

EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (EXPORT CERTIFICATION) (ENGLAND) (AMENDMENT) ORDER 2018

2018 No. 286

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 This Order amends the Plant Health (Export Certification) (England) Order 2004 (S.I. 2004/1404) which makes provision for the issue of phytosanitary certificates for the export of plant material to third countries to satisfy the requirements of those countries’ phytosanitary regulations. It also prescribes the fees payable by applicants for such certificates.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The increase in the hourly fee for export and pre-export certification services is above inflation and is set at the level required to recover the full costs of delivery.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 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.
- 4.2 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. The Animal and Plant Health Agency (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.

- 4.3 In line with the principle that the costs of services should be borne by users who benefit directly from a service, charges apply for export certification services provided under the Plant Health (Export Certification) (England) Order 2004 (“the principal Order¹”). This instrument implements changes to the charging structure and fees for export certification services, aligning them more closely to the cost of delivering the service to individual customers. The changes also reflect adjustments in the cost of service delivery, as well as changes to ensure that all eligible costs are fully recovered.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is to England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 APHA is responsible in England, on behalf of Defra, for provision of plant health services to facilitate trade and prevent the introduction and spread of plant pests and diseases.
- 7.2 The HM Treasury guidance “Managing Public Money”² explains that it is UK Government policy to charge for many publicly provided goods and services. The standard approach is to set fees to recover the full costs of service delivery. This relieves the general taxpayer of costs, so that they are properly borne by users who benefit from a service. This allows for a more equitable distribution of public resources and enables lower public expenditure and borrowing. Charging for plant health services is consistent with the principle that businesses using these services should bear the costs of any measures to prevent harm that they might otherwise cause by their actions or non-actions, since most serious pests and diseases that arrive and spread in this country do so via commercial trade in plants and plant produce. APHA spends around £13.5m each year on plant health activities, including the provision of services to businesses, surveillance and outbreak control. In 2016/17, £5.75m of this total was the cost of providing statutory chargeable services.
- 7.3 The current fees for plant health export certification services are set out in the Plant Health (Export Certification) (England) Order 2004 (as amended).
- 7.4 Guided by “Managing Public Money”, APHA reviewed the current methodology for calculating the cost of providing plant health services and developed a new methodology. This work included checking assumptions about which costs could be recovered to secure full eligible cost recovery, and ensuring that the costs associated

¹ The Plant Health (Export Certification) (England) Order 2004 (S.I. 2004/1404).

² Managing Public Money (July 2013) HM Treasury http://www.hm-treasury.gov.uk/d/mpm_whole.pdf

with delivering each plant health service were allocated more accurately to that service. The improved precision of the new cost methodology helps to ensure that the charges for each service are based on the costs and resources used by that service. The fees for export certification services implemented through this instrument are based on this new methodology.

- 7.5 The changes to export certification fees to be implemented by this instrument include increasing fees for inspection visits to correct a previous under-recovery where exporters have been receiving a public subsidy of around £700,000 per year. The following additional changes to the package of fees are intended to simplify how we charge:
- i) Change the fee structure for inspection visits in respect of applications for export certificates and set the hourly rate to achieve full cost recovery, as follows:
 - o an hourly fee for inspection visits charged for each quarter hour, with a minimum fee half hour, with
 - o a separate fee for each sample tested, and
 - o a separate fee for the issue of the certificate.
 - ii) For audit inspections of authorised grain inspections, the fee will change from a flat fee per visit to a time based fee for each quarter hour, with a minimum fee of half an hour per visit.
 - iii) Change the fee structure for pre-export inspections and set the hourly rate to achieve full cost recovery, as follows:
 - o an hourly fee for the inspection visit set for each quarter hour, with a minimum fee and,
 - o a separate fee for each sample tested.
 - iv) Change the fee structure for the issue of phytosanitary certificates where no inspection visit is required, as follows:
 - o each applicant will be charged for the issue of the certificate and,
 - o where the application also requires a laboratory test, each sample tested will incur an additional charge.
 - v) A new fee to recover the cost of amending a certificate after issue at the request of the exporter.
 - vi) A new fee for handling and processing paper-based applications which reflects the cost of putting the applications on-line. These staff costs are currently apportioned across the fees for export certification. This change is line with the Governments' policy of digital by default.

7.6 Given the increase in fees and the changes in how the charges will be applied, the increases outlined in i) to iv) above will be phased to allow businesses time to plan and prepare. The fees will be introduced in three steps so that full-cost recovery is achieved by April 2019. The remaining proposals will be implemented in April 2018.

8. Consultation outcome

8.1 A consultation on proposed changes to fees for statutory plant health services, including export certification services, provided by the Animal and Plant Health Agency in England and Wales ran from 6th September to 31st October 2017. As regards the proposed changes to export certification charges, 3 trade bodies and 28

individual businesses (from a customer base of over 640) responded to the consultation. A summary of the key points and the government's response to the consultation has been published at GOV.UK.

- 8.2 All the responses to the consultation from those using export certification services were critical. That reaction was not unexpected, given that the proposed increases were to correct a current significant under-recovery of costs on that service. We carefully considered the responses against the need to achieve full cost recovery and the improvements offered by the new cost methodology in terms of aligning charges to the cost of service delivery to each customer and decided to continue with the changes to fees as proposed in the consultation with one exception.
- 8.3 In addition to the changes outlined in paragraph 7.5 above, the consultation also sought views on a proposal for a new fee for the laboratory testing of export samples, particularly consignments of seeds, where the testing requirements specified by the importing country are more stringent than for routine export-related laboratory testing. Whilst we intend charging for this specialist seed testing in the future, following further discussions with Fera Science Ltd. we have concluded that we need to do further work on how the fees are structured and we are therefore delaying implementing these fees until we have better data on costs from 2017/18.

9. Guidance

- 9.1 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.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal.
- 10.2 There is no impact on the public sector.
- 10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies equally to all businesses trading in plant health controlled material, including small businesses. However, reduced rates apply to qualifying small businesses and individuals applying for certificates for one-off or relatively small volumes of commercial or non-commercial exports (e.g. amateur plant enthusiasts, universities or other non-commercial scientific establishments). This enables them to undertake a small number of exports at a rate equal to half that charged to other exporters. The rates apply to 'small exporters' whose cumulative charge for export services in any one financial year is equal to or less than £250. To be eligible for these concessionary rates an exporter must meet one of the following conditions when making an application for any export services: (1) the exporter must not be registered for VAT in respect of trade in plants, plant products or related materials, (2) the goods to be exported must not be a taxable supply, or (3) the exporter must not have exported goods certified with a total value of £5,000 or more in the previous financial year.

12. Monitoring and review

- 12.1 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.

12.2 The levels of fees will be reviewed over the course of the next year.

13. Contact

13.1 Iain Johnstone, Defra, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel: 02080 265265; e-mail: iain.johnstone@fera.gsi.gov.uk can answer any queries regarding these Regulations.