

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH (FEES) (ENGLAND) (AMENDMENT) REGULATIONS 2017**  
**2017 No. 125**

**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 These Regulations amend the Plant Health (Fees) (England) Regulations 2014 (S.I. 2014/601) (“the principal Regulations”) which provide for fees to be charged for certain plant health examinations, namely documentary checks, identity checks and plant health checks (physical inspections), on certain plants and plant products imported from third countries. They correct an error in the Plant Health (Fees) (England) (Amendment) Regulations 2016 (S.I. 2016/1255).

**3. Matters of special interest to Parliament**

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

- 3.1 As this instrument is being made to correct an error in S.I. 2016/1255, it will be issued free of charge to all known recipients of S.I. 2016/1255.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU<sup>1</sup> (OJ No. 169, 10.7.2000, p. 1) (“the Plant Health Directive”) establishes the EU plant health regime. The Plant Health Directive is implemented in England, for non-forestry matters, by the Plant Health (England) Order 2015 (S.I. 2015/610). Similar but separate legislation operates in Scotland, Wales and Northern Ireland. For forestry matters, the Plant Health Directive has been implemented by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517), which apply throughout Great Britain.
- 4.2 The Plant Health Directive has been amended, among other amendments, by Council Directive 2002/89/EC (OJ No. L 355, 30.12.2002, p. 45).<sup>2</sup> Among the changes introduced by this Directive was clarification of the existing requirement for mandatory examinations (documentary checks, identity checks and physical

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<sup>1</sup> This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

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inspection) on certain plants and plant produce and obligations to charge fees for these inspections. The Plant Health Directive, as amended, (Article 13a(2)), also contains a procedure for reducing the rate of inspections of certain plant imports and for charging a correspondingly reduced fee for inspections (Article 13d(2)).

- 4.3 The powers of APHA inspectors to carry out these examinations are provided in the Plant Health (England) Order 2015 and the authority to charge fees for these inspections is contained in the principal Regulations. The purpose of these Regulations is to reflect changes in certain charges.
- 4.4 These Regulations are made in exercise of powers conferred by section 56(1) of the Finance Act 1973 (c. 51) which permits a Government department to require the payment of fees or other charges for the provision of any services or facilities or the issue of any authorisation, certificate or other document, in pursuance of any EU obligation. As such, the Regulations require Treasury consent.

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

- 5.1 The extent of this instrument is to England and Wales.
- 5.2 The territorial application of this instrument is England.

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

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

## **7. Policy background**

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

- 7.1 Each year, England imports from non-EU countries about 90,000 consignments of plants and plant produce which pose a risk of introducing new plant pests and diseases to European crops and ecosystems. The Plant Health Directive requires mandatory examinations (documentary checks, identity checks and physical inspection) of plants for planting, potatoes, major fruits other than bananas and grapes, cut flowers and some leafy vegetables imported from countries outside the EU.
- 7.2 Under the Plant Health Directive, the required level for inspections is specified at 100%. However, there is provision for the level of physical inspection to be reduced for consignments of plant produce (e.g. cut flowers, fruit and vegetables) from specific countries if there is evidence that material from that source has been found to be free from pests and diseases during trade over a three year period. In plant health terms, plant produce poses a significantly lower risk than planting/propagating material as it is not planted or propagated and is generally either consumed or disposed of away from agricultural and horticultural production sites. Planting material and potatoes are excluded from risk-targeted checks arrangements and are subject to the mandatory 100% inspection level.
- 7.3 A European Commission working group meets annually to consider applications from member States for reductions in inspection levels and reviews agreed levels using trade and interception data from member States over the previous year. The working group makes recommendations for future inspection levels for consideration by the Plant Health Standing Committee. Levels of inspection can be increased or eligibility for any reduction withdrawn altogether if member States report any pest or disease

problems identified with a trade approved for reduced checks. If more than 1% of consignments imported into the EU have been found to contain pests or diseases in any year then that trade is not eligible for reduced inspection levels. Since the risk-targeted checks regime was introduced in 2006, several trades which had been approved for reduced inspections have had that approval removed in response to interceptions of pests or diseases by member States. None of those cases resulted in a pest or disease outbreak within the EU.

