

EXPLANATORY MEMORANDUM

1. i. Title

The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004 No.1684

ii. Laying Authority and Purpose

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

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

iii. Department responsible

Forestry Commission.

2. Description

- 2.1 The Order provides for the issue of phytosanitary certificates and reforwarding phytosanitary certificates for the export of trees, wood and wood products, to countries outside of the European Community. These certificates confirm that the requirements of those countries' phytosanitary regulations have been met. These measures support the UK's obligations under the 1951 International Plant Protection Convention (Cmd 9077; revised in 1979 Cmnd 8108), but also apply to non-signatory States. The Order prescribes fees payable by applicants for these certificates and makes it an offence to knowingly or recklessly make a false statement or intentionally fail to disclose material information for the purpose of obtaining a certificate.

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

- 3.1 The Order permits the Forestry Commissioners to charge fees for services in connection with the issuing of phytosanitary certificates and reforwarding phytosanitary certificates. The fees are set out in Schedule 3 to the Order.
- 3.2 Fees for these services were previously charged (at the same rate) until their suspension in May 2000 pending the outcome of a review into the legal basis for charging (explained in more detail in the following paragraph).

4. Legislative Background

- 4.1 Under the International Plant Protection Convention the UK Government agreed to a number of measures to allow pests and diseases of plants and plant products to be controlled and their introduction and spread

across national boundaries to be prevented. The Government's obligations under the Convention are primarily implemented in respect of trees, wood and wood products by the Plant Health (Forestry) (Great Britain) Order 1993 (SI 1993/1283), made under the Plant Health Act 1967 (c.8).

- 4.2 The Plant Health (Forestry)(Great Britain) Order does not, however, implement the UK's obligations under the Convention to provide for the issue of phytosanitary certificates to exporters to countries outside the European Community to meet the requirements of those countries' phytosanitary regulations nor does it oblige the UK to allow exporters to meet similar requirements imposed by non-signatory States. Until now these services have been provided on a non-statutory basis and, until their suspension in mid-2000, charges for issuing the certificates were also made without specific statutory authority.
- 4.3 The charges were suspended following a decision by the Forestry Commission and the Agriculture Departments to conduct a review of a number of plant health and other services for which charges were being made to determine whether express statutory authority should be provided in respect of those charges. The conclusions of the review in respect of charging for services relating to the issue of phytosanitary certificates and reforwarding certificates were that legislation should be introduced. (The outcome of the review was announced to Parliament by means of a written statement on 30 March 2004 (HC Hansard, Vol 419, Part 66)).
- 4.4 The provisions in the Order for the issue of the certificates are authorised by section 3(1) of the Plant Health Act 1967 which allows the Forestry Commissioners, as the competent authority in relation to forest trees and timber, to make such orders as they think expedient for preventing the conveyance of pests by articles exported from Great Britain. The power to charge in connection with applications for and the issue of certificates or in respect of any services required for their issue is provided by section 4A of the Act. This power is subject to Treasury consent.
- 4.5 The Order also makes it an offence, in applying for a certificate under the Order, to make a false statement or intentionally to fail to disclose material information for the purpose of obtaining a certificate. The offence closely follows in respect of the issue of certificates to which the Order applies the offence contained in the Plant Health (Forestry)(Great Britain) Order 1993 which applies to plant passports, phytosanitary certificates or licences issued under that Order. Authority to create this offence is contained in section 3(4) of the Plant Health Act.

5. **Extent**

The instrument extends to Great Britain.

6. **Policy background**

- 6.1 This instrument supports the policy objectives of the Plant Health Act 1967 and the International Plant Protection Convention by providing assurance that trees, wood and wood products or other objects being

exported from Great Britain to countries outside of the European Community meet the required plant health status of the importing country. Reciprocal arrangements in place under the International Plant Protection Convention help to maintain the plant health status of the UK and minimise the threat from non-indigenous plant pests and diseases to UK crops and to the wider environment.

- 6.2 Interest in the measures being introduced by the instrument has been relatively low. The main beneficiaries of these services are exporters of goods that are shipped in wood packaging material, who subsume these costs as part of their commercial operations.

7. **Impact**

A Regulatory Impact Assessment has been prepared and is attached.

8. **Contact**

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Forestry Commission
May 2004

REGULATORY IMPACT ASSESSMENT

1. TITLE

CHARGING FOR PLANT HEALTH SERVICES PROVIDED IN RESPECT OF EXPORT CERTIFICATION OF FORESTRY MATERIAL, WOOD AND WOOD PRODUCTS, INCLUDING WOOD PACKAGING MATERIAL

2. PURPOSE AND INTENDED EFFECT

2.1 Objective

To assess a proposal to reintroduce the charges made to industry for export certification of trees, wood and wood products, including wood packaging material.

2.2 Issue

Invoicing for these services was suspended in 2000 whilst a review was undertaken. This review concluded that the required legislative base was not properly in place for the services described above. The Forestry Commission is now looking to put these charges on the proper legal footing with the intention that the provision of these services is, as far as possible, cost neutral for the Department.

This Regulatory Impact Assessment applies to Great Britain. Equivalent services for plants and plant products are provided by Defra in England, and the devolved administrations in Scotland, Wales and Northern Ireland. Separate arrangements will be made by those departments for any assessment.

