALL BUSINESS: THE SMALL FIRMS' IMPACT TEST

The Small Business Service have been consulted as part of this assessment. A number of small firms will be affected by the reintroduction of charging and the effects on these would be mitigated by the concessionary fee rates that have previously been applied to small exporters.

7. COMPETITION ASSESSMENT

The Competition Filter has been applied and the conclusion is that there is no significant risk of impact on competition. A detailed assessment has therefore not been prepared.

In applying the filter, the markets identified were the potato industry and the plant and plant export industry. Knowledge of these sectors indicates that a very small number of firms may each have a market share of more than 10% in the seed potato sector. No firm has a share of more than 20% and neither do the largest three firms have more than 50% market share. The costs will fall evenly across the markets, with the exception of the small exporters' fees which will favour small businesses and private individuals. The regulations will have no impact on market structure, and will not adversely affect new firms compared to existing ones. Neither is rapid technology change a characteristic of the markets. Finally, the introduction of this legislation has no impact on the choice of firms in respect of price, quality, range or location of their products.

8. ENFORCEMENT AND SANCTIONS

The Plant Health (Export Certification) (England) Order 2004 contains offences that apply for the purposes of obtaining certification. These provisions reproduce existing offences in the Plant Health Order 1993 and will be enforced by the Plant Health & Seeds Inspectorate. No significant additional costs are expected to be incurred. The main sanction under the seed potatoes arrangements is that stocks can be downgraded or removed from the scheme if the full requirements have not been complied with.

9. MONITORING AND REVIEW

The cost of providing these services will be reviewed annually and appropriate fee rates applied. Increases in rates will not exceed the level needed to recover the costs of the services concerned and industry will be given reasonable notice of any change.

10. CONSULTATION

The principle of passing the costs on to users of services is well established and indeed industry were meeting the fees for these particular services prior to suspension of invoicing in 1999. With that background, the Department has concluded that no new decisions are being taken on whether to charge and it would be misleading to consult in such circumstances.

11. SUMMARY AND RECOMMENDATION

The Department considers that charging for these services should be reintroduced on the same basis as prior to suspension. This system has worked well over the years and received the support of customers. The Department will therefore be proceeding with Option 3 as detailed under section 3 above.

In bringing forward this legislation, the Department has provided those affected with notice and guidance at least 12 weeks ahead of implementation. This is in accordance with the Guidance on Implementation Periods issued by the Small Business Service. Guidance was in the form of a press release and direct mailing to trade bodies and known users of the services.

12. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister …Ben Bradshaw

Date ……. 11th May 2004

13. CONTACT POINTS

Richard Harris, Defra, Room 354, Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX. Tel: 01904 455183 Fax: 01904 455198

Angus Barrett, Defra, Room 339, Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX. Tel: 01904 455214 Fax 01904 455214

Plant Health Division
May 2004