

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH ETC. (FEES) (ENGLAND) (AMENDMENT) REGULATIONS
2020

2020 No. 9

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.

2. Purpose of the instrument

2.1 This instrument amends existing regulations relating to fees for inspections of plants and plant produce imported into the UK from non-EU countries to reflect changes in inspection levels and corresponding fees according to risk. This is a minor annual adjustment made by the EU in response to changing risk profiles.

2.2 EU law would continue to apply during any Implementation Period, therefore, we are amending certain import inspection fees to give effect to changes at EU level. Regardless, the UK was involved in and supports the system of reduced frequency checks on imports based on the level of risk. The changes will help protect our biosecurity and ensure fees and inspection regimes remain proportionate to the risk. The overall levels of import inspection fees are unchanged by this instrument, which simply amends the trades subject to risk-targeted checks or changes the level of reduction for certain trades.

2.3 This instrument also prescribes fees for the sampling of ware potatoes originating in the Akkar and Bekaa regions of Lebanon.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 As this 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 EU¹ (OJ No. L 169, 10.7.2000, p. 1) (“the Plant Health Directive”) establishes the EU plant health regime. 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. For forestry matters, the Plant Health Directive has been implemented by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517).
- 6.2 The Plant Health Directive has been amended by Council Directive 2002/89/EC (OJ No. L 355, 30.12.2002, p. 45).² Among the changes introduced by that Directive was clarification of the existing requirement for mandatory examinations (documentary checks, identity checks and physical inspection) on certain plants and plant produce and obligations to charge fees for these inspections. The Plant Health Directive (Article 13a(2)) contains a procedure for reducing the rate of inspections of certain plant material imports and for charging a correspondingly reduced fee for inspections (Article 13d(2)).
- 6.3 The Plant Health Directive was replaced on 14 December 2019 by Regulation (EU) 2016/2031 (OJ No. L 317, 23.11.2016, p. 4)³ (the “Plant Health Regulation”) on protective measures against pests of plants and Regulation (EU) 2017/625 (OJ No. L 95, 7.4.2017, p. 1)⁴ (the “Official Controls Regulation”) on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. Article 165, paragraph 2 of the Official Controls Regulation allows the relevant articles of Directive 2000/29/EC as regards the procedure for reducing the rate of inspections of certain plant material imports to continue to apply until 14 December 2022, or earlier if a delegated act is adopted.
- 6.4 The powers of Animal and Plant Health Agency (“APHA”) inspectors to carry out these examinations are provided in the Plant Health (Official Controls and Miscellaneous Provisions) Regulations 2019 and the authority to charge fees for these inspections is contained in the Plant Health etc. (Fees) (England) Regulations 2018 (S.I. 2018/289) (“the principal Regulations”). The purpose of this instrument is to reflect changes in certain import inspection fees.
- 6.5 This instrument is made in exercise of powers conferred by section 56(1) and (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, this instrument requires HM Treasury consent.

¹ This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

² This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

³ This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

⁴ This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

7. Policy background

What is being done and why?

- 7.1 The Plant Health Directive requires mandatory examinations (documentary checks, identity checks and physical inspection) of plants for planting, potatoes, certain major fruits and cut flowers and some leafy vegetables imported from countries outside the EU. Under the Plant Health Directive, the required level for inspections is specified at 100%. However, there is provision for the level of physical inspection to be reduced for consignments of plant produce (e.g. cut flowers, fruit and vegetables) from specific countries if there is evidence that material from that source has been found to be free from pests and diseases during trade over a three year period. In plant health terms, plant produce poses a significantly lower risk than planting/propagating material as it is not planted or propagated and is generally either consumed or disposed of away from agricultural and horticultural production sites. Planting material and potatoes are excluded from risk-targeted checks arrangements and are subject to the mandatory 100% inspection level.
- 7.2 A European Commission working group meets annually to consider applications from member states for reductions in inspection levels and reviews agreed levels using trade and interception data from member states over the previous year. The working group makes recommendations for future inspection levels for consideration by the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF). Levels of inspection can be increased or eligibility for any reduction withdrawn altogether if member states report any pest or disease problems identified with a trade approved for reduced checks. If more than 1% of consignments imported into the EU have been found to contain pests or diseases in any year then that trade is not eligible for reduced inspection levels. Since the risk-targeted checks regime was introduced in 2006, several trades which had been approved for reduced inspections have had that approval removed in response to interceptions of pests or diseases by member states. None of those cases resulted in a pest or disease outbreak within the EU.
- 7.3 Implementation of the risk-targeted check provisions is discretionary. Member states can choose not to apply reduced inspection levels and continue to inspect all imported plants and plant produce. However, the reduced checks system reflects the principle of risk-targeting which Ministers have agreed should be a key objective to pursue in the context of the review of the EU plant health regime. Adopting these provisions saves around 30,000 inspections on low risk produce in England per year and allows resources to be focussed instead on targeting trade in planting/propagating material which represents the highest risks or where the plant health status is unknown. It also means that inspections of material which is currently unregulated under the Plant Health Directive can be carried out, looking for evidence of emerging threats which can then be considered for incorporating in the EU plant health regime. This evidence feeds into an EU process to consider actions in response to persistent interceptions, which may include audits by the Commission's Sante F unit to the exporting country concerned, or new import requirements. (For instance, fresh peppers and tomatoes, which were previously unregulated under the EU plant health regime, now require a phytosanitary certificate to be imported, in response to pest findings). SCoPAFF monitors interception levels on a monthly basis and agrees actions in response to problematic trades.
- 7.4 In the event of the withdrawal of the UK from the EU on 31 January 2020 it is anticipated that an Implementation Period would apply until the end of 2020. During

