

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH (EXPORT CERTIFICATION) (ENGLAND) (AMENDMENT)**  
**ORDER 2005**

**2005 No. 3480**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The amendment to the Plant Health (Export Certification) (England) Order 2004 provides for the Department to charge for pre-export inspections in support of the export of plants, plant products or other objects to countries outside of the European Union where these services are provided in advance of an application for export certification.

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

3.1 Fees for these services were previously charged (at the same rate) until their suspension in January 2000 pending the outcome of a review into the legal basis for charging (explained in more detail in paragraph 4.3 below). The fees are set out in Article 2(7) of the Order.

3.2 Small exporters will be charged at concessionary rates that are half the rates that would otherwise be payable. To be eligible for these concessionary rates an exporter must either not be registered for VAT or have a value of certified exports of less than £5,000 in the previous financial year. The concessionary rates will apply to a maximum of £250 of services in any one financial year. The remaining fees represent the cost of providing the services to which they relate.

4. **Legislative Background**

4.1 Under the International Plant Protection Convention as amended<sup>1</sup>, the UK Government agreed to a number of measures to allow pests and diseases of plants and plant products to be controlled and their introduction and spread across national boundaries to be prevented. The Government's obligations under the Convention are primarily implemented, in England, by the Plant Health (England) Order 2005 (SI 2005/2530), which replaced, with effect from 3 October, the Plant Health (Great Britain) Order 1993 (SI 1993/1320). Both Orders were made under the Plant Health Act 1967 (c.8).

4.2 The Plant Health Order does not, however, implement the UK's obligations under the Convention to provide for the issue of phytosanitary certificates to exporters to countries outside the European Union to meet the requirements of those countries' phytosanitary regulations nor does it oblige the UK to allow exporters to meet similar requirements imposed by non-signatory States. All of these services were provided on a non-statutory basis up until 1999 when certain plant health and other services were suspended.

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<sup>1</sup> Text at <http://www.ippc.int/id/13292>

4.3 The suspension followed a decision by the Department to conduct a review of a number of plant health and other services for which charges were being made to determine whether express statutory authority should be provided in respect of those charges. The conclusions of the review in respect of charging for services relating to the issue of phytosanitary certificates and phytosanitary certificates for re-export were that legislation should be introduced. (The outcome of the review was announced to Parliament by means of a written statement on 30 March 2004 (HC Hansard, Vol 419, Part 66)). Legislation relating to services provided after an application for a certificate is made was introduced by the Plant Health (Export Certification) (England) Order 2004. Further legislation is now required to provide for charging for related pre-export services carried out prior to an application for a certificate being submitted.

## **5. Extent**

5.1 The instrument applies to England only.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 This instrument supports the policy objectives of the Plant Health Act 1967 and the International Plant Protection Convention by providing assurance that plants, plant products or other objects being exported from England to countries outside of the European Union meet the plant health requirements of the importing country. Reciprocal arrangements in place under the International Plant Protection Convention help to maintain the plant health status of the UK and minimise the threat from non-indigenous plant pests and diseases to UK crops and to the wider environment.

7.2 In common with the previous legislation, a consultation exercise was not considered appropriate, as the legislation is merely to put the charges on the correct legal footing. Stakeholders were informed on 16 September 2004 that charging for these services would be introduced in the near future. No changes have been made to the services or rates that applied prior to suspension.

## **8. Impact**

8.1 A Regulatory Impact Assessment has been prepared and is attached.

8.2 The main beneficiaries of these services are the plant and plant product export industry, for example grain or bulb exporters, who subsume these costs as part of their commercial operations.

## **9. Contact**

9.1 Richard Harris, Defra, Room 354, Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX. Tel: 01904 455183 Fax 01904 455199 email [richard.harris@defra.gsi.gov.uk](mailto:richard.harris@defra.gsi.gov.uk) can answer any queries regarding the instrument.

# REGULATORY IMPACT ASSESSMENT

## 1. Title of proposal

Charging for pre-export services provided in respect of plant health export certification.

## 2. Purpose and intended effect

### 2.1 Objective

To reintroduce the charges made to industry for pre-export services carried out in advance of the plant health export certification of plants and plant products.

### 2.2 Background

Invoicing for certain plant health and other services was suspended in 1999 whilst a review was undertaken. This review concluded that the legislative bases were not properly in place for the services carried out in respect of plant health export certification. The Department introduced legislation on 22 June 2004 (the Plant Health (Export Certification) (England) Order 2004) to provide for charging in respect of the issue for plant health export certificates. The charges which are now being re-introduced relate to pre-export services which are required to be carried out in order to satisfy the phytosanitary requirements of a third country.

This Regulatory Impact Assessment applies to England only. Equivalent services are provided in other parts of the UK by the devolved administrations and separate arrangements will be made by those departments for any assessment.

### 2.3 Rationale for government intervention

There are a number of risks if the legislation is not reintroduced. The first is in connection with allocating the proper resources to this work. By achieving cost recovery, the Department is better able to keep pace with industry demands for the services. A further risk is that not charging could be considered by the European Commission as subsidising industry and therefore contrary to EU law on State Aids. Charges are presently levied by some European counterparts for equivalent services.

