EXECUTIVE NOTE TO

THE SEED POTATOES (FEES) (SCOTLAND) AMENDMENT REGULATIONS 2007 SSI/2007/520

Introduction

1. The above instrument is made in exercise of the powers conferred by sections 16(1) and (1A)(e) of the Plant Varieties and Seeds Act 1964. As required by section 16(1) of the 1964 Act a consultation exercise was undertaken. The instrument is subject to negative resolution procedure.

Policy Objective

2. In this Executive Note –

"the Principal Regulations" means the Seed Potatoes (Fees) (Scotland) Regulations 2005 (S.S.I. 2005/279), which was amended by the 2006 Regulations;

"the 2000 Regulations" means the Seed Potatoes (Scotland) Regulations 2000 (S.S.I 2000/201)[1]; and

"the 2006 Regulations" means the Seed Potatoes (Fees) (Scotland) Regulations 2006 (S.S.I. 2006/264).

3. This instrument amends the Principal Regulations and revokes the 2006 Regulations.

Amendments to the Seed Potatoes (Fees) (Scotland) Regulations 2005

4. The Principal Regulations provide for the charging of fees. These fees are charged by the Scottish Agricultural Science Agency (SASA) for carrying out the official examinations of seed potatoes and related services. Those services include crop inspections, scientific testing of crop samples, tuber inspections and the provision of official labels in respect of classes of seed potatoes.

5. This instrument makes three amendments to the Principal Regulations. It:

- amends the fees for nuclear stock set out in the Schedule to the Principle Regulations;
- introduces fees for test and trial seed potatoes; and
- introduces a fee where appointments for tuber examinations are cancelled without reasonable excuse on the day the examination is due to take place.

[1] Amended by S.S.I. 2005/280 and S.S.I. 2007/418

Paragraphs 6 -10 provide more information about these amendments.

Fees for nuclear stock

6. This instrument increases the three fees for the provision and maintenance of nuclear stock set out in the Schedule to the Principal Regulations. The 2000 Regulations requires that seed potato stocks derived in Scotland must originate from Nuclear stock are pathogen tested microplants produced officially as the initial planting material for seed potato production in Scotland.

7. The fees increases are for:- a) the initiation of new nuclear stock (increased from £159 to £169 for 6 microplants), b) the provision of *in vitro* maintained nuclear stock (increased from £46 to £48 for 6 microplants) and c) the fee for the *in vitro* maintenance of nuclear stock (increased from £65 to £69 annual fee per variety). The previous fees for nuclear stock were set by the 2006 Regulations, which is revoked by this instrument.

Fees for test and trial seed potatoes

8. Decision 2004/842[2] makes provision for the marketing of unlisted varieties of seed potatoes for test and trial purposes, and is implemented in Scotland by the Seed Potatoes (Scotland) Amendment Regulations 2007[3] (which amended the 2000 Regulations).

9. This instrument introduces a fee for the test and trial category of seed potatoes set at £25 per half hour for both the inspection of growing crops and the inspection of tubers. The tuber inspection fee also includes the provision of any number of official labels and seals which may be reasonably required. The level of fee is the same as that already applied to Approved Stocks. Approved Stocks are imported stocks released from quarantine, or stocks of new and unnamed varieties which have been entered or are intended to be entered for National List testing.

Cancelled tuber examinations

10. This instrument also introduces a new fee to cover staff costs when visits for tuber inspections are cancelled at or en route to the place of inspection by the grower. The fee is set at £25. We expect only very limited use to be made of this provision.

Consultation

11. In terms of section 16(1) of the 1964 Act a short consultation exercise was undertaken on the proposal to introduce these Regulations. No responses were received.

[2] O.J. No. L.362 9.12.2004, p.21.
[3] S.S.I. 2007/418

Timing

12. This instrument will come into force on 1 January 2008.

Financial effects

13. The increases for the nuclear stock services are above the rate of inflation but maintaining the plant health security of the initial material is accepted as being to the benefit of all in the seed potato industry. The new fee for unlisted varieties is the same as that which already applies to Approved Stock and we are unsure what kind of uptake there may be for this category. The use of the new fee for aborted visits is expected to be applied only very rarely. Although we expect the increases in fees for growers to be minimal a Regulatory Impact Assessment has been prepared.

Rural Directorate – Agriculture Division
Crops, Plant Health and Pesticides Policy Unit
November 2007

Regulatory Impact Assessment

1. **Title**

The Seed Potatoes (Fees) (Amendment) Scotland Regulations 2007 SSI/2007/

2. **Purpose and intended effect**

Objectives

To assess the proposal to increase three fees for the provision and maintenance of nuclear stock, extend the current fees charged for crop and tuber inspections for Approved Stock to unlisted varieties of test and trial varieties which can now be marketed in Scotland following the implementation of the provisions of EC Decision 2004/842 and introduce a new fee to cover staff costs when on a very limited number of occasions visits for tuber inspections are cancelled at or en route to the place of inspection.

Background

This Regulatory Impact Assessment applies to Scotland only. Existing fees for seed potato services are contained in the Seed Potato (Fees) Scotland 2005 and the Seed Potato (Fees) (Scotland) Amendment Regulations 2006. Equivalent services are provided in other parts of the UK by the other administrations.

