

**EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (FEES) (FORESTRY) (AMENDMENT) REGULATIONS
2010**

2010 No. 2001

1. This explanatory memorandum has been prepared by the Forestry Commission and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

2.1 These regulations amend the Plant Health (Fees) (Forestry) Regulations 2006 (S.I. 2006/2697) (“the principal Regulations”) which implement Article 13d(2) of Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No. L169, 10.7.2000, p.1) (“the Plant Health Directive”).

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

3.1 The Plant Health (Fees) (Forestry) Regulations 2006 (S.I. 2006/2697) provide for fees to be charged for certain plant health examinations, namely documentary, identity and plant health checks, on certain forest trees and tree products imported from third countries. The current Regulations increase the fees to be charged relating to the documentary, identity and plant health checks of wood, wood products and isolated bark coming into Great Britain from third countries. These fees are set out in Schedules 3 and 4 to the principal Regulations, as substituted by these Regulations, and are being increased so that they reflect the current actual cost of checks.

4. **Legislative Context**

4.1 The Plant Health Directive establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Plant Health Directive (Articles 13a and 13d) requires the National Plant Protection Organisation to carry out certain checks on imported plants and plant products, including certain types of wood and wood product, and to charge fees for those inspections. In most cases, it requires inspections to be carried out on all imports of controlled material.

4.2 These obligations are implemented in Great Britain, with respect to certain wood, wood products and bark, by the Plant Health (Forestry) Order 2005 and the Plant Health (Forestry) (Fees) Regulations 2006.

4.3 The regulations are made under section 2(2) of the European Communities Act

1972.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 In January 2005 the European Community Council Directive 2002/89/EC, introduced new elements to the Plant Health Directive.

7.2 One of the changes introduced was to make it obligatory for member States to recover the costs associated with certain Plant Health inspections. The Plant Health Directive, as amended, prescribes the level of phytosanitary fee that member States may set, which may either be the 'standard' fee set out in Annex VIIIa to the Plant Health Directive or 'actual' costs incurred by the relevant Plant Health Service.

7.3 As a result of this change to the Plant Health Directive, in 2006 the Forestry Commission's Plant Health Service consulted with its stakeholders on proposals to revoke and replace the Plant Health (Fees) (Forestry (Great Britain) Regulations 1996 (as amended) with new regulations charging for plant health inspections. Having considered the responses to the consultation exercise the Forestry Commission implemented changes to its plant health charging regime via The Plant Health (Fees) (Forestry) Regulations 2006, which came into force on 6th November 2006.

7.4 In accordance with the consultation process the Forestry Commission undertook to operate a Trading Account, which would reflect the full costs of carrying out the inspections and the amount of income received, in order to assess whether the charges have been set at an appropriate level with a formal review taking place at least every 12 months.

7.5 Prior to the global recession having an effect on the timber import trade the Forestry Commission managed to achieve full cost recovery for its inspection service but due to the significant down-turn in imports of controlled bulk coniferous material in FY2008/09 and FY2009/10 it has under-recovered its costs. The Forestry Commission considers it necessary to maintain the current level of inspection service to avoid the situation of the import trade having its consignments delayed at the point of entry which may in turn result in the port authorities and shipping lines imposing demurrage charges. Having calculated the costs of providing an inspection service in FY2010/11 the Forestry Commission concluded that it had to seek to increase its plant health inspection fees, by an amendment to the fees regulations, in order to fully recover these costs, especially in view of the fact that the import trade of bulk coniferous material is unlikely to return to pre-recession volumes in the short-term.

7.6 During the fees consultation exercise in 2006, consignments of wood shavings (mainly imported for the equine bedding trade) and wood chips were included in the charging regime but they were treated as consignments of wood as per the EU Directive. As the numbers of consignments of wood shavings quickly increased post the consultation exercise the Forestry Commission considered that the application of the wood, per cubic metre volume, fees were inappropriate and it, in consultation with the importers, agreed to administratively apply the fees for loose bark material to consignments of wood shavings, wood chips and sawdust. This administrative arrangement has now been formally incorporated into the fees legislation.

