

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH ETC. (MISCELLANEOUS FEES) (ENGLAND)**  
**(AMENDMENT) REGULATIONS 2019**

**2019 No. 1257**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 These Regulations amend the Plant Health etc. (Fees) (England) Regulations 2018 (S.I. 2018/289) (the “2018 Regulations”) which specify fees payable to the Secretary of State in relation to plant health services and the certification of seed potatoes and fruit plants and fruit plant propagating material. They also amend the Plant Health (Export Certification) (England) Order 2004 (S.I. 2004/1404) (the “2004 Order”) which specify fees for export certification services.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 Defra regrets that it has not been possible to give the usual 21 days’ notice before this instrument takes effect. Our intention was to lay this instrument on the 9th September. Regrettably we were not able to do so.
- 3.2 The 1st October 2019 is a common commencement date which was highlighted as part of engagement with business through August and early September to enable trade to prepare for these amended fees. Businesses are now expecting these updated fees to be in place from that date. The updated fees ensure that the Animal and Plant Health Agency (APHA) does not over or under recover fees from businesses.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

- 6.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU (“the Plant Health Directive”) establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in England, for non-forestry matters, by the Plant Health (England) (Order) 2015 (S.I. 2015/610). Similar but separate legislation operates in Scotland, Wales and Northern Ireland.
- 6.2 Article 13d of the Plant Health Directive requires Member States to recover the cost of the import inspections required by the Directive through fees. The 2018 Regulations implement that requirement in England. The Plant Health Directive, as amended, (Article 13a(2)), also contains a procedure for reducing the rate of inspections of certain plant imports and for charging a correspondingly reduced fee for inspections.
- 6.3 In line with the principle that the costs of statutory services should be borne by users who benefit directly from a service, charges also apply for the following activities required by the Plant Health Directive:
- Sampling and testing of potatoes imported from Egypt and the Lebanon
  - Plant passporting services
  - Plant health licensing services
- 6.4 Seed potatoes produced and marketed in England and Wales must be certified under the Seed Potato Classification Scheme, which aims to provide assurance that seed potatoes delivered to buyers and growers meet the health and quality standards specified by the Seed Potatoes (England) Regulations 2015. The Regulations implement the requirements of Council Directive 2002/56/EC on the marketing of seed potatoes. Charges apply for the provision of seed potato certification services.
- 6.5 In order to prevent the introduction of harmful pests and diseases most countries outside the EU require that consignments of plants, plant products and other related plant material must meet certain plant health standards before they are allowed entry. These standards are laid down by the relevant authorities in each country and vary from country to country. Most of these countries require that consignments must be accompanied by a phytosanitary (plant health) certificate issued by the National Plant Protection Organisation (NPPO) in the exporting country. A phytosanitary certificate provides importing countries with an assurance that consignments meet their plant health standards. APHA is responsible for issuing certificates in England on behalf of Defra. Consignments without this certificate are likely to be rejected at the point of entry, destroyed or returned to the exporting country. In most cases, depending on the requirements of the importing country, phytosanitary certificates can only be issued following satisfactory official inspection of the material for export. In some circumstances it may also be necessary for a sample of the material to be examined by the official laboratory, which for England is Fera Science Ltd. The 2004 Order provides for such export certification services and their fees.

- 6.6 This instrument implements changes to fees for plant health statutory services to ensure that the full cost of service provision continues to be recovered. The changes also reflect adjustments in the cost of service delivery, as well as changes to ensure that all eligible costs are fully recovered and fees are applied fairly.
- 6.7 Regulation 2 of this instrument is made under powers conferred by sections 3(1) and 4A of the Plant Health Act 1967 which provides for the setting of reasonable fees or other charges. As such, the Regulations require Treasury consent.
- 6.8 Regulation 3 of this instrument is made in exercise of powers conferred by sections 56(1) and 56(2) of the Finance Act 1973 (c. 51) which permits a government department to require the payment of fees or other charges for the provision of any services or facilities or the issue of any authorisation, certificate or other document, in pursuance of any EU obligation. As such, the Regulations require Treasury consent.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The 2018 Regulations and the Plant Health (Export Certification) (England) (Amendment) Order 2018 which both came into force on 6 April 2018, implemented in England the outcome of a public consultation in 2017 on proposed changes to fees for import inspection, sampling and testing of potatoes originating in Egypt and the Lebanon, plant passporting, licensing, certification of seed potato and fruit plant and propagating material and export certification material services provided by the APHA in England and Wales.
- 7.2 Those instruments implemented changes to the charging structure and fees for statutory plant health services, aligning them more closely to the cost of delivering the services to individual customers. The changes also reflected adjustments in the cost of service delivery, as well as changes to ensure that all eligible costs are fully recovered.
- 7.3 The government's response to the public consultation, published in March 2018, acknowledged that there were several outstanding charging issues which needed further review. Further issues were raised by stakeholders during 2018. This instrument implements changes to fees to address those concerns.
- 7.4 Fees are reviewed annually to ensure full cost recovery is maintained. This instrument also implements changes resulting from the latest review. In general fees are decreasing (as costs have decreased) but with significant increases in fees for monitoring compliance with licence terms and conditions, where a phased implementation is being put in place (see paragraph 7.9).
- 7.5 The significant changes to the package of fees to be implemented by this instrument are:

