

EXECUTIVE NOTE

THE PLANT HEALTH FEES (SCOTLAND) REGULATIONS 2008

S.S.I. 2008/153

Introduction

1. The above instrument is made by the Scottish Ministers in exercise of powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

Policy Objective

2. The principal objective is to increase the fees charged to industry under the Plant Health Fees (Scotland) Regulations 1996 (“the 1996 Regulations”) for statutory inspections carried out when a business has applied for, or holds, an authority to issue plant passports. This increase is required to ensure full cost recovery for this service, in line with Scottish Government accounting principles.

3. The opportunity is also taken to consolidate amendments made to the 1996 Regulations in 2004, 2005 and 2007, and to replace references to the Plant Health (Great Britain) Order 1993 with references to the Plant Health (Scotland) Order 2005 (“the 2005 Order”).

Background

4. Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (“the Plant Health Directive”) establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Directive is implemented in Scotland, for non-forestry matters, by the Plant Health (Scotland) Order 2005 (as amended). Similar but separate legislation operates in England, Wales and Northern Ireland.

5. Under the Plant Health Directive a limited range of plants which host the most serious pests and diseases require a plant passport to facilitate movement within the Community. Anyone wishing to trade in such material must first be authorised to issue plant passports. Article 29 of the 2005 Order enables the Scottish Ministers to authorise a person to issue plant passports. Authorisation is dependent on a satisfactory inspection. Inspections are also necessary to maintain authorisation to issue plant passports. The 1996 Regulations provide that a fee shall be payable for these inspections. Generally one growing season inspection and one record check inspection are carried out each year.

6. The 1996 Regulations also prescribe fees for the grant of licences to permit the importation of articles which would otherwise be prohibited, including licences for trial or scientific purposes or for work on varietal selection. The 1996 Regulations were amended in 2004 to include fees for potato quarantine testing, and in 2007 to extend the fees relating to plant passporting to cover plant passports under the Plant Health (*Phytophthora ramorum*)(Scotland) Order 2004. Fees relating to licences were increased by an amendment in 2005. These amendments are consolidated in the current Regulations.

Discussion

7. Scottish Government accounting principles require that fees and charges for all statutory and commercial services should be set at a level that achieves full cost recovery. This ensures that services which benefit business (eg, by enabling them to sell and export plants and plant products that would otherwise be prohibited) are paid for by the businesses in question, and are not subsidised by the taxpayer. It is also important that the income from fees should be sufficient to provide an effective service to meet the level of demand.

8. The costs of inspections relating to authorisation to issue plant passports include the inspection itself, administration of the scheme, and the scientific investigation of samples sent for analysis. Costs vary from year to year depending on the plant health situation at the time, which affects factors such as the number of samples sent for analysis and the time taken to inspect each premises. Fees are calculated according to the size of the premises.

9. Although the service aims to be as efficient as possible, costs have risen significantly in recent years, at an average of 11% per annum. This is partly due to new plant health threats, particularly *Phytophthora ramorum*, and partly reflecting rising costs for staffing and overheads. Fees have not increased since 1996, and in the financial year 2006-07 the service experienced a deficit of £1,774. A further deficit is anticipated for 2007-08. It is therefore necessary to increase fees in order to achieve full cost recovery in future years.

Consultation

10. Industry was consulted on a number of options based on different assumptions about the rate at which costs will increase in future years. All respondents preferred to keep any increase in fees to a minimum, rather than building in any “headroom” for future years.

11. The consultation was based on an Initial Regulatory Impact Assessment. No comments were received on the assumptions or calculations made in the assessment.

Financial effect

12. These amending Regulations implement an increase of 21% in the fees charged to industry for statutory inspections carried out for the purpose of considering an application for, or the continuing operation of, an authority to issue plant passports. This is the minimum possible increase to ensure full cost recovery in 2008-09, assuming that costs rise only in line with inflation. Fees will be reviewed annually thereafter and further increases will be made as necessary to keep pace with costs. The accompanying Regulatory Impact Assessment gives full details of current and projected costs.