8. Consultation outcome

8.1. The main stakeholders were consulted over a shortened consultation period of 6 weeks. One organisation responded on behalf of its timber import members and commented that the proposal was a large increase at the wrong time than that they would prefer to discuss the possibility of a phased increase at a less commercially sensitive time and it was felt that the present time was not the right time for Government Departments to be adding to the cost burden on business.

8.2 On considering the comments the Forestry Commission concluded that the preferred proposal of full cost recovery should be implemented as to do otherwise the British Government would have to subsidise the trade and may face EC infraction proceedings.

9. Guidance

9.1 The main stakeholders have been provided with guidance on the amendment to the legislation via the issue of an explanatory newsletter. An amendment to the more formal Plant Health Guide will be made in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is £66,299 per annum distributed across approximately and 4,175 transactions.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has been prepared and is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 A Trading Account as mentioned at para 7.4 will be prepared at the end of FY2010/11 and these accounts will be reviewed and if it is deemed necessary the fees will be subjected to a further amendment.

13. Contact

Ian Brownlee at the Forestry Commission Tel: 0131-314-6480 or email:
ian.brownlee@forestry.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Forestry Commission	Title: Impact Assessment of Proposals to amend the Plant Health (Fees) (Forestry) Regulations 2006	
Stage: Consultation	Version:	Date: 1 May 2010
Related Publications:		

Available to view or download at:

<http://www.forestry.gov.uk>

Contact for enquiries: Ian Brownlee

Telephone: 0131-314-6480

What is the problem under consideration? Why is government intervention necessary?

To comply with EU legislation (Council Directive 2000/29/EC) and HM Treasury rules the Forestry Commission's Plant Health Service must fully recover its costs but due to a reduction in the import trade of controlled wood, wood products and bark resulting from the global recession the department is failing to recover its costs and must increase its fees through an amendment to the existing legislation.

What are the policy objectives and the intended effects?

The policy objectives are to amend the inspection fees set out in the Plant Health (Fees) (Forestry) Regulations 2006 with the intended effect of ensuring that Forestry Commission's Plant Health Service fully recover its costs.

What policy options have been considered? Please justify any preferred option.

- A. No change to current fees
- B. Reduce the fixed cost of the FC's Plant Health Service to avoid increases to inspection fees
- C. Preferred option: adjust the current fees to achieve full cost recovery at the earliest opportunity.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

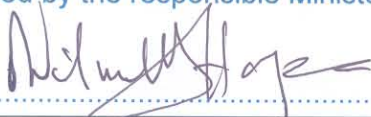
FY2011/12

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Secretary to the Commissioners,



Date: 15 June 10

Summary: Analysis & Evidence

Policy Option:	Description:
-----------------------	---------------------

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£			
	Average Annual Cost (excluding one-off)			
	£		Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£			
	Average Annual Benefit (excluding one-off)			
	£		Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?					
On what date will the policy be implemented?					
Which organisation(s) will enforce the policy?					
What is the total annual cost of enforcement for these organisations?	£				
Does enforcement comply with Hampton principles?	Yes/No				
Will implementation go beyond minimum EU requirements?	Yes/No				
What is the value of the proposed offsetting measure per year?	£				
What is the value of changes in greenhouse gas emissions?	£				
Will the proposal have a significant impact on competition?	Yes/No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Yes/No</td> <td style="width: 25%; text-align: center;">Yes/No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	Yes/No	Yes/No	N/A	N/A
Yes/No	Yes/No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase	£	Decrease	£	Net
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Option A – No change to current fees

This option cannot be proposed for two important reasons –

1. In accordance with article 13 d(1) of the EU Plant Health Directive (Council Directive 2000/29/EC) all member states must cover the costs of the plant health inspection function through the application of inspection fees. Article 13d(4) prohibits the making of direct or indirect refunds of fees, which would include deliberate under recovery. Failure to comply with the EU legislation could result in infraction proceedings and a fine against the UK government.
2. HM Treasury rules (Managing Public Money – Fees, Charges and Levies) require that statutory services, such as inspection service costs, are fully recovered via the application of fees.

