

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH ETC. (FEES) (ENGLAND) (AMENDMENT) REGULATIONS**  
**2021**

2021 No. [XXXX]

**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 the Plant Health etc. (Fees) (England) Regulations 2018 (S.I. 2018/289) (“the 2018 Regulations”). It provides for fees to be charged for plant health checks on commodities imported into England from EU member States, Switzerland and Liechtenstein.

*Explanations*

What did any relevant EU law do before exit day?

2.2 Regulations (EU) 2016/2031 and (EU) 2017/625 establish controls and restrictions on the import (from third countries), and internal movement within and between EU member States, of certain plants, plants pests and other material, to help reduce biosecurity risk and protect the environment from the spread of harmful pests. Regulation (EU) 2017/625 requires the charging of fees for plant health checks on regulated consignments imported from outside the EU.

Why is it being changed?

2.3 From 1 January 2021 plant health checks are being carried out on consignments of regulated plants, plant products and other objects imported into the UK from EU member States, Switzerland and Liechtenstein, in addition to those from the rest of the world.

What will it now do?

2.4 Fees will also be applied for checks on imports of regulated plants, plant products and other objects from EU member States, Switzerland and Liechtenstein, in addition to those from the rest of the world.

**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 This instrument does not have any minor or consequential effects outside England.

- 3.3 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.4 The Department has reached this view because it considers that the purpose of this instrument is to provide for the application of fees for plant health import inspections, which is within the devolved legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the Welsh Parliament.

#### **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 set out in Section 3 under “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)”.

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

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:
- ‘In my view the provisions of the Plant Health etc. (Fees) (England) (Amendment) Regulations 2021 are compatible with the Convention rights’.

#### **6. Legislative Context**

- 6.1 Regulation (EU) 2016/2031 on protective measures against pests of plants and Regulation (EU) 2017/625 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 (“the EU Regulations”) establish controls and restrictions which apply to the import and internal movement of certain plants, plants pests and other material. The purpose of the EU Regulations is to help reduce biosecurity risk and protect the environment from the spread of harmful pests. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 give effect to the EU Regulations.
- 6.2 Article 79 of Regulation (EU) 2017/625 requires the charging of fees for certain official controls, including plant health checks on certain regulated imported consignments. The 2018 Regulations specify fees payable to the Secretary of State in relation to plant health services, including import inspection services, provided in England.

#### **7. Policy background**

##### *What is being done and why?*

- 7.1 Plant health checks (documentary, identity and physical) are carried out on regulated consignments imported into England from non-EU countries. The highest risk

commodities are subject to 100% documentary, identity and physical checks. The level of identity and physical checks on other commodities is based on risk.

- 7.2 Fees are applied for checks under the 2018 Regulations. For consignments eligible for reduced levels of physical checks a proportionally reduced fee is applied to every imported consignment.
- 7.3 From 1 January 2021 plant health checks are also being carried out on consignments of regulated plants, plant products and other objects imported from EU member States, Switzerland and Liechtenstein. Under the agreed phased approach, higher risk goods are subject to documentary, identity and physical checks from January. Documentary, identity and physical checks on other regulated plants, plant products and other objects will be phased in through 2021 and 2022.
- 7.4 In line with the standard approach that the full cost of service delivery be recovered from businesses using these services, fees will also be applied for checks on imports of regulated plants, plant products and other objects from EU member States, Switzerland and Liechtenstein. In order to give businesses time to adjust to the new arrangements, the fees for documentary, identity and physical checks on the higher risk goods will not be applied until 1 June 2021. Fees for identity and physical checks on the remaining regulated goods from EU member States, Switzerland and Liechtenstein, as set out in Schedule 2A, will be applied from 1 March 2022.
- 7.5 Under the 2018 Regulations there is a single combined fee for a documentary and identity check, reflecting the fact that both those checks were previously carried out at 100% on all consignments. Under Regulation (EU) 2017/625 the frequency of the identity check is linked to that of the physical check; so any reduction in the level of physical inspection will also apply to the identity check. This instrument therefore provides for a separate fee for documentary and identity checks for all consignments.
- 7.6 This instrument does not make any other changes to existing fees for checks on consignments imported from non-EU countries other than Switzerland and Liechtenstein.
- 7.7 Similar changes are to be introduced by the Scottish and Welsh governments.

## **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union and is being made under section 14(1) of, and paragraph 7 of Schedule 4 to the European Union (Withdrawal) Act 2018. The Minister has made the relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 This is not a consolidation and is the fourth amendment of the 2018 Regulations.

## **10. Consultation outcome**

- 10.1 Whilst a formal consultation with stakeholders was not carried out (as the amendments introduced by this instrument are not changes to policy), Defra have engaged extensively with stakeholders, throughout 2020, regarding the planned changes following the end of the Transition Period. This included explanations of the planned charging regime for EU imports in October 2020 and was followed with

details of the changes in December 2020. EU imports were also discussed in detail with the trade bodies, including the National Farmers' Union, Horticultural Trades Association and Fresh Produce Consortium during this period. Very limited feedback has been received; mainly asking for clarification on how the new fees will be applied.

## **11. Guidance**

- 11.1 The main stakeholders affected will be informed of the changes and information on the new fees will be placed on the [Plant Health](#) section of Gov.uk prior to implementation.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 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. There are no significant financial implications as a result of policy changes introduced under this instrument.

## **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

## **14. Monitoring & review**

- 14.1 Plant health fees and the trades eligible for reduced levels of inspection are subject to an annual review.
- 14.2 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

## **15. Contact**

- 15.1 Iain Johnstone at the Department for Environment, Food and Rural Affairs Telephone: 02080 265 265 or email: [iain.johnstone@defra.gov.uk](mailto:iain.johnstone@defra.gov.uk) can be contacted with 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, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

#### 1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Plant Health etc (Fees) (England) (Amendment) Regulations 2021 do no more than is appropriate”.

- 1.2 This is the case because the amendments ensure that the fees due to be collected against checks on goods from the EU, Switzerland and Liechtenstein maintain cost recovery and do not result in any over-recovery from businesses. This approach is in line with existing fees and meets Managing Public Money and HMT requirements.

#### 2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are that 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.

#### 3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lord Gardiner of Kimble have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

#### 4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.