13. Other fees included in the consolidated Regulations are not changed.

Plant Health Fees (Scotland) Regulations 1996 – Amendments to Plant Passporting Fees

FINAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

Increase in charges in respect of inspections carried out for the purpose of conferring authority to issue plant passports under the Plant Health (Scotland) Order 2005.

2. Purpose and intended effect

Objective

2.1 To increase the charges made to industry in order to achieve full cost recovery for statutory inspections carried out for authorisation to issue plant passports.

Background

2.2 Around the world there are many plant pests and diseases which, if they were to become established in an area, could cause serious damage to crops and plants. To guard against the spread of harmful organisms official controls apply to the movement and keeping of plants, plant pests and other material within the European Community, including any trade within the UK. These controls are based on EC and GB legal provisions.

2.3 Under the Plant Health (Scotland) Order 2005, certain listed plants, plant products and other objects may only be brought into or moved within Scotland, or sent from Scotland to other parts of the EU, when accompanied by a plant passport. Producers, traders and importers of such material must be authorised by the Scottish Government to issue plant passports. The authorisation process involves an inspection of the listed plant material at the premises and includes a check of business records.

2.4 The Plant Health Fees (Scotland) Regulations 1996 (as amended) prescribe the fees to be charged for these inspections, for issuing licences to permit importation of plant material that would otherwise be prohibited, and for potato quarantine testing. The fees for licences were increased in 2005, and those for potato quarantine testing were introduced in 2004. Neither of these are affected by the current proposals. The fees relating to plant passports have not been altered since 1996.

Rationale for government intervention

2.5 Scottish Government accounting principles require that fees and charges for all statutory and commercial services should be set at a level that achieves full cost recovery. This ensures that services which benefit business (eg, by enabling them to sell and export plants and plant products that would otherwise be prohibited) are paid for by the businesses in question, and are not subsidised by the taxpayer. It is also important that the income from fees should be sufficient to provide an effective service to meet the level of demand.

2.6 The costs of inspections relating to authorisation to issue plant passports include the inspection itself, administration of the scheme, and the scientific investigation of samples sent for analysis. Costs vary from year to year depending on the plant health situation at the time, which affects factors such as the number of samples sent for analysis and the time taken to inspect each premises. Fees are calculated according to the size of the premises.

2.7 Although the service aims to be as efficient as possible, costs have risen significantly in recent years. This is partly due to new plant health threats, particularly *Phytophthora ramorum*, and partly reflecting rising costs for staffing and overheads. Fees have not increased since 1996, and in the financial year 2006-07 the service experienced a deficit of £1,774. A further deficit is anticipated in 2007-08. It is therefore necessary to increase fees in order to achieve full cost recovery in future years.

3. Consultation

Within government

3.1 Colleagues within the Scottish Government have been consulted. No inter-departmental consultation is required although other administrations (eg Defra) will be copied in for information.

Public consultation

3.2 There is a relatively small group of potential users of this service, and the principle of passing on the costs of administering these services is well established with them. Users of the service and relevant industry bodies have been consulted on the proposed increase in fees through a written consultation on the terms of the initial Regulatory Impact Assessment (RIA). An analysis of responses is attached. Respondents stated which option they would prefer to see implemented. No comments were received on the assumptions or calculations made in the RIA.

4. Options

4.1 In the financial year 2006-07 the costs incurred for plant passporting purposes for the businesses inspected was £14,000, but the amount of fees collected was £12,226, a deficit of £1,774. A deficit is also predicted in 2007-08, although final figures are not yet available.

