

EXPLANATORY MEMORANDUM TO
THE FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE REGULATIONS
2012

2012 No. 178

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.

2. Purpose of the instrument

2.1 The instrument enforces Council Regulation (EC) No 2173/2005 (“the FLEGT Regulation”) and Commission Regulation (EC) No 1024/2008, which set out a licensing scheme for imports of timber originating from countries with which the EU has signed a Voluntary Partnership Agreement (“VPA”).

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

3.1 None.

4. Legislative Context

4.1 This SI enforces the FLEGT Regulation which makes it illegal to import timber and timber products from partner countries, with which the EU has signed a VPA, without a valid FLEGT licence. This is to avoid illegally harvested timber and timber products entering the EU from these countries.

4.2 A second piece of EU legislation, Council Regulation (EU) No 995/2010, laying down the obligations of operators who place timber and timber products on the market (“the EU Timber Regulation”) will require operators first placing timber and timber products on the EU market to exercise due diligence of their supply using a risk-based approach, to ensure that they do not place illegal timber or timber products on the EU market. This is supported by a prohibition on the placing of illegal timber on the market. This complementary Regulation becomes applicable across the EU on 3rd March 2013, and a subsequent SI will be made by 3rd March 2013 to enforce this.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

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 The Forest Law Enforcement Governance and Trade (FLEGT) Action Plan is an EU-led initiative aimed at tackling illegal logging by ensuring that imports of timber into the EU are from legal sources. It is the foundation of the European Union's efforts to support improvements to forest governance around the world, in particular in developing nations. The adoption of the FLEGT action plan has resulted in two new EU Regulations: the FLEGT regulation and the EU Timber Regulation.

7.2 Illegal logging is one major driver of global tropical deforestation. Global deforestation, which constitutes annual losses of forest areas the size of England, has significant negative impacts. A study by The Economics of Ecosystems and Biodiversity (TEEB) estimated the value of the ecosystem services lost as a result of deforestation at \$2tr-\$4.5tr each year, these losses are felt local both locally by the rural poor in developing countries and globally through the link to climate change and biodiversity loss. Further, illegal logging results in revenue losses to governments and legitimate businesses.

7.3 The FLEGT Regulation aims to change the behaviour of European timber and timber product importers by requiring them to alter their mechanisms for sourcing timber products from international suppliers, creating demand for legally verified (FLEGT) timber, and thereby also providing assurance to VPA countries that their efforts in implementing the licensing system will not place them at a competitive disadvantage with non-VPA countries. This will have broader benefits in terms of tackling illegal logging, and avoiding the serious economic, environmental and social problems of deforestation on a global scale.

7.4 Defra's Animal Health & Veterinary Laboratories Agency (AHVLA) will be the designated Competent Authority for implementing the FLEGT licensing system in the UK. AHVLA was chosen for the role because it already manages licences for the import and export of plant and animal species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

7.5 The UK Border Agency will be the enforcement authority for the regulations at the border and will be responsible for handling any timber arriving from VPA countries without a valid FLEGT licence. Away from the border AHVLA Wildlife Inspectors will have a role in checking compliance with the domestic regulations, with the police being responsible for investigating breaches of the regulations and taking forward any charges and prosecutions.

7.6 Offences relating to the prohibition on importing without a valid FLEGT licence in Article 4(1) of the EU FLEGT Regulation are contained in the Customs and Excise Management Act 1979. This instrument modifies the penalties in that Act such that the maximum period of imprisonment for an offence is 3 years. The goods concerned are also liable to be forfeited under the 1979 Act.

7.7 The Government is not currently planning to charge for its work to check, administer and verify FLEGT licences in the first two years of operation of the FLEGT scheme. This will help to reduce the burden on small business, as per all businesses.

7.8 The Government is still developing its position on what should happen to timber that has been seized due to breach of the FLEGT Regulation.

8. Consultation outcome

8.1 The consultation, which closed at the end of 2009, sought stakeholder views on four main elements regarding implementation of the scheme: establishment of a delayed Full Cost Recovery approach to licences; enforcement and penalties; the inspections and verifications regime; dealing with seized timber.

8.2 The Department for Environment, Food and Rural Affairs received seven responses (3 NGOs, 1 Trade Federation, 2 UK government bodies and 1 consultant). Responses broadly supported our approach with regard to penalties and charging, but some specific issues were raised: Calls for clear information for importers and further clarity on the licensing and inspection process going forward, agreement to using the CITES Management Authority within AHVLA as a competent authority- maximising synergies and minimising costs, agreement to the proposed approach to delayed full cost recovery, need for creative, but legal ways to deal with seized timber.

9. Guidance

The central point of expertise for timber procurement (CPET) <http://www.cpet.org.uk/flegt-regulation-1/flegt-regulation> and Animal Health and Veterinary Laboratories Agency (AHVLA) <http://animalhealth.defra.gov.uk/cites/FLEGT/index.htm> are sources of information and guidance for those affected by the FLEGT Regulation.

10. Impact

10.1 There will be no charge for years one and two of the FLEGT licensing scheme, but a charge will be revisited, and perhaps imposed from year three onwards. The licence charge which might be incorporated from year three, has been estimated to cover the total sum of the full cost to AHVLA of checking and verifying FLEGT licences over the first seven years of operation, on a working assumption of increasing flows of FLEGT timber to the UK (based upon further VPAs having been signed). Costs are expected to be low as a proportion of shipment values (<1%). Average shipment values are estimated to be around £25,000, a £25 fee therefore would represent only 0.1% of the shipment value.

10.2 Other costs, which may accrue to importers, are those associated with any administrative arrangements that may need to be made in order to gain possession of the

FLEGT licence so that customs formalities can be completed in full by the operator declaring their shipment.

10.3 The impact on the public sector will be ongoing costs to AHVLA associated with the checks, administration, verification of the licence, and communications with HMRC clearance processes, as well as one-off costs of additional information technologies, communications systems and administrators needed to run and update current systems in the AHVLA. There will also be other costs associated with training AHVLA, UK Border Agency and HM Revenue and Customs officers in these new responsibilities, prosecuting those guilty of an offence associated with failure to present a valid FLEGT licence, running auctions for seized shipments, and other elements of running the scheme.

10.4 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There are no exemptions for small firms from implementing the FLEGT Regulation. It would not be possible to exempt small firms because the EU legislation does not exempt them.

12. Monitoring & review

12.1 This instrument must be reviewed by the Department for Environment, Food and Rural Affairs within a period of five years.

12.2 . The decision as to whether Charging will be introduced for FLEGT licenses in the third year will be reviewed in advance of the start of the third year.

12.3 Evaluation and monitoring of the FLEGT scheme will also be undertaken at the European level. The UK will endeavour to input into these evaluation exercises and run our own evaluations in parallel.

13. Contact

Stephen Lowe at the Department for Environment, Food and Rural Affairs
Tel: 020 7238 3202 or email: Stephen.Lowe@defra.gsi.gov.uk, can answer any queries regarding the instrument.