Rationale for government intervention

By working towards achieving cost recovery The Scottish Government is better able to keep pace with industry demands for the services. If the appropriate level was not charged for the services that applicants receive, the European Commission could consider that Scotland is subsidising its seed potato industry and is therefore acting contrary to EU law on State Aids. Charges are currently levied by our European counterparts for equivalent services.

3. **Consultation**

Within Government

Colleagues within The Scottish Government have been consulted.

Public consultation

A short written public consultation with stakeholder organisations has been undertaken. Stakeholders included the National Farmers Union Scotland, the Pre-Basic Growers Association, the British Potato Council, the British Potato Trade Association, the Scottish Organic Producers Association and the Association of Small Businesses. All stakeholders involved in the seed potato industry will therefore be aware of our proposals.

4. **Options**

Two options have been identified.

4.1 Option 1 – Do nothing

The fees charged under Option 1 for nuclear stock would remain at the current level set in the Seed Potatoes (Fees) (Scotland) Amendment Regulations 2006, namely £159 for the initiation of new nuclear stock (6 microplants); £46 for the provision of *in vitro* maintained nuclear stock (6 microplants) and £65 annually for the *in vitro* nuclear stock (per variety). There would be no fee charged for either unlisted varieties for test and trial varieties or for any aborted visits. The Scottish Government would not be able to recover the costs of the service for providing and maintaining nuclear stock and so tax payers would be subsidising the industry. For the two new fees tax payers would also be meeting the costs and therefore subsidising some parts of the seed potato industry.

4.2 Option 2 – Increase fees for the nuclear stock services and introduce 2 new fees

The fees charged under Option 2 for the nuclear stock services would increase to £169 for the initiation of new nuclear stock (6 microplants); £48 for the provision of *in vitro* maintained nuclear stock (6 microplants) and £69 annually for the *in vitro* maintenance of nuclear stock (per variety). For unlisted varieties for test and trial seed potatoes the level proposed is the same as currently applies to Approved Stock, namely £25 per half hour or part thereof for growing crop and tuber inspections and for aborted visits the level is proposed at £25 per half hour or part thereof.

5. **Costs and Benefits**

Sectors and groups affected

Seed potato producers, growers, merchants and ware potato growers who rely on seed potatoes to be of a known health status. It is envisaged that the measures would impact equally across the industry irrespective of size.

Scotland is a major seed potato producer. The value of Scottish seed potatoes in 2006 was recorded as being around £50 million.

Benefits

Option 1 – No change

Stakeholders would benefit from getting the nuclear stock services at a reduced rate and being subsidised by tax payers. Producers of unlisted varieties of test and trial seed potatoes would benefit from being able to market these seed potatoes with costs of the services being subsidised by taxpayers.

Option 2 – Increased fees for nuclear services and the introduction of new fees

Stakeholders would be liable to pay the appropriate fee for the services received without the costs of these services and inspections being subsidised by tax payers.

Costs

Option 1 – No change

The no change option would mean that producers would not be faced with additional costs.

Option 2 – Increased fees for nuclear services and the introduction of new fees

This option would mean that the industry would be required to meet the costs of the provision and maintenance of nuclear stock. Assuming the same figures as detailed, the total cost over a year would amount to £3,000 for increases in nuclear stock services, and £300 for unlisted varieties. It is not possible to quantify the amount for aborted visits but we anticipate that this cost would be minimal.

6. Small Firms Impact Test

A number of small businesses may be affected by these increases and the introduction of the fees for the marketing of unlisted varieties for test and trial purposes. Exact numbers are not known as some of the smaller companies in the industry will be subsidiaries of larger companies and will be classified accordingly. The level of all the fees under the scheme will be the same no matter what size the company however the revised regulation inherently provides for different sizes of businesses, as the impact of requirements such as inspection and labelling etc will be proportionate to the numbers of seed potatoes being produced and marketed.

7. Legal Aid Impact Test

The Proposal does not create new criminal sanctions or civil penalties.

8. Test Run of business forms

Stakeholders already apply for the services and no new forms are envisaged.

9. Competition Assessment

The following initial assessment has been made.

Would the Proposal:

- Directly limit the number or range of suppliers?
- Indirectly limit the number or range of suppliers?

The Proposal imposes further costs on growers, but does not directly or indirectly restrict the number or range who will be able to operate in the market place.

- Limit the ability of suppliers to compete?
- Reduce growers' incentives to compete vigorously?

The Proposal is unlikely to have any effect on competition.

10. Enforcement, sanctions and monitoring

Growers will be charged the revised fees of the services by Government officials. Failure to pay the relevant fee will mean that the service will not be available.

11. Implemention and delivery plan

The proposal will come into force on 1 January 2008.

12. Post-implementation review

The level of seed potatoes fees in Scotland are regularly reviewed.

13. Summary and recommendation

Industry made no comments on the proposals. We therefore recommend that Option 2 be introduced.

14. Declaration and publication

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

Signed…… Date November 2007

Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment

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