

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH (FEES) (FORESTRY) (ENGLAND) (AMENDMENT)**  
**REGULATIONS 2021**

**2021 No. 660**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food, and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument makes amendments to the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 (S.I. 2015/350) (“the 2015 Regulations”) to provide for inflationary increases in the fees for services in relation to plant passport authorities and applications for phytosanitary certificates (including phytosanitary certificates for re-export).

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The 2015 Regulations set fees for delivery of plant health (forestry) services in England and Scotland. Fees included in the 2015 Regulations apply to export certification services which are required to comply with third country entry requirements relating to plant health-controlled material. Also included are fees for inspections in connection with a plant passport authority. All businesses that use these services are charged a fee.

Why is it being changed?

- 2.3 Amendments are being made to provide for increases in the fees for services, in relation to England, to reflect an inflationary rise in the cost of providing those services since the introduction of those fees. The fees for export certification services were introduced in 2004 and the fees for inspections in connection with a plant passport authority were introduced in 2006. There have been no changes to these fees since they were introduced.

What will it now do?

- 2.4 The instrument will allow the Forestry Commission to recover more of its plant health costs through fees for services.

**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 Regulation (EU) 2016/2031 (on protective measures against pests of plants) and Regulation (EU) 2017/625 (on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products) (“the EU Regulations”) establish rules and controls which apply to the import, export and internal movement of certain plants, plant products and other objects. The purpose of the EU Regulations is to help reduce biosecurity risk and protect the environment from the spread of harmful pests. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 give effect to the EU Regulations.

- 6.2 Article 80 of Regulation (EU) 2017/625 makes provision for competent authorities to be able to charge fees or charges to cover the costs of official controls and other official activities, including export certification. The 2015 Regulations specify fees payable to the Forestry Commissioners in relation to plant health (forestry) services, including export certification and inspections in connection with a plant passport authority, provided in England and Scotland.

**7. Policy background**

*What is being done and why?*

- 7.1 The amendments introduced by this instrument do not include any policy changes. The instrument provides for further cost recovery towards services for export certification to third countries and for inspections in connection with a plant passport authority, provided in England.

- 7.2 The purpose of this instrument is to apply inflationary increases to (forestry) fees for export certification and for inspections in connection with a plant passport authority. The existing fees have not been increased since they were introduced in 2004 and 2006, respectively. The improvement in recovery of costs will apply to the application, examination, production and amendment of phytosanitary certificates to meet third country entry requirements as well as to the inspections in connection with a plant passport authority, provided in England. Wales is making parallel legislation and Scotland is considering making similar changes to have effect on their fees.

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

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under powers conferred by section 14(1) of, and paragraph 7 of Schedule 4 to, the European Union (Withdrawal) Act 2018. The Minister has made the relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

9.1 This is not a consolidation and is the twelfth amendment of the Regulations.

## **10. Consultation outcome**

10.1 Stakeholders have not been consulted as all the amendments introduced by this instrument are inflationary increases and not policy changes.

10.2 The Welsh and Scottish Devolved Administrations have been consulted about the proposed amendments and they will either make parallel legislation or review their devolved fees legislation, respectively, to have effect on their fees.

## **11. Guidance**

11.1 The Forestry Commission is the relevant delivery body and is developing an implementation plan and associated guidance for publication on GOV.UK in advance of the laying date of 8 June 2021. Information on the new fees will be placed on the [Plant Health \(forestry\) news](#) section of Gov.uk prior to implementation.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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 because there are no significant impacts and there are no policy changes being introduced under this instrument. The inflationary increases to fees fall well below any threshold to carry out an Impact Assessment or a Small and Micro Business Assessment (SaMBA).

## **13. Regulating small business**

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 This instrument applies equally to all businesses trading in controlled plant health material in England, including small businesses, the costs associated with this trade are not mitigated by the size of the business.

## **14. Monitoring & review**

14.1 The Forestry Commission is planning a full review of fees later in 2021 and will continue to monitor on an annual basis.

14.2 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

## **15. Contact**

- 15.1 Anna Brown at the Forestry Commission can be contacted with any queries regarding this instrument, email: [anna.brown@forestrycommission.gov.uk](mailto:anna.brown@forestrycommission.gov.uk)
- 15.2 Richard Greenhous at the Forestry Commission can confirm that this Explanatory Memorandum meets the required standard, email: [richard.greenhous@forestrycommission.gov.uk](mailto:richard.greenhous@forestrycommission.gov.uk).
- 15.3 Lord Benyon, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## **Part 2**

### **Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act**

#### **1. Appropriateness statement**

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Plant Health (Fees) (Forestry) (England) (Amendment) Regulations 2021 do no more than is appropriate”.

- 1.2 This is the case because the instrument ensures the current policy services for export certification to third countries and for plant health services within England is maintained.

#### **2. Good reasons**

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 It is Government policy to recover the cost of plant health services through fees and to make inflationary increases to fees as appropriate to achieve cost-recovery.

#### **3. Equalities**

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement(s):

This instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lord Benyon have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

#### **4. Explanations**

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.