

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH ETC. (MISCELLANEOUS FEES) (AMENDMENT)
(ENGLAND) REGULATIONS 2022

2022 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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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 ensures that the fees charged for plant health checks (physical checks and identity checks) on commodities imported into England from all third countries reflect the frequencies of plant health checks established under the new risk-targeted inspection regime, and on certain plants for planting under a new flat rate fee.
- 2.2 It also extends a fee exemption, in the 2018 Regulations and the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 (“the 2015 Regulations”), to December 2023. Traders are exempted from paying fees under certain circumstances in respect of applications to Defra for pre-export and export certification services for plants, plant products or other objects moving to Northern Ireland.
- 2.3 Finally, this instrument corrects an error in the Plant Health etc. (Fees) (England) (Amendment) Regulations 2021 (“the 2021 Regulations”) to re-instate fees for samples taken on imports. This ensures importers are liable to pay inspection fees when samples of consignments are taken for laboratory testing to confirm the presence of certain plant pests.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument corrects an error by re-instating in the 2018 Regulations a provision covering fees for samples taken on imports (which was omitted in error by the Plant Health etc. (Fees) (England) (Amendment) Regulations 2021).

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 The Parliamentary Under Secretary of State for Rural Affairs, Access to Nature and Biosecurity, Lord Benyon, has made the following statement regarding Human Rights:

‘In my view the provisions of the Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2022 are compatible with the Convention rights’.

6. Legislative Context

- 6.1 Regulation (EU) 2016/2031 on protective measures against pests of plants (“the Plant Health Regulation”) 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 Official Controls Regulation”) (together “the GB 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 GB Regulations is to help reduce biosecurity risk and protect the environment from the spread of harmful pests.
- 6.2 Article 79 of the Official Controls Regulation requires the charging of fees for certain official controls, including plant health checks on certain imported controlled consignments.
- 6.3 The 2015 Regulations and the 2018 Regulations set fees for the delivery of plant health services in England by the Forestry Commission and Defra respectively. This includes import inspection, pre-export, and export certification services to comply with third country entry requirements relating to plant health checks on controlled consignments.
- 6.4 The fees for plant health checks prescribed in the 2018 Regulations and amended by Plant Health etc. (Fees) (England) (Amendment) Regulations 2021 are being amended in this instrument to reflect the frequencies of plant health checks established under the Official Controls (Plant Health) (Frequency of checks) Regulations 2022, which is being introduced to implement a new risk-targeted inspection regime.

7. Policy background

What is being done and why?

- 7.1 Plant health checks are currently carried out on regulated consignments imported into England from all non-EU countries and on high priority (also known as high-risk) commodities from EU member States, Switzerland and Liechtenstein. The highest priority commodities are subject to 100% documentary, identity and physical checks, and lower risk goods are subject to lower frequencies of checks.
- 7.2 The new risk-targeted inspection scheme set out in the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022, which will apply from July 2022, will provide a risk-targeted method to determine the frequency of plant health checks. This scheme will apply equally to imports from non-EU countries and high priority goods from EU member States, Switzerland, and Liechtenstein. In line with the standard approach that the full cost of service delivery be recovered from businesses using these services, fees for physical and identity checks under the 2018 Regulations are being amended to reflect the frequencies established under the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022. For commodities subject to reduced levels of physical and identity checks, a proportionally reduced fee is applied.
- 7.3 Secondly, this instrument provides for a temporary flat rate fee on certain plants for planting imported to England from all third countries. Plants from the EU, Lichtenstein and Switzerland, intended for final users, are currently subject to plant

health checks at a frequency of 5-10%, compared to 100% for plants not intended for final users. This policy for a temporary flat rate fee was proposed following stakeholder concerns on the current fees for importing these consignments from the EU, Lichtenstein and Switzerland. This measure aims to prevent plants finished¹ in those territories benefiting from a cost advantage over plants imported for finishing in Great Britain.

- 7.4 Thirdly, an exemption from the payment of fees for pre-export and export certification services, is extended, where goods are moving from England to a business or private individual in Northern Ireland. This will continue to enable trade between England and Northern Ireland.
- 7.5 Fourthly, an error is corrected to re-instate in the 2018 Regulations provision for fees for samples taken on imports (which was omitted by the Plant Health etc. (Fees) (England) (Amendment) Regulations 2021). This ensures importers are liable to pay the specified fee where an inspector suspects consignments are infected and takes a sample from the consignment for laboratory testing to confirm the presence of a controlled plant pest. It is UK Government policy to charge for many publicly provided goods and services with the standard approach being to set fees to recover the full costs of service delivery. This includes the costs of inspections to reduce risks to plant health from the trade in plants and plant produce.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 Plant health checks are currently carried out on regulated consignments imported into England from all non-EU countries and on high priority commodities from EU member States, Switzerland and Liechtenstein. Article 79 of the Official Controls Regulation provides for the charging of fees for plant health checks. These fees, which are set out in the 2015 Regulations and the 2018 Regulations, are in line with the standard approach that the full cost of services to conduct plant health checks are recovered from businesses using these services.
- 7.7 The 2015 Regulations and the 2018 Regulations also allow traders to be exempt from paying fees for pre-export and export certification services when moving plants, plant products or other objects from England to Northern Ireland, following the UK's Exit from the EU.

