

## EXECUTIVE NOTE

### THE SEED POTATOES (SCOTLAND) AMENDMENT REGULATIONS 2010 SSI/2010/71

#### 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 2009/2010. 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 a zero tolerance at growing crops and tuber inspections for a new bacterial pathogen in the genus *Dickeya* which has emerged as a major threat to potato production in Europe. The pathogen is a close relative of *Dickeya dianthicola* which has caused problems from time to time across Europe since the 1970s. It causes blackleg like symptoms in the growing crop with leaf wilt and soft rots in tubers. Symptoms may vary depending on the variety and other factors, but even mild symptoms in the plant can lead to severe rots in the tubers.

4. The new pathogen is adapted to warmer temperatures but it can cause disease under Scottish conditions. As the new species appears to be more aggressive at higher temperatures, there are implications as a consequence of climate change and exports to warmer climates.

5. This instrument also amends the principal Regulations to reduce the time which must elapse before seed potatoes may be grown for classification, after a finding of Potato Cyst Nematode (PCN), from 12 to 6 years. This change is connected to the implementation of Commission Directive 2007/33/EC on the control of PCN, which comes into force on 1 July 2010. Legislation to transpose the PCN Directive will be brought forward at a later date.

#### Timing

6. The Regulations will come into force on 29 March 2010, with the exception of the amendment connected with Council Directive 2007/33/EC which will come into effect on 1 July 2010.

## **Financial effects**

7. A Regulatory Impact Assessment has been prepared.

**The Scottish Government – Rural Directorate  
Agriculture and Rural Development Division  
Plants, Horticulture and Potatoes**

February 2010

## **Regulatory Impact Assessment**

### **1. Title**

#### **The Seed Potatoes (Scotland) Amendment Regulations 2010**

### **2. Purpose and intended effect**

#### Objective

To assess the proposal to prevent the spread of a new aggressive pathogen *Dickeya* spp to potato crops in Scotland.

#### Background

This Regulatory Impact Assessment applies to Scotland only. The Seed Potatoes (Scotland) Regulations 2000 set out the legislative provisions governing the growing and marketing of seed potato crops. Equivalent regulations apply elsewhere in the UK.

#### Rationale for government intervention

*Dickeya* spp. a new bacterial pathogen viewed by those involved in the seed potato industry as a significant threat to potato production in Europe. It causes blackleg like symptoms in the growing crop with leaf wilt and soft rots in tubers. Symptoms may vary depending on the variety and other factors, but even mild symptoms in the plant can lead to severe rots in tubers. The Scottish Government is therefore proposing action be taken to help preserve the high health status of Scotland's potato industry.

### **3. Consultation**

#### Within government

Wide consultation and discussion within the Scottish Government with colleagues in Science and Advice for Scottish Agriculture (SASA) and Rural Payment and Inspections Directorate (RPID).

#### Public consultation

A written consultation with interested stakeholder organisations in the industry was carried out. Stakeholders consulted included the National Farmers Union Scotland, the Pre-Basic Growers Association, the Potato Council, the British Potato Trade Association, etc. The subject was also discussed with stakeholder organisations on a number of occasions during 2009 including at the Sub Panel Stakeholders meeting in August, at the UK meeting of the potato industry stakeholders at Harrogate at end of November and at the December meeting of the Potato Council's Seed and Export Committee. 8 replies were received in response to the consultation 7 of which were in favour of introducing a zero tolerance for all classes at growing crop and tuber inspections.

#### **4. Options**

Two options were identified.

##### Option 1 – No change

The first option was retain the status quo and introduce no specific tolerance for *Dickeya* spp. in the Seed Potatoes (Scotland) Regulations 2000.

##### Option 2 – Introduce zero tolerance for *Dickeya* spp. across all classes at growing crop and tuber inspections (including exports to third countries)

The second option was to make an amendment inserting a zero tolerance across all grades in Schedules 2 and 7 of the Seed Potato (Scotland) Regulations 2000 for *Dickeya* spp.

#### **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.

##### Benefits

##### Option 1 – No Change

The industry continues with the existing tolerances within the Seed Potato Certification Scheme. The Scottish Government would encourage growers to follow the common sense controls to limit the possibility that the pathogen will spread to seed potatoes in Scotland. This approach does not require any changes to the legislation nor to current inspection methods.

##### Option 2 – Introduce zero tolerance for *Dickeya* spp. across all classes at growing crop and tuber inspections

This approach would involve no major changes to current seed production methods and inspections, with proportionate additional controls applied to seed potato crops known to be at risk. There would be a requirement to demonstrate through the existing inspection system that Scottish seed potatoes continue to be free from *Dickeya* spp.

##### Costs

##### Option 1 – No change

The no change option would mean that Scotland had no specific control over the *Dickeya* pathogen and as such no ability to remove affected stocks from the seed

multiplication chain. It is likely that in the near future this situation would result in a loss of market advantage to the trade in Scotland together with a loss estimated as £7 million from crops affected, (based on pro-rata terms on the experience in the Netherlands).

#### Options 2 – Introduce zero tolerance for *Dickeya* spp. across all classes at growing crop and tuber inspections

If the pathogen were to be found in individual Scottish seed potato crops in the short term this would require a marketing restriction to be placed on individual growers and they would have to take steps to increase the level of hygiene when handling their crops. The resultant cost is estimated to be £50,000. In the longer term if the pathogen subsequently became established in Scottish seed potatoes to the extent that the zero tolerance is no longer sustainable it would signal to the markets that the pathogen was now prevalent here and that Scottish seed no longer free of the pathogen. This could lead to a loss of trade in some export markets, estimated as per Option 1, at £7 million.

#### **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. Small firms will have received details about the proposals from the same organisations as the larger companies. The initial feedback from stakeholders which was subsequently confirmed by the responses received to the consultation was that the majority involved in the industry were supportive of taking action to deal with *Dickeya* spp.

#### **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 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 a further burden on growers to ensure their seed potatoes are free from the pathogen, 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 in Scotland. A zero tolerance would, have no effect on competition within the industry because the same risks would apply to every company regardless of its size.

#### **10. Enforcement, sanctions and monitoring**

The Scottish Government (RPID and SASA) enforce the seed potatoes marketing regulations. Enforcement will be covered by the existing provisions of the Seed Potato Classification Scheme. No new sanctions are to be introduced. The Scottish Government will be monitoring the position through the existing inspection regime. Growers are charged fees for the services provided by the inspectors. Failure to pay the relevant fee will mean that the service will not be available.

#### **11. Implementation and delivery plan**

The proposal will come into force on 29 March 2010. Growers will be advised of this development through information contained in SASA's 2010 explanatory leaflet on growing crop inspections to be issued in April/May 2010.

#### **12. Post-implementation review**

The success of this venture in keeping Scottish seed potatoes free from *Dickeya* spp. will be monitored by the existing growing crop and tuber inspections and the policy is to be reviewed regularly by the Scottish Government.

#### **13. Summary and recommendation**

Seven of the eight responses received from the industry stated that they welcomed the SG's proposals to take action as per the provisions of Option 2 – the introduction of a zero tolerance for *Dickeya* spp. across all classes for growing crop and tuber inspections. 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 25 February 2010

Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment

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