

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (FEES) (ENGLAND) AND OFFICIAL CONTROLS
(FREQUENCY OF CHECKS) (AMENDMENT) REGULATIONS 2024

2024 No. 557

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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to implement the second milestone of the Border Target Operating Model, that comes into effect on 30 April 2024, to protect biosecurity and support trade between Great Britain (“GB”) and third countries. The Border Target Operating Model proposes a new approach to sanitary and phytosanitary (“SPS”) controls applying to imports of live animals, animal products, high risk food and feed of non-animal origin, plants and plants products at the border.
- 2.2 This instrument makes amendments to 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 Official Controls Regulation”) and the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739) (“the 2022 Regulations”) to apply a requirement for risk-based import checks (documentary, identity and physical) on certain goods imported from certain countries including EU member states, Liechtenstein and Switzerland from 30 April 2024.
- 2.3 Changes are then made to the Plant Health etc. (Fees) (England) Regulations 2018 (S.I. 2018/289) (“the 2018 Regulations”) to ensure that the fees charged for checks on goods imported into England reflect the established frequencies of checks.
- 2.4 Finally, errors in the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 (S.I. 2015/350) (“the 2015 Regulations”) and the 2018 Regulations are corrected.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The increase in certain fees charged for checks on goods imported into England is above inflation and is set at the level required to maintain cost recovery.
- 3.2 The department confirms that it has complied with the requirement in paragraph 4.7.6 of Statutory Instrument Practice and has consulted the Statutory Instrument Registrar on the use of the free issue procedure in relation to this instrument.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland, except for regulations 2 and 3, which extend to England and Wales only.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland, except for regulations 2 and 3, which apply to England only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under-Secretary of State (Minister for Biosecurity, Animal Health and Welfare), Lord Douglas-Miller, has made the following statement regarding Human Rights:

“In my view the provisions of The Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The amendments introduced by this instrument are to implement the Border Target Operating Model.
- 6.2 The principal legislation governing the controls required on introduction into GB of plants, plant products and other objects is set out in retained EU legislation, namely Regulation (EU) 2016/2031 (“the Plant Health Regulation”) and the Official Controls Regulation and the secondary legislation made under these Regulations. This instrument applies a requirement in the Official Controls Regulations for checks on medium-risk plants, plant products and other objects (as can be found listed on gov.uk¹) that originate from certain countries, including EU member states, Liechtenstein, and Switzerland in accordance with the 2022 Regulations.
- 6.3 The 2022 Regulations implemented the current risk-targeted checks regime and set out the information that must be taken account of to determine the frequency rates of identity and physical checks. Amendments are also made to the 2022 Regulations to expand their scope to include the aforementioned medium-risk goods, with specific carve-outs (see section 7.1), as businesses importing goods from the EU and certain other countries will now need to comply with certain import requirements applied to all other third countries.
- 6.4 This instrument also makes an amendment to the Official Controls Regulation to ensure that where a physical and identity check is carried out on medium-risk goods, a documentary check is required.
- 6.5 The 2015 Regulations and the 2018 Regulations set fees for the delivery of plant health services in England by the Forestry Commission and Defra respectively. This includes import checks, pre-export, and export certification services to comply with third country entry requirements relating to plant health for controlled consignments. The fees for import checks prescribed in the 2018 Regulations are being amended in this instrument to reflect the frequencies of import checks on medium-risk goods.

¹ [TOM risk categorisations - UK Plant Health Information Portal \(defra.gov.uk\)](https://www.defra.gov.uk/plant-health/tom-risk-categorisations)

Errors in the 2015 Regulations and the 2018 Regulations are also being corrected in this instrument.

7. Policy background

What is being done and why?