4.2 There are two ways in which future costs can be projected. We can assume that costs will rise in line with inflation, which is currently around 3% per annum. However, the actual costs of the scheme have risen at an average of 11% per annum over the past 4 years. It is not expected that costs will continue to rise at the same rate over future years, but this figure can be used as a maximum. Using these alternative assumptions, future costs of the scheme would be as follows:

Financial Year	Cost rising at 3% p.a.	Cost rising at 11% p.a.
2006-07	£14,000	£14,000
2007-08	£14,420	£15,540
2008-09	£14,852	£17,249
2009-10	£15,298	£19,146
2010-11	£15,757	£21,252
2011-12	£16,229	£23,590
2012-13	£16,716	£26,185

4.3 Five options for future charges have been considered, and are set out below. These are based on the same level of business applications for authorisation to issue plant passports as in 2006-07, and assume an average number of samples requiring scientific analysis each year.

Option 1 No change in fees

This would result in increasing deficits year on year, rising to a predicted £4,490 in 2012-13, even if costs only increase in line with inflation.

Option 2 Assume that costs will rise in line with inflation, and increase fees to a level that would ensure full cost recovery for 3 years.

To meet the projected cost of £15,757 in 2010-11, fees would need to rise by 29%

Option 3 Assume that costs will continue to rise at 11% p.a., and increase fees to a level that would ensure full cost recovery for 3 years.

To meet the projected cost of £21,252 in 2010-11, fees would need to rise by 74%

Option 4 Assume that costs will rise in line with inflation, increase fees to a level that would ensure full cost recovery in 2008-09, and review fees annually thereafter to reflect the increase in costs for the preceding year.

To meet the projected cost of £14,852 in 2008-09, fees would need to rise by 21%. If costs then rise in line with inflation, fees would be raised by 3% each year.

Option 5 Assume that costs will continue to rise at 11% p.a., increase fees to a level that would ensure full cost recovery in 2008-09, and review fees annually thereafter to reflect the increase in costs for the preceding year.

To meet the projected cost of £17,249 in 2008-09, fees would need to rise by 41%. If costs continue to rise at the current rate, fees would then be raised by 11% each year.

4.4 The revised fees under each option would be:

Area (Ha)	Option 1 (no change)	Option 2 (29%)	Option 3 (74%)	Option 4 (21%)	Option 5 (41%)
Not exceeding 1	£72.50	£93.53	£126.15	£87.73	£102.23
1-2	£100.00	£129.00	£174.00	£121.00	£141.00
2-4	£146.00	£188.34	£254.04	£176.66	£205.86
4-10	£192.00	£247.68	£334.08	£232.32	£270.72
10-20	£298.00	£384.42	£518.52	£360.58	£420.18
20-35	£357.00	£460.53	£621.18	£431.97	£503.37
35-50	£420.00	£541.80	£730.80	£508.20	£592.20
Each additional 10 Ha or part	£55.00	£70.95	£95.70	£66.55	£77.55

Outcomes

4.5 **Option 1** would not meet the objective of achieving full cost recovery. All other options have the potential to achieve full cost recovery, depending on the rate at which costs increase in future years. **Option 2** and **Option 4** run the risk that the costs of the scheme will rise faster than inflation, and therefore significant increases in fees could be required in future years to catch up. If **Option 4** was selected, but costs rise by 11% in 2007-08, fees would need to rise by 29% for 2009-10. **Option 3** and **Option 5** require very large increases in fees for 2008-09, but increases after that would be limited to the rate at which costs increase. **Option 4** and **Option 5** put in place a systematic way of ensuring that full cost recovery is achieved in future years. These options are likely to impose some additional costs for the Scottish Government as the Regulations will need to be amended more frequently, but these costs are not expected to be passed on in fees.

4.6 **Option 4** was recommended to consultees for the following reasons:

- It has the potential to achieve full cost recovery in 2008-09;
- If this is not achieved, further increases can be made to ensure full cost recovery in 2009-10;
- If costs continue to rise at current levels, the significant increase in fees required to meet full cost recovery will be spread across 2 years;
- An annual review process will ensure that the level of fees is closely related to the costs of the service, and should avoid significant increases after the initial readjustment in 2008-09 and (potentially) 2009-10.

