

EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (FEES) (ENGLAND) (AMENDMENT) REGULATIONS 2019

2019 No. 180

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.

2. Purpose of the instrument

- 2.1 These Regulations amend the Plant Health (Fees) (England) Regulations 2018 (S.I. 2018/289) (“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. This is a minor annual adjustment to reflect changes in inspection levels according to risk.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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

6. Legislative Context

- 6.1 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 (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).

- 6.2 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). Among the changes introduced by this Directive was clarification of the existing requirement for mandatory examinations (documentary checks, identity checks and physical 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)), which applies throughout Great Britain.
- 6.3 The powers of Animal and Plant Health Agency (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.
- 6.4 These Regulations are made in exercise of powers conferred by section 56(1) and (2) 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.

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 (SCOPAFF). 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. This evidence feeds into an EU process to consider actions in response to persistent interceptions, which may include audits by the Commission's Sante F unit to the exporting country concerned, or new import requirements (for instance, fresh peppers and tomatoes, which were previously unregulated under the EU plant health regime, now require a phytosanitary certificate to be imported, in response to pest findings). SCOPAFF monitors interception levels on a monthly basis and agrees actions in response to problematic trades. 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 Under the principal Regulations, reduced checks apply to 46 trades. These regulations implement the latest changes recommended by the European Commission's Reduced Checks Working Group held in June 2018, which were agreed by the Plant Health Standing Committee in December 2018. The outcome of this year's meeting saw increases in levels of inspection on 9 trades, including to 100% in the case of peppers from Morocco, bitter melon from Surinam and aubergines from Kenya because of the risk from fall armyworm, with matching increases in fees, as follows:
- Phoenix from Costa Rica (from 35% to 50%);
 - Cut roses from Kenya (from 5% to 10%);
 - Cut roses from Tanzania (from 15% to 50%);
 - Citrus fruit from USA (from 15% to 25%);
 - Stone fruit from Morocco (from 25% to 50%);
 - Stone fruit from USA (from 25% to 50%);
 - Peppers from Morocco (from 5% to 100%);
 - Bitter melon from Surinam (from 35% to 100%);
 - Aubergines from Kenya (from 25% to 100%).

Further evidence of compliance was available for 4 trades resulting in levels of inspection decreasing, with matching decreases in fees, as follows:

- Cut roses from Ecuador (from 3% to 1%);
- Citrus fruit from Morocco (from 5% to 3%);
- Apples from Brazil (from 75% to 50%)
- Passion fruit from Vietnam (35% to 25%)

Three additional trades were shown to pose minimal plant health risks and were accepted for reduced inspection levels. The inspection rate for consignments of the following has therefore decreased, with a matching decrease in fees:

- Citrus fruit from the Egypt (from 100% to 75%);
- Citrus fruit from Tunisia (from 100% to 75%)
- Mangoes from Brazil (100% to 50%).

7.7 The Plant Health Standing Committee agreed further changes to the list of trades eligible for reduced levels of import inspection which will become applicable at a yet to be determined date during 2019. Those additional changes are not relevant in terms of these regulations.

7.8 The overall levels of import inspection fees are unchanged by these Regulations, which simply amend the trades subject to risk-targeted checks or change the level of reduction for certain trades. Details of all the trades subject to reduced levels of physical inspection and the relevant fees are included within the revised Schedule 2 inserted by regulation 2 of these regulations.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This is the first amendment of the principal regulations.

10. Consultation outcome

10.1 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.

11. Guidance

11.1 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.

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal.

12.2 There is no, or no significant, impact on the public sector.

- 12.3 An Impact Assessment has not been prepared for this instrument as it implements annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.
- 13. Regulating small business**
- 13.1 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.
- 14. Monitoring & review**
- 14.1 The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission.
- 15. Contact**
- 15.1 Iain Johnstone, Defra, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel: 02080 265265; e-mail: iain.johnstone@defra.gov.uk can answer any queries regarding these regulations.
- 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 Gardiner of Kimble at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.