

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (PLANT PASSPORT FEES)(ENGLAND) REGULATIONS
2007

2007 No. 720

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**

The Regulations revoke and replace earlier Regulations which provide for fees to be charged for inspections carried out for the purpose of conferring authority to issue plant passports under the Plant Health (England) Order 2005 (S.I. 2005/2530)). The new Regulations provide for fees to be charged for such inspections in respect of an authority to issue plant passports under the 2005 Order and an equivalent authority under the Plant Health (*Phytophthora ramorum*) (England) Order 2004 (S.I. 2004/2590). The fees are set out in Article 3(2) of the Regulations.

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

The Regulations replace fees set out in the Plant Passport (Plant Health Fees) (England and Wales)(Amendment) Regulations 1997 (S.I. 1997/1961) and extend charging to inspections carried out for the purpose of conferring authority to issue plant passports under the Plant Health (*Phytophthora ramorum*) (England) Order 2004. The level of fees remains unchanged from the 1997 Regulations.

4. **Legislative Background**

- 4.1 The Plant Health (England) Order 2005 establishes controls in England to prevent the introduction into and spread within Great Britain of certain plant pests and diseases. It implements 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, which establishes the Community plant health regime, and replaced and revoked an earlier Order, the Plant Health (Great Britain) Order 1993. Under article 29 of the 2005 Order (replacing equivalent provisions in article 17 of the 1993 Order), the Minister may, where certain requirements are met, confer authority on an individual to issue plant passports (a document which facilitates movement of plant material within the Community). Similar provisions, including powers to confer an equivalent authority, exist in Article 8 of the Plant Health (*Phytophthora ramorum*) Order 2004, which establishes emergency controls in respect of a specific disease: *Phytophthora ramorum*.
- 4.2 The present Regulations revoke and replace the Plant Health (Plant Passport Fees) (England and Wales)(Amendment) Regulations 1993 (S.I. 1993/1642), as amended by

Plant Health (Plant Passport Fees) (England and Wales) (Amendment) Regulations 1997 (S.I. 1997/1961), which provided for the charging of fees in respect of inspections carried out for the purpose of conferring an authority to issue plant passports under article 17 of the 1993 Order (now article 29 of the 2005 Order). The purpose of the new Regulations is to update the 1993 Regulations to refer to the 2005 Plant Health (England) Order and to provide additional authorisation to charge fees in respect of inspections carried out for the purpose of conferring an authority to issue plant passports under article 8 of the Plant Health (*Phytophthora ramorum*) Order 2004.

- 4.3 The Regulations are made under s. 56 of the Finance Act 1971 and are subject to the consent of the Treasury.

5. Extent

This instrument applies to England only. Colleagues in Scotland, Wales and Northern Ireland are considering the need for similar legislation.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 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. As noted, the Directive is implemented in England, for non-forestry matters, by the Plant Health (England) Order 2005.
- 7.2. Under the 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 be authorised to issue plant passports. Authorisation involves the provision of basic details about the business, followed by an inspection by the Plant Health and Seeds Inspectorate of the premises and plants. Visits are also necessary to maintain authorisation to issue plant passports. Charges apply for inspections associated with authorisation to issue plant passports. The number of inspections will depend on the plant health risk associated with the particular plants grown and the size of the business. Generally they would range from two to four chargeable visits during the year.
- 7.3 Similar controls apply in respect of *Phytophthora ramorum* (“sudden oak death disease”) for which the plant passport regime is extended to the genera *Rhododendron*, *Viburnum* and *Camellia*.
- 7.4 Some charges for inspections in respect of authorisations granted under the Plant Health (*Phytophthora ramorum*) Order 2004 (and its predecessor Orders) were made between November 2002 and October 2006 under the misconception that the 1993 Regulations

provided authority. Following legal advice, we understood these charges to have been unlawful and charges were suspended pending the introduction of a new SI. The previous charges are subject to a repayment exercise. We have determined that between £25,000 and £30,000 of charges have been unlawfully collected between November 2002 and October 2006.

8. Impact

A regulatory impact appraisal was drawn up in 2002 when the measures were introduced based on the policy intention that the whole plant passport regime, including charges, should be applied to camellias, rhododendrons and viburnums. In the light of new advice we now know that the cross referencing between the different pieces of legislation failed to give adequate effect to that intention. The current SI simply corrects the position, and no new RIA is required. A copy of the earlier RIA is attached at Annex A for ease of reference.

9. Contact

Stephen Hunter, Defra, Room 351, Foss House, King's Pool, 1-2 Peasholme Green, York YO1 7PX. Tel: 01904 455162 Fax: 01904 455163 e-mail:

stephen.hunter@defra.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

1. TITLE

Extension of plant passporting requirements

2. PURPOSE AND INTENDED EFFECT OF THE MEASURE

2(i) Objective

To respond to two Community measures requiring an extension to plant passporting arrangements.