The services for which the Forestry Commission intends to re-introduce charging are the provision of phytosanitary (plant health) certificates for wood and wood products, including wood packaging material, and any inspections required before a certificate can be issued. These certificates are provided as evidence that consignments of wood and wood products meet the phytosanitary conditions set by importing countries.

2.3 Risk Assessment

There are a number of risks if the legislation is not reintroduced. The first is in connection with allocating the proper resources to this work. By achieving cost recovery, the Forestry Commission is better able to keep pace with industry demands for the services. A further risk is that not charging could be considered by the European Commission as subsidising industry and therefore contrary to EU law on State Aids. Charges are presently levied by some European counterparts for equivalent services. Finally, if the offence provisions that relate to information supplied to obtain a certificate and to altering or reusing a certificate, are not brought into force there is an increased risk that the UK's obligations under the International Plant Protection Convention may be breached.

3. OPTIONS

3.1 Identifying the options

Two options have been identified:

Option 1 - Do nothing

Although charging was suspended in 2000, the Forestry Commission has continued to provide the services detailed above. In so doing, this has increased the running costs of its Plant Health Service and presented a conflict with the other areas for which charging has been ongoing, principally the inspection of imports of wood and wood products.

Option 2 - Reintroduce charges

Charges would be reintroduced at the same rates that were applied before suspension.

3.2 Issues of equity or fairness

Customers for the export certification services range from private individuals (infrequent) and small businesses through to major exporting companies generally consigning goods of a wide range of commodities in wooden packaging material. It is envisaged that the measures would impact equally across the industry irrespective of size.

4. BENEFITS

The benefits of doing nothing (Option 1) are that exporters would continue to gain access to the services without charge.

The benefits of reintroducing charging (Option 2) are that:

- Cost-recovery - the services will be self-funding. The costs will be borne by those who stand to make a financial gain rather than being funded by the taxpayer.
- Consistency – prior to suspension in 2000, charges were already being made for these services. The fees are therefore not anything new to exporters and form part of an existing charging scheme for other plant health services.
- Fairness – the work involved in preparing an export certificate is about the same regardless of the size of the exporter. Differences do arise in terms of the amount of technical time needed for inspections which can be accounted for by continuing to charge by the half hour, with a minimum fee.
- Legal – the risk of Commission action in relation to State Aid rules would be removed.

5. COSTS

If Option 1 is pursued, the current annual loss of income to the Forestry Commission will be in the order of £240,000. This is on the basis of providing 16,000 phytosanitary certificates for exports each year. This figure is expected to fall significantly, however, as countries currently requiring phytosanitary certificates for wood packaging material are expected to drop this requirement as they implement a new International Standard. This Standard relies on the marking of wood packaging material by the manufacturer to attest compliance, rather than certification by a National Plant Protection Organisation. There would be no additional costs to the industry.

For Option 2, the total costs to industry would currently equate to the £240,000 charged for providing the present level of service.

6. CONSULTATION WITH SMALL BUSINESS: THE SMALL FIRMS' IMPACT TEST

The Small Business Service have been consulted as part of this assessment. A number of small firms will be affected by the reintroduction of charging but the sums involved are not significant and there should be no detrimental effects.

7. COMPETITION ASSESSMENT

The Competition Filter has been applied and the conclusion is that there is no significant risk of impact on competition. A detailed assessment has therefore not been prepared.

In applying the filter, the markets identified were varied within the export industry, especially those shipping goods to China. The regulations will have no impact on market structure, and will not adversely affect new firms compared to existing ones. Neither is rapid technology change a characteristic of the markets. Finally, the introduction of this legislation has no impact on the choice of firms in respect of price, quality, range or location of their products.

8. ENFORCEMENT

The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004 applies existing offences contained in the Plant Health (Forestry) (Great Britain) Order 1993 relating to the making of false statements or the failure to disclose material information for the purpose of procuring an export certificate. These offences will be enforced by the Plant Health Service. No significant additional costs are expected to be incurred.

9. MONITORING AND REVIEW

The cost of providing these services will be reviewed from time to time and appropriate fee rates applied. Increases in rates will not exceed the level needed to recover the costs of the services concerned and industry will be given reasonable notice of any change.

10. CONSULTATION

The principle of passing the costs on to users of services is well-established and indeed industry were meeting the fees for these particular services prior to suspension of charging in 2000. With that background, the Forestry Commission has concluded that no new decisions are being taken on whether to charge and it would be misleading to consult in such circumstances.

11. SUMMARY AND RECOMMENDATION

The Forestry Commission considers that charging for these services should be reintroduced on the same basis as prior to suspension. This system has worked well over the years and received the support of customers. The Forestry Commission will therefore be proceeding with Option 2 as detailed under section 3 above.

In bringing forward this legislation, the Forestry Commission has provided those affected with notice and guidance at least 12 weeks ahead of implementation. This is in accordance with the Guidance on Implementation Periods issued by the Small Business Service. Guidance was in the form of a press release and direct mailing to known users of the services.

12. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Ministers

Ben Bradshaw Date: 9 June 2004
Parliamentary Under Secretary of State DEFRA

Allan Wilson Date: 9 June 2004
Deputy Minister for Environment and Rural Development SEERAD

Carwyn Jones Date: 22 June 2004
Minister for Environment, Planning and Countryside NAW

13. CONTACT POINT

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