- 7.1 This instrument applies a requirement for risk-based import checks on medium-risk goods from certain countries, including EU member states, Liechtenstein, and Switzerland, from 30 April 2024, as published in the Border Target Operating Model. This instrument ensures that certain goods are not within scope of this change, including fruit and vegetables from EU member states, Liechtenstein, and Switzerland which are currently being treated as low-risk goods while risk assessments are being conducted, and any goods from EU member states, Liechtenstein, and Switzerland entering GB via a listed West Coast port.
- 7.2 Changes are being made to the fees legislation to reflect the level of identity and physical checks determined in accordance with the 2022 Regulations, and risk-based documentary checks, on medium-risk goods, ensuring the full cost of services to conduct import checks are recovered from businesses using these services. Fees are also updated in the 2018 Regulations for certain goods from non-EU countries to account for changes in the frequency of checks.
- 7.3 Finally, an error is being corrected in the 2015 Regulations to remove a word incorrectly included in relation to certain checks. An error concerning import check fees is also corrected in the 2018 Regulations.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 Under existing legislation, import checks are carried out on high-priority (also known as high risk) consignments of imported plants, plant products and other objects imported into GB from certain countries, including EU member States, Liechtenstein, and Switzerland, and on regulated goods imported from all other third countries, on a risk-basis. GB Plant Health Services carry out these checks, and charge for these plant health services accordingly, to prevent the introduction and spread of organisms harmful to plants or plant products. The existing fees legislation ensures that the cost of plant health services, including import inspections, is recovered via fees.

Why is it being changed?

- 7.5 The legislation is being amended to ensure that goods which pose a medium risk to GB biosecurity are subject to proportionate import controls, and the equivalent fees, in line with the Border Target Operating Model.
- 7.6 This instrument also makes amendments to the 2018 Regulations and the 2015 Regulations to correct a specific fee, and the type of check for which a fee is chargeable, under those Regulations.

What will it now do?

- 7.7 A requirement for risk-based import checks and the equivalent fees, will be applied on medium-risk goods from certain countries, including EU member states, Liechtenstein, and Switzerland, from 30 April 2024. This phased approach introduces

biosecurity controls in line with the Border Target Operating Model, while allowing businesses the time needed to prepare.

8. European Union Withdrawal and Future Relationship

- 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 sections 14(1) and 22 of, and paragraph 7 of Schedule 4 and paragraphs 21 and 38 of Schedule 7 to the European Union (Withdrawal Act) 2018. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.
- 8.2 Alongside the EU (Withdrawal) Act 2018 powers, the instrument is also being made under Article 54(3) and 144(6) of, and paragraph 3(2) of Annex 6 to, of the Official Controls Regulation.

9. Consolidation

- 9.1 This is not a consolidation instrument.

10. Consultation outcome

- 10.1 A consultation was carried out, via targeted stakeholder engagement, on the proposal to apply import checks and fees on medium risk goods from the EU, Liechtenstein, and Switzerland. Engagement was aimed at plant health stakeholders, including trade associations and their members, primarily affected by this instrument as they represent businesses which import the majority of goods which require import checks. The comment period was open for 10 weeks.
- 10.2 The respondents were generally supportive of the proposal. The summary of the responses and the Government's response to these was published on gov.uk².
- 10.3 The Scottish and Welsh Devolved Administrations have been consulted and have provided appropriate consent to lay this instrument which extends to England and Wales, and Scotland.

11. Guidance

- 11.1 The main stakeholders affected have been informed of the changes. Information on the frequencies of consignment checks has been placed on the UK Plant Health Portal³.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies. Businesses importing goods from the EU and certain other countries will now need to comply with certain import requirements, such as checks and associated fees, applied to all other third countries.
- 12.2 There is no significant impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument as these changes are amendments that reflect the impact of EU Exit and the operation of the

² [Response to Stakeholder Engagement: Introducing import checks and fees - UK Plant Health Information Portal \(defra.gov.uk\)](#)

³ [Frequency of plant health import inspections across GB - UK Plant Health Information Portal \(defra.gov.uk\)](#)

Transitional Staging Period (“the TSP”), a period during which the requirements for certain official documents, and for the performance of official controls in relation to some categories of animals, plants and other goods imported into GB from certain countries, including EU member states, Liechtenstein and Switzerland, have been temporarily eased.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. This instrument applies equally to all businesses importing regulated plant goods, given the importance of protecting plant biosecurity through the actions of all businesses, regardless of their size. The risk of introducing harmful organisms is not mitigated by the size of the business.

14. Monitoring & review

- 14.1 Plant health fees and the level of checks on goods are subject to an annual review.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Suzannah Pearce at the Department for Environment, Food and Rural Affairs. Telephone: 07557 486012 or email: Suzannah.pearce@defra.gov.uk can be contacted with any queries regarding the instrument.
- 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 The Parliamentary Under-Secretary of State (Minister for Biosecurity, Animal Health and Welfare), Lord Douglas-Miller, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 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) or 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) or 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) or 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 IP completion 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) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Explanations

- 1.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.