BENEFITS

The main benefit of this option would be that there would be no increase to the costs of the timber importing business sector during the latter point of a recession where the economy is showing signs of recovery.

COSTS

No change to the current fees would result in the tax-payer having to fund the timber import business sector because of the Plant Health Services under-recovery situation. This option would go against the principle that the 'risk owners pay for risk mitigation'.

Option B - Reduced the fixed cost of the FC's Plant Health Service to avoid increases to inspection fees

We have continually kept our staffing levels under review and in 2004 we took the opportunity to reduce the number of Regional Plant Health Managers from three to the current level of two following an age retirement. In the Edinburgh office there is one Operations Manager, one Enquiry Officer and in 2005 we also reduced the number of administrative support officers from two to one following an age retirement. We do not believe there are any opportunities for further reduction without seriously compromising our ability to provide full cover, particularly during periods of absence of any member of staff, for whatever reason. Our local inspectors are self employed contractors and are engaged after the completion of competitive tender exercises. They are only paid for the work that they perform which ensures that our customers receive value for money through the service that we provide.

BENEFITS

The main benefit of this option would be that there would be no increase to the costs of the timber importing business sector during the latter point of a recession where the economy is showing signs of recovery.

COSTS

There would be a reduction in the service provided by the Plant Health Service which could result in importers consignments being delayed at the point of entry and this in turn may result in the port authority or shipping line imposing demurrage charges on the importer.

Option C - Preferred option: adjust the current fees to achieve full cost recovery at the earliest opportunity.

BENEFITS

This option would enable the Plant Health Service to recover its costs at the earliest opportunity, and ensure that infraction proceedings and a fine from the EC are avoided. By implementing this option the Plant Health Service will maintain its current level of service, in particular to carry out import inspections on the working day of notification, or the next again working day thus minimising the risk of demurrage costs for importers, or late release of consignments. We have consistently achieved this on an annual basis in over 99% of imported consignments.

COSTS

The full additional cost of this proposal to the timber import sector amounts to £66,299 as detailed in the analysis below –

Proposed increase in Fees to achieve Full Cost Recovery in FY2010/11

Bulk Shipment Volumes

	Proposed Fees Income	Current Fees Income and Difference (+/-£)
175 inspections of 306,441m ³		
306,441		
<u>17,500</u> (less 175 x first 100m ³) Plant health check x £26.00 = £ 4,550		£2,144 (+£2406)
288,941(each m3 > 100m ³) plant health check x £ 0.20 = £57,788		£57,788 (£0)
175 ID checks x £12.00 = £ 2,100		£1,851 (+£249)
175 Documentary checks x £ 6.00 = <u>£ 1,050</u>		<u>£ 926</u> <u>(+£124)</u>
Sub Total	= £65,488	£62,709 (+£2,779)
<u>Container Volumes</u>		
4000 x £26.00 Plant Health check	= £104,000	£49,000 (+£55,000)
4000 x £ 6.00 Documentary check	= £ 24,000	£21,160 (+£2,840)
8000 x £6.00 ID checks (based on 2 checks/ave consignment of 48m3)	= <u>£48,000</u>	<u>£42,320</u> <u>(+£5,680)</u>
sub total	= £ 176,000	£112,480 (+£63,520)
Total	= <u>£241,488</u>	<u>£175,189</u> <u>(+£66,299)</u>

Forecast Income required FY2010/11	- £240,000
Forecast Income based on proposed Fees	- <u>£241,488</u>
Over-recovery	- <u>£ 1,488</u>

SUMMARY AND RECOMMENDATION

To recover the cost of the Plant Health inspections the Forestry Commission needs to increase the fees for the documentary, identity rate and the rate of plant health checks for consignments up to over 100m³ ie the most significant increase.

By implementing all of the preferred proposal we will ensure that the trade continues to meet the cost of providing a Plant Health Service for wood and wood products.

Implementation will mean a significant increase in the fees currently paid by importers for controlled wood and wood products coming from third countries.

If we do not implement the proposals the British Government would have to subsidise the trade, and may face infraction proceedings.

It is suggested that the benefits are greater than the costs and as such we recommend that the proposals be adopted.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No