4.7 All 7 respondents to the consultation preferred to keep any increase in fees to a minimum, rather than build in any “headroom” for future years. Of those who identified a preference from the options offered, 3 preferred option 4, one identified option 2 or option 4, and the other preferred option 1 (no increase).

5. Costs and benefits

Sectors and groups affected

5.1 In 2006-07, 85 plant nurseries (consisting of large and small businesses) were authorised to issue plant passports. The average fee charged, per business, was £164, therefore there is unlikely to be any significant transfer of costs to other sectors or consumers.

Benefit

5.2 The proposed increases to fees for inspections relating to authorisation to issue plant passports would meet the requirement for statutory and commercial services provided by the Scottish Government to achieve full cost recovery, and avoid any risk of illegal subsidy. It would also ensure that the Scottish Government continues to have the resources to provide an effective service to plant passporting businesses.

Disadvantage

5.3 The proposed increases may not be well received by some organisations who use this service, particularly since the fees have stayed at the same level since 1996. The service cannot be provided by anyone apart from the Scottish Government, so there is no option to seek lower fees elsewhere.

Costs

5.4 The proposal will have no costs to businesses which use the service other than the direct increase in fees. There may be some increase in administrative costs to the Scottish Government if the annual review results in the fees being amended more frequently.

6. Small Firms Impact Test

6.1 Many of the businesses involved in plant passporting may be regarded as small businesses, ie, having fewer than 250 full time equivalent employees. Fees are charged according to the size of the premises to be inspected. No changes are proposed to regulatory procedures which might for example require additional staff time, therefore no significant impact on small businesses is anticipated beyond the direct increase in fees.

6.2 All businesses authorised to issue plant passports have been consulted directly on these proposals, in writing, either by post or by email. The relevant trade associations have also been consulted, including the National Farmers Union Scotland and the Horticultural Trades Association. The Horticultural Trades Association took the view that an average rise of £34 per business was excessively onerous and should be phased over a longer period, such as 10 years. However, the majority of respondents accepted the need for fees to rise to cover the current costs of inspections.

7. Test run of business forms

No new forms will be introduced as a result of this proposal.

8. Competition assessment

8.1 The Competition Filter has been applied and the conclusion is that there is no significant risk of impact on competition. The service involved is a statutory service which cannot be provided by anyone except the Scottish Government, and the proposed increase in fees will apply equally to all businesses that wish to issue plant passports. A detailed competition assessment has therefore not been prepared.

9. Enforcement, sanctions and monitoring

9.1 There is a theoretical risk that a significant increase in fees to businesses that wish to issue plant passports could lead to some businesses seeking to evade the system and issue plant passports without authorisation. However, it is unlikely that such actions would succeed. The trade is well aware of the requirement for plant passports and purchasers would

be unlikely to accept consignments without the proper documentation. Plants moved within the EU without a valid passport risk being destroyed. Scottish Government inspectors are also in regular contact with businesses authorised to issue plant passports and other horticultural businesses, and would quickly become aware of any non-compliance.

9.2 Inspection visits to authorised suppliers would also provide an opportunity to discuss and monitor the impact of increased fees, in addition to administrative monitoring of the balance of income and expenditure.

10. Implementation and delivery plan

10.1 The Scottish Government will bring forward Regulations as soon as possible to implement the increased fees. Businesses which are authorised, or which apply to become authorised, to issue plant passports will be informed individually of the new fees, as will trade organisations.

11. Post-implementation review

11.1 The costs of the service will be reviewed annually to see whether any further increase in fees is necessary. Any increase proposed will be subject to a new RIA and consultation with the industry.