### Amendment of the 2004 Order

- 7.6 In the response to the 2017 consultation, Defra undertook to review during 2018 the concessionary rate for export charges which has been in place since 1988 to support small-scale operators and improve their operating margins. Small businesses and individuals who export small volumes of plant material are, subject to meeting certain criteria, eligible for a 50% reduction in export fees, up to a maximum value of services of £250 in any one financial year. Services required when this total is exceeded are charged at full price. The £250 maximum has not been updated for many

years and is now out of step with export fees, which since April 2019 have been at full cost recovery and as such the benefit of the concessionary rate to small-scale exporters has been eroded away. Regulation 2(2) of this instrument amends the 2004 Order so that those eligible for the concession will now get a 50% reduction in fees for export services up to a £750 maximum per year instead of the current maximum of £250 per year.

- 7.7 Under Regulation 2(3) the fees for export certification services set out in Schedule 3 of the 2004 Order are amended to ensure that full cost recovery is maintained.

Amendment of the 2018 Regulations

- 7.8 At Regulation 3(6) the mechanism by which the fee for carrying out inspections in connection with the certification of fruit propagation material is calculated is changing from an hourly charge applied against site, travel and admin time, to an hourly charge applied against site time only. At Regulation 3(10) the mechanism by which the fee for monitoring compliance with licence terms and conditions is calculated is changing from an hourly charge applied against site, travel and admin time, to an hourly charge applied against site time only. This will provide consistency with similar hourly charges for other plant health inspection services.
- 7.9 Given the increases in the hourly fee for licensing services, their introduction will be phased in three steps so that full-cost recovery is achieved by October 2020, in order to support businesses and give them time to plan and prepare.
- 7.10 Currently, when an imported consignment includes plant material subject to a full rate of import inspection and also material subject to a reduced level of inspection (because it is from a lower risk country and involves a lower risk commodity) and consequentially a reduced fee, the importer is charged twice - both the full inspection fee (under Schedule 1 of the 2018 Regulations) and the reduced fee (under Schedule 2). In practical terms only a single inspection is carried out and in effect the importer is penalised for sourcing lower risk material. In the government's response to the 2017 consultation Defra said that we would review how we charge for mixed consignments to improve fairness. Regulation 3(2)(b)(ii) of this instrument provides for a single fee for mixed consignments, whereby the importer would be charged the full import inspection fee, with no additional charge for plant material in the same consignment eligible for a reduced inspection rate.
- 7.11 Regulation 3(8) substitutes Schedule 2 to the 2018 Regulations which sets out reduced rate fees for certain plants and plant products which are subject to reduced levels of plant health checks agreed under the procedure provided for in Articles 13a(2) and 18(2) of 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 (OJ No 169, 10.7.2000, p1). This gives effect to the latest notification published by the European Commission of the reduced plant health checks applicable to certain plants and plant products.
- 7.12 Regulation 3(11) substitutes Schedule 5 of the 2018 Regulations which sets out fees for soil sampling and testing and certification of seed potatoes including the provision of labels. Following discussions with stakeholders during 2018 Defra has revised the charges for seed potato labels to make it more equitable, particularly for those selling or exporting in small bags.

7.13 Current fees for inspecting basic and certified seed potatoes are set per 0.5 hectares, with part hectares rounded up to the nearest 0.5 hectare. The fees for pre-basic seed potatoes are set per 0.25 hectare, with part hectares rounded to 0.25 hectares. In response to the 2017 consultation, some stakeholders raised concerns that charging to nearest 0.5 hectare led to overcharging for this service. On further consideration, and in order to apportion the costs more fairly across seed potato growers, the part hectare charges for growing season inspections of all grades of seed potatoes, except pre-basic grade PBTC, will be rounded to 0.1 hectare.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 Further amendments are still to be made. Consolidation will be carried out when the instrument is next amended.

## **10. Consultation outcome**

10.1 A consultation on proposed changes to fees for statutory plant health services provided by the Animal and Plant Health Agency in England and Wales ran from 6<sup>th</sup> September to 31<sup>st</sup> October 2017. The changes made by this instrument are in line with the outcome of that consultation.

## **11. Guidance**

11.1 The main stakeholders have been informed and details of the new fees will be included on the APHA website. They are also specified in the instrument itself.

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies is minimal.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument.

## **13. Regulating small business**

13.1 The legislation applies to all businesses. A concessionary (reduced) rate is in place for small-scale exporters.

## **14. Monitoring & review**

14.1 Defra will continue to work with the government-businesses taskforces who have been engaged during the fee review with the aim of continuing to identify efficiencies and better ways of working in order to further drive down costs. This collaborative approach has been broadly welcomed by the industry.

14.2 The regulation does not include a statutory review clause as it falls under section 3(8) exemption of the Small Business Enterprise and Employment Act 2015.

## **15. Contact**

- 15.1 Iain Johnstone at the Department for Environment, Food and Rural Affairs; Telephone: 02080 265265 or email: [iain.johnstone@defra.gov.uk](mailto:iain.johnstone@defra.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.