- 7.4 Implementation of the risk-targeted check provisions is discretionary. Member States can choose not to apply reduced inspection levels and continue to inspect all imported plants and plant produce. However, the reduced checks system reflects the principle of risk-targeting which Ministers have agreed should be a key objective to pursue in the context of the review of the EU plant health regime. Adopting these provisions saves around 30,000 inspections on low risk produce in England per year and allows resources to be focussed instead on targeting trade in planting/propagating material which represents the highest risks. It also means that inspections of material which is currently unregulated under the Plant Health Directive can be carried out, looking for evidence of emerging threats which can then be considered for incorporating in the EU plant health regime. In the past 12 months 2,800 consignments of unregulated material were inspected on arrival in England, with 400 serious pests or diseases found. This evidence feeds into an EU process to consider actions in response to persistent interceptions, which may include Food and Veterinary Office audits to the exporting country concerned, or new import requirements (for instance, fresh peppers, which were previously unregulated under the EU plant health regime, now require a phytosanitary certificate to be imported, in response to pest findings). An EU working group has been established to monitor interception levels and make recommendations. The reduced frequency of import checks arrangements therefore allow us to target resources away from products which represent a very low risk, to those which represent a higher threat or where the plant health status is unknown.
- 7.5 The Plant Health Directive requires charges to be raised to cover the costs of those examinations, either through the adoption of a scale of minimum charges set out in an Annex, or through a national system based on the calculation of specified costs. Where risk-targeted checks apply, the Plant Health Directive states that a proportionally reduced fee should be collected for every imported consignment.
- 7.6 The Plant Health (England) (Fees) (Amendment) Regulations 2016, which came into force on 16 January 2017, implemented the latest changes recommended by the European Commission's Reduced Checks Working Group held in September 2016, which were agreed by the Plant Health Standing Committee in November 2016. The outcome of that meeting saw increases in levels of inspection on 8 trades, including to 100% in the case of citrus fruit from Mexico because of repeated disease findings. However, the Plant Health (Fees) (England) (Amendment) Regulations 2016 failed to implement this increase and applied the change to citrus fruit from Morocco instead. This amendment corrects that error.
- 7.7 This principal Regulations (as amended by these Regulations) will be updated and consolidated in 2017.

### ***Consolidation***

- 7.8 This is not a consolidation as this is only the third instrument to amend the principal Regulations.

## **8. Consultation outcome**

- 8.1 The original consultation in 2004, held prior to plant health inspection charges being introduced in earlier legislation (the Plant Health (Import Inspection Fees) (England) Regulations 2005 (S.I. 2005/906)) outlined the possibility of changes and new trades being added to the reduced rate regime in the future. No further consultation has been carried out on these Regulations as they implement annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

## **9. Guidance**

- 9.1 The main stakeholders have been informed and a summary of the changes will be placed on the APHA website. Details of all the trades subject to reduced levels of physical inspection and the relevant fees are in Schedule 2 to the principal Regulations, as substituted with a revised Schedule 2 by these Regulations.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is minimal.
- 10.2 There is no impact on the public sector.
- 10.3 An impact assessment has not been prepared for this instrument as they implement annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

## **11. Regulating small business**

- 11.1 The legislation applies to all businesses importing controlled plant health material, including small businesses. The changes introduced through these Regulations give effect to the latest agreed rates for inspection of certain material.

## **12. Monitoring and review**

- 12.1 The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission.

## **13. Contact**

- 13.1 Iain Johnstone, Defra, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel: 02080 265265; e-mail: iain.johnstone@fera.gsi.gov.uk can answer any queries regarding these Regulations.