12 Summary and recommendation

12.1 Option 4 is recommended, as it meets the Scottish Government's requirement to achieve full cost recovery in 2008-09 and industry's preference to keep any increase in fees to a minimum. Fees will be increased by 21%, to the levels set out in section 4.4.

Declaration

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

Richard Lochhead

Cabinet Secretary for Rural Affairs and the Environment

15 April 2008

Annex A - Analysis of consultation responses

Background

14. The consultation paper sought views on increasing the charges made to industry in respect of inspections carried out for the purpose of conferring authority to issue plant passports under the Plant Health (Scotland) Order 2005. Plant passports are required for the movement of certain plants or plant products within the EU, to prevent the spread of harmful organisms. Plant traders, producers and importers can be authorised by the Scottish Government to issue plant passports, subject to satisfactory inspections of their premises and records.

15. Scottish Government accounting principles require that fees and charges for all statutory and commercial services should be set at a level that achieves full cost recovery. The fees for inspections in relation to authorisation to issue plant passports have not been increased since 1996, but costs have risen considerably, leading to a deficit of £1774 in 2006-07, and further anticipated deficit in 2007-08.

Options

16. The consultation paper set out 5 options:

Option 1 No change in fees – not acceptable to the Scottish Government since this would result in continuing deficits.

Option 2 29% increase - Assume that costs will rise in line with inflation (3%), and increase fees to a level that would ensure full cost recovery for 3 years.

Option 3 74% increase - Assume that costs will continue to rise at 11% p.a. and increase fees to a level that would ensure full cost recovery for 3 years.

Option 4 21% increase - Assume that costs will rise in line with inflation (3%) and increase fees to a level that would ensure full cost recovery in 2008-09.

Option 5 41% increase - Assume that costs will continue to rise at 11% p.a. and increase fees to a level that would ensure full cost recovery in 2008-09.

Options 4 and 5 would both require fees to be reviewed annually from 2008-09 onwards, and increased as necessary to keep pace with costs.

Responses

17. The consultation paper was sent to 112 businesses which have been authorised to issue plant passports in recent years, plus trade bodies the Horticulture Development Council, Horticulture Trade Association, National Farmers Union Scotland and the Federation of Small Businesses. It was also sent to CoSLA, local authorities and the Equality and Human Rights Commission, who are standard recipients of all consultation papers.

18. Six businesses and one trade association responded. Three explicitly preferred option 4 and one suggested either option 2 or option 4. One objected to any increase and therefore preferred option 1. Another stated that increases should be no more than inflation, while the last suggested that if an increase was necessary it should be phased over a longer period. Two local authorities also replied to say that they did not wish to make formal responses.

19. Four respondents mentioned that the Scottish Government should aim to keep the costs associated with inspections to a minimum. We make every effort to do so, but new plant health threats mean that more time is required at each premises, and more samples may need to be sent for laboratory analysis. Costs for staffing, travel etc have also risen. The fees have not been adjusted since 1996, and therefore a large increase is needed at this stage to re-align fees with the costs of the service. The minimum increase proposed is significantly lower than cost of living increases since 1996.

20. Two respondents suggested that the fees for inspections in relation to plant passports should be compared to practice in other EU Member States. One protested against the requirement for large numbers of plants to be destroyed on the basis of a sample found to be infected, without compensation. Other suggestions were that inspections could include advice and guidance to the business on plant pests, and combining inspections for various purposes at one visit.

Conclusion

21. The option of keeping fees at their present level, or phasing an increase over several years, does not meet the requirement of achieving full cost recovery in 2008-09. The majority of respondents accepted the need for fees to rise and preferred the smallest increase, option 4, with no additional allowance made for increased costs in future years.

22. In light of these responses the Scottish Government intends to bring forward legislation to increase fees for inspections relating to plant passporting by 21%, implementing option 4 in the consultation. The new fees will apply from summer 2008. The costs of the service will be reviewed annually and fees will be increased as necessary to ensure full cost recovery each year, as required by Scottish Government accounting principles.