

EXPLANATORY MEMORANDUM TO THE PLANT HEALTH (EXPORT CERTIFICATION) (WALES) (AMENDMENT) ORDER 2018

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Export Certification) (Wales) (Amendment) Order 2018.

Hannah Blythyn

Minister for Environment

29 June 2018

1. Description

The purpose of the amending instrument is to provide for an increase in the fees payable in relation to plant health export certification services provided by the Animal and Plant Health Agency (APHA), on behalf of the Welsh Ministers, as part of a move towards full cost recovery of such fees.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

This Order is made under powers conferred on the Welsh Ministers by sections 3 and 4A of the Plant Health Act 1967.

The Welsh Ministers are the competent authority for Wales for the purposes of the Act pursuant to section 1(2) of the Act as amended by the Natural Resources Body for Wales (Functions) Order 2013.

Section 3(1) provides the power to make provision in an Order which is considered expedient for preventing the spread of pests in Great Britain or the conveyance of pests by articles exported from Great Britain. Section 4A provides the power to make provision imposing reasonable fees or charges in connection with import and export licences and certificates.

HM Treasury has consented to the making of this Order in accordance with the requirement of section 4A of the Act.

This Order is subject to the negative procedure.

4. Policy background

In order to prevent the introduction of harmful pests and diseases most countries outside the EU require that consignments of plants, plant products and other related plant material must meet certain plant health standards before they are allowed entry. These standards are laid down by the relevant authorities in each country and vary from country to country.

Most of these countries require that consignments must be accompanied by a phytosanitary (plant health) certificate issued by the National Plant Protection Organisation in the exporting country. A phytosanitary certificate provides importing countries with an assurance that consignments meet their plant health standards. APHA is responsible for issuing certificates in Wales on behalf of the Welsh Ministers. Consignments without this certificate are likely to be rejected at the point of entry, destroyed or returned to the exporting country. In most cases, depending on the requirements of the importing country, phytosanitary certificates can only be issued following satisfactory official inspection of the material for export. In some

circumstances it may also be necessary for a sample of the material to be examined by the official laboratory, which for Wales is FERA Science Ltd.

In line with the principle that the costs of services should be borne by users who benefit directly from a service, charges apply for export certification services provided under the Plant Health (Export Certification) (Wales) Order 2006 . This instrument implements changes to the charging structure and fees for export certification services, aligning them more closely to the cost of delivering the service to individual customers. The changes also reflect adjustments in the cost of service delivery, as well as changes to ensure that all eligible costs are fully recovered.

APHA is responsible in Wales, on behalf of the Welsh Ministers, for the provision of plant health services to facilitate trade and prevent the introduction and spread of plant pests and diseases.

It is policy to charge for many publicly provided goods and services. The standard approach is to set fees to recover the full costs of service delivery. This relieves the general taxpayer of costs, so that they are properly borne by users who benefit from a service. This allows for a more equitable distribution of public resources and enables lower public expenditure and borrowing. Charging for plant health services is consistent with the principle that businesses using these services should bear the costs of any measures to prevent harm that they might otherwise cause by their actions or non-actions, since most serious pests and diseases that arrive and spread in this country do so via commercial trade in plants and plant produce. APHA spends around £13.5m each year on plant health activities, including the provision of services to businesses, surveillance and outbreak control. In 2016/17, £5.75m of this total was the cost of providing statutory chargeable services.

The current fees for plant health export certification services are set out in the Plant Health (Export Certification) (Wales) Order 2006 (as amended).

APHA reviewed the current methodology for calculating the cost of providing plant health services and developed a new methodology. This work included checking assumptions about which costs could be recovered to secure full eligible cost recovery, and ensuring that the costs associated with delivering each plant health service were allocated more accurately to that service. The improved precision of the new cost methodology helps to ensure that the charges for each service are based on the costs and resources used by that service. The fees for export certification services implemented through this instrument are based on this new methodology.

