

**EXPLANATORY MEMORANDUM TO  
THE FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE  
(AMENDMENT) (FEES) REGULATIONS 2014**

**2014 No. 2339**

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 The instrument amends the Forest Law Enforcement, Governance and Trade Regulations 2012 (“the UK FLEGT Regulations”), which enforce Council Regulation (EC) No 2173/2005 (“the EU FLEGT Regulation”) and Commission Regulation (EC) No 1024/2008. The two EC Regulations set out a licensing scheme for imports of timber originating from countries with which the EU has signed a Voluntary Partnership Agreement (“VPA”). This instrument sets out details for a cost recovery licence fee, to be paid when FLEGT licences are submitted in the UK.

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

3.1 None.

**4. Legislative Context**

4.1 This instrument amends the Forest Law Enforcement, Governance and Trade Regulations 2012 (S.I. 2012/178), which enforces the EU FLEGT Regulation and the associated Commission Regulation. The EU FLEGT Regulation makes it illegal to import timber and timber products from partner countries, with which the EU has signed a VPA, without a valid FLEGT licence. This is to avoid illegally harvested timber and timber products entering the EU from these countries.

4.2 A further piece of EU legislation, Council Regulation (EU) No 995/2010, lays down the obligations of operators who place timber and timber products on the market (“the EU Timber Regulation”) requiring operators placing timber and timber products on the EU market for the first time to exercise due diligence of their supply using a risk-based approach, to avoid placing illegal timber or timber products on the EU market. This is supported by a prohibition on the placing of illegal timber on the market. This complementary Regulation became applicable across the EU on 3 March 2013, and is enforced in the UK by the Timber and Timber Products (Placing on the Market) Regulations 2013.

4.3 The purpose of this amendment is to set out the details of a cost recovery fee, payable when licences are submitted to the Government. This fee is allowed for by the EU FLEGT Regulation.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom

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

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

## **7. Policy background**

7.1 The Forest Law Enforcement Governance and Trade (FLEGT) Action Plan is an EU-led initiative which aims to tackle illegal logging by ensuring that imports of timber entering the EU come from legal sources. It is the foundation of the EU's efforts to support improvements to forest governance around the world, in particular in developing nations. The adoption of the FLEGT Action Plan has resulted in three new EU Regulations: the FLEGT Regulation, the associated Commission Regulation, and the EU Timber Regulation.

7.2 Illegal logging is a major driver of global tropical deforestation. Global deforestation, which constitutes annual losses of forest areas the size of England, has significant negative impacts. A study by The Economics of Ecosystems and Biodiversity (TEEB) estimated the value of the ecosystem services lost as a result of deforestation at \$2tr-\$4.5tr each year. These losses are felt both locally by the rural poor in developing countries and globally through the link to climate change and biodiversity loss. Furthermore, illegal logging results in revenue losses to governments and legitimate businesses.

7.3 The EU FLEGT Regulation aims to change the behaviour of European timber and timber product importers by requiring them to alter their mechanisms for sourcing timber products from international suppliers, creating demand for legally verified (FLEGT) timber, and thereby also providing assurance to VPA countries that their efforts in implementing the licensing system will not place them at a competitive disadvantage compared to non-VPA countries. This will have broader benefits in terms of tackling illegal logging and avoiding the serious economic, environmental and social problems of deforestation on a global scale.

7.4 The National Measurement Office (NMO), an executive agency of the Department for Business Innovation and Skills, is responsible for enforcing the FLEGT Regulations in the UK. NMO was chosen because it is the Competent Authority for the EU Timber Regulation, and therefore has timber-specific expertise whilst also being able to make efficiency savings through synergies between the two Regulations. Away from the border, NMO Wildlife Inspectors will provide intelligence-based inspections where contravention of the EU FLEGT Regulation is suspected. These inspections will be carried out with NMO's work enforcing the EU Timber Regulation, as breaches of the EU FLEGT Regulation will also constitute breaches of the EU Timber Regulation.

7.5 Her Majesty's Revenue and Customs (HMRC) is responsible for the customs clearance of goods falling under the EU FLEGT Regulation, and for conducting documentary checks to ensure that a valid licence is presented which matches the relevant customs declaration prior to release to free circulation. Border Force is responsible for carrying out any checks on an intelligence led basis required to ensure that the contents of FLEGT shipments correspond to the details of the licence. The National Wildlife Crime Unit (NWCU) is the liaison point for any Police activity relation to FLEGT. They will be liaising with other Police units in order to support investigations by other enforcements partners into breaches of the EU FLEGT Regulation away from the border.

7.6 The administrative cost to Government of carrying out the processes listed above will be recovered by a fee of £31 per licence, payable to the NMO when FLEGT licences are submitted. Licences and payments should be submitted via the NMO's website, [www.bis.gov.uk/nmo/enforcement](http://www.bis.gov.uk/nmo/enforcement).

Licences will be processed only once full payment is received.

7.7 Importers will be liable for expenses related to the holding and disposal of imports which are illegal under the UK FLEGT Regulations.

7.8 Offences relating to the prohibition on importing without a valid FLEGT licence in Article 4(1) of the EU FLEGT Regulation are contained in the Customs and Excise Management Act 1979. The UK FLEGT Regulations modify the penalties in that Act such that the maximum period of imprisonment for an offence is three years. The goods concerned are also liable to be forfeited under the 1979 Act.

## **8. Outcome of consultation on the UK FLEGT Regulations**

8.1 The consultation on the UK FLEGT Regulations, which closed at the end of 2009, sought stakeholder views on four main elements regarding implementation of the FLEGT scheme: establishment of a delayed full cost recovery approach to licences; enforcement and penalties; the inspections and verifications regime; and dealing with seized timber.

8.2 The Department for Environment, Food and Rural Affairs received seven responses (three NGOs, one Trade Federation, two UK government bodies and one consultant). Responses broadly supported our approach with regard to penalties and charging, including agreement to the proposed approach to delayed full cost recovery. As such, a further consultation has not been carried out for this amendment.

## **9. Guidance**

The Central Point of Expertise for Timber Procurement (CPET) <http://www.cpet.org.uk/flegt-regulation> and NMO <http://www.bis.gov.uk/nmo/enforcement> are sources of information and guidance for those affected by the EU FLEGT Regulation.

## **10. Impact**

10.1 The cost recovery fee has been calculated to cover the full cost to NMO, BF, and HMRC of the FLEGT implementation regime. The fee represents approximately 0.1% of the average shipment value.

10.2 Further costs may include prosecutions associated with failure to present a valid FLEGT licence.

## **11. Regulating small business**

11.1 The legislation applies to small businesses.

11.2 There are no exemptions for small firms from implementing the EU FLEGT Regulation. It would not be possible to introduce an exemption, as the EU legislation does not allow it.

## **12. Monitoring & review**

12.1 The UK FLEGT Regulations must be reviewed by the Department for Environment, Food and Rural Affairs within a period of five years beginning with 20<sup>th</sup> February 2012.

12.2 Evaluation and monitoring of the FLEGT Action Plan will also be undertaken by the European Commission in 2015.

## **13. Contact**

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