Why is it being changed?

- 7.8 The fees for plant health checks are being amended in this instrument to reflect the frequencies of plant health checks established under the Official Controls (Plant Health) (Frequency of checks) Regulations 2022, which is being introduced to implement a new risk-targeted inspection regime.
- 7.9 This instrument also aims to support traders and individuals who are impacted by the fees for certain plant health checks. Specifically, this instrument will extend measures which prevent costs to traders who move goods from England to Northern Ireland by exempting certification costs. Additionally, it ensures the same fees apply for traders who import certain plants for finishing in GB compared to those importing the same plants that have been finished in the EU.

¹ Finishing refers to the final stages of the manufacturing process.

- 7.10 It is UK Government policy to charge for many publicly provided goods and services with the standard approach being to set fees to recover the full costs of service delivery. A correction has therefore been made to re-instate provision for fees for samples taken on imports for laboratory testing to confirm the presence of certain plant pests. The provision was omitted in error by the Plant Health etc. (Fees) (England) (Amendment) Regulations 2021.

What will it now do?

- 7.11 This instrument will ensure that the fees charged for plant health checks on commodities imported into England from all third countries reflect the frequencies of plant health checks established under the new risk-targeted inspection regime, and on certain plants for planting under a new flat rate fee.
- 7.12 It extends the exemption of traders from paying fees to Defra for pre-export and export certification services for plants, plant products or other objects moving to Northern Ireland.
- 7.13 It corrects an error to re-instate provision for a specified fee to be payable by importers when samples of consignments are taken for laboratory testing to confirm the presence of certain plant pests.

8. European Union Withdrawal and Future Relationship

- 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 paragraphs 1 and 7 of Schedule 4 and paragraph 21 of Schedule 7 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 ninth amendment of the 2018 Regulations.

10. Consultation outcome

- 10.1 Targeted stakeholders were consulted on the development of the new risk-targeted inspection scheme (see the Explanatory Memorandum for the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 for details). The eleven respondents (which included responses from trade organisations) were generally supportive of a GB focused risk-based frequency of checks regime. A consultation targeted at plant health stakeholders and their members, was appropriate as this instrument primarily affects stakeholder businesses who import commodities requiring plant health checks.
- 10.2 The summary of responses and Government's response to the consultation on a method for determining the frequency of risk-targeted plant health import inspections to GB was published on gov.uk at [Freq-of-checks-Gov-Response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114144/Freq-of-checks-Gov-Response.pdf) ([defra.gov.uk](https://www.defra.gov.uk))
- 10.3 Stakeholders were consulted for the proposal of flat rate physical and identity check fees for certain plants for planting in England and Wales. Of the thirty-four responses received, the vast majority of respondents (thirty-one) supported the proposal. The main objection was that a flat rate fee would increase fees for importing certain goods, such as bulbs. Defra has responded to these responses by restricting the flat rate fee to the goods where there is a clear benefit to trade (excluding bulbs and seeds).

10.4 The Scottish and Welsh Devolved Administrations have been consulted about the proposed amendments and plan to lay parallel legislation to amend devolved fees legislation.

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 The impact on business, charities or voluntary bodies is that these changes are estimated to save businesses c. £1.2m per annum due to lower levels of checks and subsequent impact on fees.

12.2 There is no, or no significant, impact on the public sector as a result of policy changes introduced under this instrument.

12.3 An Impact Assessment has not been prepared for this instrument because 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 level of inspection of commodities 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 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs, Telephone: 02085 654 319 or email: kate.somerwill-owens@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 Benyon, Parliamentary Under Secretary of State for Rural Affairs, Access to Nature and Biosecurity can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

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

“In my view the Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2022 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 all third countries maintain cost recovery (with a couple of trade-enabling exceptions, see section 7.4) 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, Access to Nature and Biosecurity, Lord Benyon 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, Access to Nature and Biosecurity, Lord Benyon has made the following statement(s):

“The draft 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, Access to Nature and Biosecurity, Lord Benyon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lord Benyon 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 7 of the main body of this Explanatory Memorandum.