2(ii) Issue

Two new Community measures include, amongst other things, requirements to extend plant passporting to additional species. The measures concerned are Directive 2002/36, and Commission Decision 2002/757 on *Phytophthora ramorum* (the organism which has caused Sudden Oak Death in California). The *Phytophthora ramorum* measures are to be implemented by 31 October 2002 and Directive 2002/36 by 1 April 2003.

2(iii) Risk Assessment

There are two main risks if the new measures are not implemented. First, there is the risk of infraction proceedings by the Commission. Such proceedings would undoubtedly be initiated if the measures were not implemented.

There is also the risk to plant health. The measures have been agreed by scientific and other experts and are being introduced at the Community level to provide additional protection against known plant health risks, based on developments in member states and elsewhere.

Directive 2002/36 requires an extension of plant passporting to additional plants found to be hosts of pests such as *Liriomyza huidobrensis* and *Liriomyza trifolii* during monitoring. If the new requirements were not introduced, the additional safeguards offered through the plant passporting regime would not be available, thus increasing the risk of these pests becoming established.

The *Phytophthora ramorum* measures address recent findings of this fungus in Europe, including the UK. Emergency measures were introduced in England (and other parts of the UK) in May, in advance of Community consideration. Both the English and Community measures reflect a precautionary approach against two main risks. First, there is the possibility that the European isolate of the fungus will display damaging effects on trees, in the same way as the North American isolate (although there is no evidence of this at present). Second, there is the possibility that if the different American and European mating types are brought together, this could result in a wider range of strains developing and the possible production of long-lived resting spores.

2(iv) Main provisions

Plant passporting involves registration and authorisation of businesses trading in specified plants and a requirement for commercial movements of such material to be accompanied by plant passports. Authorisation is granted annually on the basis of an official inspection of the plants during the growing season and a check on record keeping.

Directive 2002/36 requires an extension of plant passporting to all herbaceous plants for planting (rather than just specified herbaceous species) as well as *Ficus* and *Hibiscus* for planting. For the *Phytophthora ramorum* measures, passporting is required for *Viburnum* and *Rhododendron* (except *Rhododendron simsii* – pot azaleas), the two plants on which the fungus has been recorded in Europe.

Both measures include other provisions, particularly in relation to imported material. But as the impact of such provisions will fall mainly on exporting businesses and their national authorities, they are not considered in this RIA.

3. OPTIONS

3(i) Identifying the options

Two options have been identified:

Option 1 – Do Nothing

For 2002/36, this would avoid any additional burden on English growers/traders, but the new registration and passporting provisions would not be implemented. This would place English traders out of step with the rest of the Community, making it impossible to trade in relevant species. It would also increase the risk of pest establishment and result in infraction proceedings.

For the *Phytophthora ramorum* measures, the current English emergency measures would remain in place, which require notification of commercial movements of *Rhododendron* and *Viburnum* to Plant Health and Seeds Inspectors. This is a more burdensome approach than plant passporting and so English traders would be placed at a financial disadvantage to their counterparts in the Community, as well as being unable to trade with other member states. In addition, there would again be infraction proceedings.

Option 2 – Implement the new requirements

This would require businesses which do not already trade in passportable material to register with DEFRA and receive an annual authorisation visit. They would also need to amend their labelling to include passport details. Businesses which are already registered would just need to amend their labels. Such an approach would ensure consistency with the rest of the Community, would provide additional protection against the plant health risks identified and would avoid infraction proceedings.

3(ii) Issues of equity or fairness

It is perceived that the measures would impact equally across the industry. The likely burden on small businesses is not considered to be any more onerous, in relation to size, than it would be for larger businesses, although it is recognised that smaller businesses would, in the main, have less administrative capacity.

4. BENEFITS

The benefits of doing nothing are the savings associated with not having an annual authorisation visit and not having to adjust labelling.

The benefits of implementing the measures are:

- Consistency with other member states – this would facilitate trade and ensure a co-ordinated approach to pest risk management
- Enhanced plant health protection – official passporting authorisation visits provide an opportunity to monitor the plant health status of the growing crop as well as checks on record keeping. Issuing passports facilitates traceability in the event of plant health problems being detected. These measures would reduce the risk of pest outbreaks and therefore reduce the likelihood of having to carry out eradication/containment measures. For *Phytophthora ramorum*, there is the added benefit of additional protection against possible environmental consequences, which would result if this disease became established and was found to have damaging effects on British trees.
- Replacement of the notification requirement under the English emergency *Phytophthora ramorum* Order with plant passporting arrangements – under a previous RIA these notification costs have been estimated at around £2,500 per week.
- Avoidance of infraction proceedings.

5. COMPLIANCE COSTS FOR BUSINESSES, CHARITIES AND VOLUNTARY ORGANISATIONS

5(i) Business sectors affected

The new measures would not affect charities and voluntary organisations apart from those who may be involved with the commercial activities referred to.

The main businesses affected would be nurseries and other companies which trade, warehouse and arrange transportation of specified plants.