this period the UK would continue to apply EU requirements, including those on imports and the system of reduced frequency import inspections described above. Therefore, although this instrument is related to EU arrangements, and the UK is not expected to be member of the EU when they take effect, the system of import inspections, including scope for reduced frequency checks, will not change immediately on exit. Hence it is important to make these changes.

- 7.5 Article 79 of the Official Controls Regulation requires charges to be raised to cover the costs of import checks. In accordance with Article 82(1) fees are charged at a flat rate based on the overall cost of the import inspections and applied to all importers irrespective of whether consignments are inspected or not.
- 7.6 Under the Principal Regulations, reduced checks apply to 44 trades. This instrument implements the latest changes recommended by the European Commission's Reduced Checks Working Group held in June 2019, which were agreed by SCoPAFF in November 2019. The outcome of this year's meeting saw increases in levels of inspection on five trades, including to 100% in the case of *Citrus limon* and *C. aurantifolia* fruit from Israel and stone fruit from USA because of a decrease in the volume of consignments imported, with matching increases in fees, as follows:
- Lemon and lime fruit from Israel (from 25% to 100%);
 - Passion fruit from South Africa (from 35% to 50%);
 - Passion fruit from Zimbabwe (50% to 75%);
 - Stone fruit (other than peaches) from South Africa (from 5% to 10%);
 - Stone fruit from USA (50% to 100%).

Further evidence of compliance was available for one trade resulting in levels of inspection decreasing, with matching decreases in fees, as follows:

- Aubergines from Turkey (25% to 15%).

Three additional trades were shown to pose minimal plant health risks and were accepted for reduced inspection levels. The inspection rate for consignments of the following has therefore decreased, with a matching decrease in fees:

- Citrus fruit from Mexico (from 100% to 50%)
- Vaccinium fruit from Chile (from 100% to 10%)
- Vaccinium fruit from Peru (from 100% to 10%).

- 7.7 Details of all the trades subject to reduced levels of physical inspection and the relevant fees are included within the revised Schedule 2 inserted by Regulation 2 of this instrument.
- 7.8 Under the Plant Health Regulation the import of potatoes is prohibited from most third countries because of the risk of introduction of harmful organisms. Commission Implementing Decision 2019/1614 of 26 September 2019 (OJ No. L 250, 30.9.2019, p. 85–90) provides for the import of potatoes, other than those intended for planting (ware potatoes), originating in the regions of Akkar and Bekaa of Lebanon, where evidence has been provided that potatoes are grown under adequate phytosanitary conditions to ensure freedom from harmful organisms, particularly *Clavibacter michiganensis*. Commission Implementing Decision 2019/1614 permits the import of such potatoes subject to official sampling on arrival in the EU to ensure freedom from *Clavibacter michiganensis*. Regulation 2(3) of this instrument prescribes a fee for each lot sampled.

8. European Union (Withdrawal) Act 2018/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 2018.

9. Consolidation

9.1 This is the third amendment of the Principal Regulations.

10. Consultation outcome

10.1 The consultation in 2004, held prior to plant health inspection charges being introduced in earlier legislation (the Plant Health (Import Inspection Fees) (England) Regulations 2005 (S.I. 2005/906)) outlined the possibility of changes and new trades being added to the reduced rate regime in the future. No further consultation has been carried out on this instrument as it implements annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

11. Guidance

11.1 The main stakeholders have been informed and a summary of the changes will be placed on the APHA website. Details of all the trades subject to reduced levels of physical inspection and the relevant fees are in Schedule 2 to the Principal Regulations, as substituted with a revised Schedule 2 by these Regulations.

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal. Of the 58 trades subject to reduced checks currently, this instrument leaves 49 unchanged.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it implements annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

13. Regulating small business

13.1 The legislation applies to all businesses importing controlled plant health material, including small businesses. The changes introduced through this instrument give effect to the latest agreed rates for inspection of certain material.

14. Monitoring & review

14.1 The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission.

15. Contact

15.1 Iain Johnstone at the Department for Environment, Food and Rural Affairs Defra, Tel: 02080 265265; e-mail: iain.johnstone@defra.gov.uk can answer any queries regarding this instrument.

15.2 Nicola Spence, Deputy Director for Plant Health, Bees 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 at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.