## 3. Consultation

The principle of passing the costs on to users of services is well established and indeed industry were meeting the fees for these particular services prior to suspension of invoicing in 1999. In common with the previous legislation, a consultation exercise was not considered appropriate, as the legislation is merely to put the charges on the correct legal footing. Stakeholders were informed on 16 September 2004 that charging for these services would be introduced in the near future. No changes have been made to the services or rates that applied prior to suspension.

In bringing forward this legislation, the Department has provided those affected with notice and guidance at least 12 weeks ahead of implementation. This is in accordance with the Guidance on Implementation Periods issued by the Small Business Service. Guidance was in the form of a press release and direct mailing to trade bodies and known users of the services.

## 4. Options

Three options have been identified:

### ***Option 1 - Do nothing***

Although invoicing was suspended in 1999, the Department has continued to provide the services detailed above. In so doing, this has increased the running costs of plant health services and presented an anomaly with the other areas for which charging has been ongoing.

### ***Option 2 - Reintroduce charges, applying the same fee rates to all***

Charges would be reintroduced at the same rates that were applied before the suspension of the services, except that a previous concession for small exporters would be removed. The services will be charged at the standard PHSI rate of £81 per hour.

### ***Option 3 - Reintroduce charges, including a reduced rate for small exporters***

This is the charging basis that applied prior to the suspension in 1999. Under the export certification arrangements, small exporters would be charged at a rate equal to half that charged to other exporters. The definition of a small exporter is one who is not registered for VAT or whose value of exports in the last financial year was less than £5,000. In addition to small businesses, this concession is intended to apply to, for example, private individuals making a non-commercial export, amateur plant enthusiasts, or a university or other non-commercial scientific establishment.

## 5. Costs and benefits

### 5.1 Sectors and groups affected

Customers for the export certification services range from private individuals and small nurserymen through to major grain exporting companies. It is envisaged that the measures would impact equally across the industry irrespective of size. However, option 3 would alleviate some of the burden in terms of costs that would fall on small exporters.

### 5.2 Costs and benefits

The benefits of doing nothing (Option 1) are that industry would continue to gain access to the services without charge.

The benefits of reintroducing charging at the same rates for all (Option 2) are that:

- Cost-recovery - the services, which are only used by exporters, will be self-funding. The costs will be borne by those who stand to make a financial gain rather than being funded by the tax-payer.
- Consistency – prior to suspension in 1999, charges were already being made for these services. The fees are therefore not anything new to industry and form part of an existing charging scheme for the wider range of plant health services.

- Fairness – the work involved in preparing an export certificate is about the same regardless of the size of the exporter. Differences do arise in terms of the amount of technical time needed and these can be accounted for by continuing to charge for technical input by the quarter hour, with a minimum fee.
- Legal – the risk of Commission action in relation to State Aid rules would be removed.

The additional benefits that would accrue from charging a lower rate to small exporters (Option 3) are:

- A reduction in financial burdens for small businesses and individuals –profit levels in this part of the industry tend to be small and exports are not a large feature of the business. In addition, individuals often wish to make a one-off export and could be dissuaded from doing so if the charges were the same as that paid by industry.
- A return to the status quo which existed prior to suspension and was operating well.

If Option 1 is pursued, the annual loss of income to the Department will be in the order of £65,000. This is on the present basis of providing pre-export services in respect of these services. There would be no additional costs to the industry.

## **6. Small Firms Impact Test**

The Small Business Service has been consulted as part of this assessment. A number of small firms will be affected by the reintroduction of charging and the effects on these would be mitigated by the concessionary fee rates that have previously been applied to small exporters.

## **7. Competition assessment**

The Competition Filter has been applied and the conclusion is that there is no significant risk of impact on competition. A detailed assessment has therefore not been prepared.

In applying the filter, the markets identified were the potato industry and the plant and plant export industry. Knowledge of these sectors indicates that a very small number of firms may each have a market share of more than 10% in the seed potato sector. No firm has a share of more than 20% and neither do the largest three firms have more than 50% market share. The costs will fall evenly across the markets, with the exception of the small exporters' fees which will favour small businesses and private individuals. The regulations will have no impact on market structure, and will not adversely affect new firms compared to existing ones. Neither is rapid technology change a characteristic of the markets. Finally, the introduction of this legislation has no impact on the choice of firms in respect of price, quality, range or location of their products.

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

The Plant Health (Export Certification) (England) Order 2004 contains offences that apply for the purposes of obtaining certification. These provisions reproduce existing offences in the Plant Health Order 1993 and will be enforced by the Plant Health & Seeds Inspectorate. No significant additional costs are expected to be incurred.

## **9. Implementation and delivery plan**

The re-introduction of charging for pre-export services in respect of export certification will be implemented by an amendment to the Plant Health (Export Certification (England) Order 2004. These services will continue to be carried out by the Department's Plant Health and Seeds Inspectorate.

## **10. Post-implementation review**

The cost of providing these services will be reviewed annually and appropriate fee rates applied. Increases in rates will not exceed the level needed to recover the costs of the services concerned and industry will be given reasonable notice of any change.

## **11. Compensatory simplification**

There is no scope for compensatory simplification measures in respect of these proposals.

## **12. Summary and recommendation**

The Department considers that charging for these services should be reintroduced on the same basis as prior to suspension. This system has worked well over the years and received the support of customers. The Department will therefore be proceeding with Option 3 as detailed under section 4 above.

## **Declaration and publication**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed ...Bach**

**Date 7<sup>th</sup> December 2005**

**Lord Bach  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs**

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