5(ii) Compliance costs

There would be no compliance costs for the option of doing nothing.

There would be three compliance elements involved in implementing the new measures: registration; authorisation; labelling. The new registration requirements would be free and with no time limit. Authorisation to issue plants passports would require an annual visit by the Plant Health and Seeds Inspectorate and would be chargeable at the rate of £81 per hour on site, although the visits would be free in the first year (for the *Phytophthora ramorum* provisions only), in advance of the necessary statutory measures being introduced. There would be an administrative charge associated with amendment of labels and documentation to include passport details. However, the additional costs would be negligible as most suppliers would be able to amend existing documentation to accommodate this information.

In terms of costs to central Government, the measures would require additional monitoring and administration by the Plant Health and Seeds Inspectorate, some of which would be chargeable as indicated above. The additional work involved would be achieved through re-direction of existing resources.

5(iii) Total compliance costs

These are dependent on the level of trade in the species indicated but, for Directive 2002/36, estimates suggest that there are approximately 170 businesses which are already authorised to issue passports for other purposes, which would need to extend their arrangements to cover the additional species referred to. There are approximately 110 businesses which are not already authorised to issue passports and would need to register and receive a new annual visit at a cost of £81 per hour. For the *Phytophthora ramorum* measures, the estimated number of businesses affected are 230 (already authorised and needing to extend requirements) and 60 (not already authorised). Assuming some overlap of premises affected by the two measures, there may be around 150 premises which will be subject to authorisation visits for the first time. The minimum inspection period is 30 minutes (but may be more depending on layout of the premises, numbers of plants etc), so the total cost of inspection for all these premises would be in the region of £7,000. For premises that are already authorised (say around 300 assuming some overlap), annual visits are already carried out, but some additional input may be necessary by the Plant Health and Seeds Inspectorate. If it is assumed that 50% of these premises would require additional input to the extent that an additional 30 minutes inspection charge would be warranted, the total additional compliance cost would be in the region of £7,000.

6. CONSULTATION WITH SMALL BUSINESSES: “THE LITMUS TEST”

The Competition Filter has been applied and the conclusion was that there is no significant risk of a negative competitive impact, therefore a detailed assessment has not been carried out. For plant passporting to work effectively, it is important that all appropriate businesses, irrespective of size, comply with the relevant requirements. This avoids any gaps in plant health assessments and traceability of material. However, the impact of such controls are proportionate to the size and efficiency of businesses, in that charges for official inspections are based on the length of time spent by inspectors on a premises, and the number of labels to be printed and issued depends on the number of plants being traded. No concerns about the impact on small businesses have been raised during the consultation process.

7. CONSULTATION

Consultation has been completed with the National Farmers Union and Horticultural Trades Association in relation to *Phytophthora ramorum* and there is broad support for the measures being introduced, which are seen as an important safeguard and a less burdensome means of control than the existing notification requirement. Consultation about the practical arrangements for implementing Directive 2002/36 are continuing, but the policy of extending plant passporting to the additional species covered has been supported during previous consultation exercises prior the adoption of this Directive.

8. SUMMARY AND RECOMMENDATION

Two new Community measures require an extension of plant passporting to additional species.

The options are to do nothing or to implement the new requirements.

The costs associated with implementing the new measures are negligible, but the risks associated with not implementing them are substantial. In particular, trade with other member states would be affected, plant health status would be jeopardised and infraction proceedings would be incurred. In view of this assessment, it is recommended that the measures are implemented as required.

9. MONITORING AND REVIEW

There is a continuous programme to monitor plant health developments, carried out at Community level by the Standing Committee on Plant Health. This takes into account developments within member states, including new pest risk assessments and interceptions. This procedure will provide the opportunity, where necessary, to consider any further changes to the plant passporting regime.

Implementation of the new measures will be monitored by the Plant Health and Seeds Inspectorate, who will undertake annual authorisation visits at relevant premises.

In addition, for the *Phytophthora ramorum* measures, the situation will be kept under review through:

- Surveys carried out in the UK and other EC Member States of host plant material, which will help to determine the extent to which the fungus is present in the Community.
- Increased monitoring by the Plant Health and Seeds Inspectorate of host plants, at import inspections, as well as plant passporting visits. Imports of wood derived from host trees are also subject to import inspection by Forestry Commission Plant Health Inspectors.
- The outcome of further Research and Development to supply key information needed for an updated risk assessment.

The Commission Decision on *Phytophthora ramorum* includes a review date of 31 December 2003.

10. DECLARATION

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

Signed by the responsible Minister...Jeff Rooker

Date.....1st March 2007

Minister of State (Lords) (Sustainable Farming and Food)

11. CONTACT POINTS

Martin Ward, DEFRA, Room 355, Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX Tel: 01904 455175 Fax: 01904 455198

Steve Ashby, DEFRA, Room 343, Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX Tel: 01904 455048 Fax: 01904 455198