EXECUTIVE NOTE

THE SEED POTATOES (SCOTLAND) AMENDMENT REGULATIONS 2009
SSI 2009/226

Introduction

1. The above instrument is made in exercise of the powers conferred by sections 16(1) to (5) and 36 of the Plant Varieties and Seeds Act 1964. As required by section 16(1) of the 1964 Act a consultation exercise was undertaken in 2008. The instrument is subject to negative resolution procedure.

Policy Objective

2. The purpose of this instrument is to make further amendments to the Seed Potatoes (Scotland) Regulations 2000 ("the principal Regulations") which provide for the marketing of seed potatoes in Scotland.

3. This instrument provides for the introduction of provisions allowing the marketing of seed potatoes of conservation varieties within their region of origin (the production area). Commission Directive 2008/62/EC ("the Directive") lays down the rules which allow a Member State to market seed potatoes of conservation varieties. An application for National Listing of the conservation variety must have been sought and granted before the seed potatoes can be marketed.

4. Seed potatoes of conservation varieties are old heritage varieties such as Shetland Blacks, Salad Blues, Highland Burgundy Reds and Blue Kestrels, which have long ceased (if indeed they ever did) to appear on the National List or in the EC Common Catalogue. There exists a relatively small but thriving niche market amongst hobby growers, allotment holders and other gardening enthusiasts to purchase and grow these varieties. The Amendment Regulations extends the remit of the principal Regulations to include such potatoes.

5. This instrument implements Directive 2008/62/EC by amending the principal Regulations to provide a definition of conservation varieties and region of origin (production area), it regulates the marketing of conservation varieties to within a Member States region of origin and requires that the terms "conservation variety" and "region of origin" be added to the official label. This instrument also allows Scottish Ministers to specify the maximum amount of conservation varieties that can be marketed annually by producers. It has been agreed with the other Administrations that the region of origin will be the UK but the Directive permits in special circumstances for this to be extended to additional regions. The Directive permits certain discretionary derogations from the normal certification processes being applied to the marketing of such varieties. Because of Scotland's high plant health status for seed potato production these derogations are not being applied.

Timing

6. The Regulations will come into force on 30 June 2009.

Financial effects

7. Although the financial effect of these Regulations on the seed potato industry is expected to be minimal a Regulatory Impact Assessment has been prepared.

The Scottish Government – Rural Directorate
Agriculture and Rural Development Division

June 2009

Final Regulatory Impact Assessment

1. Title

The Seed Potatoes (Scotland) Amendment Regulations 2009

2. Purpose and intended effect

Objectives

To assess the proposal allowing listed varieties of conservation varieties (which are old heritage varieties) to be marketed in Scotland following the implementation of the provisions of Commission Directive 2008/62/EC in the Seed Potatoes (Scotland) Amendment Regulations 2009.

Background

This Regulatory Impact Assessment applies to Scotland only. Fees for seed potato services including inspections for growing crops and tubers are contained are contained in the Seed Potatoes (Fees) Scotland 2005 and the Seed Potatoes (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 the Science and Advice for Scottish Agriculture (SASA) and Rural Payments and Inspections Directorate (RPID) have been consulted.

Public consultation

A public consultation with stakeholder organisations was 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 all producers growing conservation varieties commercially. All stakeholders involved in the seed potato industry will therefore be aware of our proposals. Two responses in favour were received from the British Potato Trade Association and the Potato Council Limited.

4. **Options**

Two options have been identified.

4.1 Option 1 – Do nothing

There is a relatively small but thriving niche market amongst hobby growers and other gardening enthusiasts. The trade would not be able to market seed potatoes of conservation varieties in the same way as other varieties of seed potatoes. The Scottish Government would in addition be liable to infraction proceedings.

4.2 Option 2 – Introduce amendments to allow conservation varieties to be marketed

Producers will be able to grow and market conservation varieties of seed potatoes which will be subject to the same provisions and fees as currently applies to other varieties of seed potatoes. The seed potatoes will have to be listed on the National List and there will be a reduced one off payment for each variety of conservation variety as opposed to an annual payment for other types of seed potatoes.

5. **Costs and Benefits**

Sectors and groups affected

Seed potato producers, growers and merchants 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 2008 was recorded as being around £52 million.

Benefits

Option 1 – No change

There are no known benefits in pursuing this option.

Option 2 – Introduce amendments to allow conservation varieties to be marketed

Producers would be able to produce and market conservation varieties which would subject to the existing provisions which apply to other seed potatoes varieties. Producers 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 the existing provisions for marketing seed potatoes would not be extended to seed potatoes of conservation varieties. A cost could be that the Scottish Government could be subject to infraction proceedings and possible fine by the Commission.

Option 2 – Introduce amendments to allow conservation varieties to be marketed

This option would mean that the industry is able to produce and market seed potatoes of conservation varieties on the same terms as apply to other varieties but would be required to meet the costs estimated at £2,000 to those growers involved in this niche market.

6. Small Firms Impact Test

A number of small businesses may be affected and they were consulted in writing. No responses were received from them. 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

The Scottish Government (RPID and SASA) enforce the seed potatoes marketing regulations. 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 30 June 2009.

12. Post-implementation review

The level of seed potatoes fees charged in Scotland are reviewed annually be the Scottish Government.

13. Summary and recommendation

The two responses received from the industry were content that the provisions of 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 June 2009

Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment

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