The changes to export certification fees to be implemented by this instrument include increasing fees for inspection visits to correct a previous under-recovery. The following additional changes to the package of fees are intended to simplify how APHA charge:

- i) Change the fee structure for inspection visits in respect of applications for export certificates and set the hourly rate to achieve full cost recovery, as follows:
 - ◆ an hourly fee for inspection visits charged for each quarter hour, with a minimum fee half hour, with

- ◆ a separate fee for each sample tested, and
 - ◆ a separate fee for the issue of the certificate.
- ii) For audit inspections of authorised grain inspections, the fee will change from a flat fee per visit to a time based fee for each quarter hour, with a minimum fee of half an hour per visit.
- iii) Change the fee structure for pre-export inspections and set the hourly rate to achieve full cost recovery, as follows:
- ◆ an hourly fee for the inspection visit set for each quarter hour, with a minimum fee and,
 - ◆ a separate fee for each sample tested.
- iv) Change the fee structure for the issue of phytosanitary certificates where no inspection visit is required, as follows:
- ◆ each applicant will be charged for the issue of the certificate and;
 - ◆ where the application also requires a laboratory test, each sample tested will incur an additional charge.
- v) A new fee to recover the cost of amending a certificate after issue at the request of the exporter.
- vi) A new fee for handling and processing paper-based applications which reflects the cost of putting the applications on-line. These staff costs are currently apportioned across the fees for export certification.

Given the increase in fees and the changes in how the charges will be applied, the increases outlined in i) to iv) above will be phased to allow businesses time to plan and prepare. The fees will be introduced in three steps so that full-cost recovery is achieved by April 2019. The remaining proposals will be implemented in May 2018.

5. Consultation

A consultation on proposed changes to fees for statutory plant health services, including export certification services, provided by the APHA in Wales and England ran from 6th September to 31st October 2017. As regards the proposed changes to export certification charges, three trade bodies and 284 individual businesses (from a customer base of over 640) responded to the consultation. A summary of the key points and the response to the consultation has been published and can be viewed here.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684657/plant-health-services-consult-sum-resp.pdf

There was a negative response overall to the proposals outlined in the consultation. That response was not unexpected, given the proposed increase in fees was to

correct a significant under-recovery of the costs of providing export certification services.

Several exporters questioned the timing of the fee changes, given the current uncertainties around the UK's exit from the EU and what they saw as the inconsistency of increasing fees and costs to exporters at the same time as encouraging UK exports. Officials decided to press ahead with implementation so that it could fix the under-recovery of costs – any delay in moving to full-cost recovery for these services would require funding to be found from other plant health activities to bridge the gap, with negative implications for the publicly-funded work on surveillance and eradication.

Respondents were also critical of the proposal for a new fee for the laboratory testing of export samples, particularly consignments of seeds, where the testing requirements specified by the importing country are more stringent than for routine export-related laboratory testing. Whilst APHA intends charging for this bespoke seed testing in the future, officials concluded that it needs to do further work on how the fees are structured and so implementation of those fees has been postponed until we have better data on costs from 2017/18.

The new fees are set to recover the eligible costs of providing export certification services, which is consistent with the principles of full cost recovery. No consultees asserted that the new fees are above reasonable cost recovery rates. The new fees do not include a significant element of cross-subsidisation.

6. Regulatory Impact Assessment

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

There is no impact on the public sector.

An impact assessment has not been prepared for this instrument.

7. Regulating small business

The legislation applies equally to all businesses trading in plant health controlled material, including small businesses. However, reduced rates apply to qualifying small businesses and individuals applying for certificates for one-off or relatively small volumes of commercial or non-commercial exports (e.g. amateur plant enthusiasts, universities or other non-commercial scientific establishments). This enables them to undertake a small number of exports at a rate equal to half that charged to other exporters. The rates apply to 'small exporters' whose cumulative charge for export services in any one financial year is equal to or less than £250. To be eligible for these concessionary rates an exporter must meet one of the following conditions when making an application for any export services: (1) the exporter must not be registered for VAT in respect of trade in plants, plant products or related materials, (2) the goods to be exported must not be a taxable supply, or (3) the exporter must not have exported goods certified with a total value of £5,000 or more in the previous financial year.

8. Monitoring and review

Welsh Government officials will continue to work with UK Government and the government-businesses taskforces who have been engaged during the fee review with the aim of continuing to identify efficiencies and better ways of working in order to further drive down costs. This collaborative approach has been broadly welcomed by the industry.

The levels of fees will be reviewed over the course of the next year.