EXECUTIVE NOTE

THE SEED POTATOES (FEES) (SCOTLAND) REGULATIONS 2009

SSI 2009/306

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 were amended by the 2007 Regulations;

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

"the 2007 Regulations" means the Seed Potatoes (Fees) (Scotland) Regulations 2007 (S.S.I. 2007/520).

3. This instrument consolidates the provisions of, and revokes, both the Principal Regulations and the 2007 Regulations. It makes some further amendments of a minor or consequential drafting nature, and provides for an increase in the rate of fees payable for nuclear stock services.

The Seed Potatoes (Fees) (Scotland) Regulations 2005

4. The Principal Regulations provide for the charging of fees. These fees are charged by the Science and Advice for Scottish Agriculture (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 repeals and consolidates the provisions of the Principal and 2007 Regulations.

Paragraphs 6 - 7 provide more information about these amendments.

Fees for nuclear stock

[1] Amended by S.S.I. 2005/280, S.S.I. 2007/418 and SSI 2009/226

6. This instrument increases the three fees for the provision and maintenance of nuclear stock set out in the Schedule to the 2007 Regulations. The 2000 Regulations requires that seed potato stocks derived in Scotland must originate from Nuclear stock. These 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 £169 to £176 for 6 microplants), b) the provision of *in vitro* maintained nuclear stock (increased from £48 to £50 for 6 microplants) and c) the fee for the *in vitro* maintenance of nuclear stock (increased from £69 to £72 annual fee per variety). The previous fees for nuclear stock were set by the 2007 Regulations.

Consultation

8. In terms of section 16(1) of the 1964 Act a short consultation exercise was undertaken on the proposal to introduce these Regulations. Two responses were received from the Pre-Basic Growers Association and the Potato Council Limited who were both in favour of the increases proposed.

Timing

9. This instrument will come into force on 25 September 2009.

Financial effects

10. The increases for the nuclear stock services are below the rate of inflation and the seed potato industry accept that maintaining the plant health security of the initial material is of benefit to all in the seed potato industry. Although the increases in fees for nuclear stock services are minimal a Regulatory Impact Assessment has been prepared.

Rural Directorate – Agriculture and Rural Development Division
Plant Health, Horticulture and Potatoes
26 August 2009

Regulatory Impact Assessment

1. **Title**

The Seed Potatoes (Fees) (Scotland) Regulations 2009

2. **Purpose and intended effect**

Objectives

To assess the proposal to increase three fees for the provision and maintenance of nuclear stock.

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 2007. 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 in SASA 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 Potato Council Limited, 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. Two written responses, both, in favour of the proposals were received from the Pre-Basic Growers Association and the Potato Council Limited.

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 2007, namely £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* nuclear stock (per variety). 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.

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

The fees charged under Option 2 for the nuclear stock services would increase to £176 for the initiation of new nuclear stock (6 microplants); £50 for the provision of *in vitro* maintained nuclear stock (6 microplants) and £72 annually for the *in vitro* maintenance of nuclear stock (per variety).

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 the size of the company.

Scotland is a major seed potato producer. The value of Scottish seed potatoes in 2008 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 for these services to be subsidised by tax payers.

Option 2 – Increased fees for nuclear services

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

Costs

Option 1 – No change

The no change option would mean that producers would not be faced with funding the additional costs of the increase in the provision of nuclear services.

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

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 level of requests as at present, the total cost to the whole industry over a year would amount to £2,100 for the increases in nuclear stock services.

6. Small Firms Impact Test

A number of small businesses may be affected by these increases. 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 nuclear stock services and no new forms are required.

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 that 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 nuclear stock services will not be available to the stakeholder.

11. Implementation and delivery plan

The proposal will come into force on 25 September 2009.

12. Post-implementation review

The level of seed potatoes fees for nuclear stock services in Scotland are reviewed on a regular annual basis.

13. Summary and recommendation

The two written responses received from stakeholder bodies in the seed potato industry were content with the increases proposed under Option 2. 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 2 September 2009

Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment

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