

EXPLANATORY MEMORANDUM TO THE PLANT HEALTH ETC. (FEES) (WALES) REGULATIONS 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 etc. (Fees) (Wales) Regulations 2018. I am satisfied the benefits justify the likely costs.

Hannah Blythyn

Minister for Environment

15 November 2018

1. Description

These Regulations revoke and replace the Plant Health (Fees) (Wales) Regulations 2014 which specify statutory plant health fees for services provided by the Animal and Plant Health Agency (APHA) on behalf of the Welsh Ministers in the field of plant health and seed potatoes.

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 instrument is made in exercise of powers in section 56(1) and (2) of the Finance Act 1973 – those powers are conferred on the Welsh Ministers by virtue of section 59(5) of the Government of Wales Act 2006. The powers permit the Welsh Ministers to make regulations which 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. This instrument requires and has received Treasury consent.

This instrument is subject to the negative resolution procedure.

4. Policy background

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 (“the Plant Health Directive”) establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in Wales, for non-forestry matters, by the Plant Health (Wales) Order 2018. Similar but separate legislation operates in England, Scotland and Northern Ireland.

The Plant Health Directive has been amended 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.

Article 13d of the Plant Health Directive requires Member States to recover the cost of the import inspections required by the Directive through fees. The Plant Health (Fees) (Wales) Regulations 2014 implement that requirement in Wales. 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.

In line with the principle that the costs of statutory services should be borne by users who benefit directly from a service, charges also apply for the following activities required by the Plant Health Directive:

- Sampling and testing of potatoes imported from Egypt and the Lebanon
- Plant passporting services
- Plant health licensing services

Seed potatoes produced and marketed in Wales and England must be certified under the Seed Potato Classification Scheme, which aims to provide assurance that seed potatoes delivered to buyers and growers meet the health and quality standards specified by the Seed Potatoes (Wales) Regulations 2016. The Regulations implement the requirements of Council Directive 2002/56/EC on the marketing of seed potatoes. Charges apply for the provision of seed potato certification services.

This instrument implements changes to the charging structure and fees for statutory plant health 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.

It also introduces a new statutory fee for inspections in connection with the certification of fruit propagating material following the implementation of harmonisation EU measures replacing the current voluntary certification scheme. The new statutory fee will be kept at the same level as the current fee under the voluntary scheme during 2018/19.

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

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 five statutory plant health services (import inspection, sampling and testing of potatoes from Egypt and Lebanon, seed potato certification, plant passporting and plant health licensing) are set out in the Plant Health (Fees) (Wales) Regulations 2014 (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 implemented through this instrument are based on this new methodology.

The changes to the package of fees to be implemented by this instrument are:

Import inspection services

- i. Combine the separate charges for documentary checks and identity checks into one lower fee.
- ii. Move from the current volume-based approach to charging for physical inspections to a more cost-based approach, in effect flat fees for each commodity type irrespective of the size of the consignment. Where reduced levels of inspection apply for lower risk consignments (from countries where there is continued evidence of pest and disease freedom), the inspection fee per consignment would be proportionately reduced.
- iii. Introduce a separate fee to recover the costs of laboratory testing where samples are taken by APHA inspectors because of the suspected presence of a harmful pest or disease.
- iv. The additional charge for inspections undertaken outside of 'normal business hours' will be removed and the costs of this activity apportioned across all physical inspection fees.

Sampling and testing of potatoes imported from Egypt and the Lebanon

Under the new cost methodology the fee will be reduced for each lot sampled and tested.

Plant passporting

The main change for this service is to correct how the hourly fee is calculated so that it is set at the level required to recover the full costs of delivery. Fees for inspection visits will increase for each quarter hour spent on site, as will the minimum fee per visit. These changes remove the existing public subsidy for this service of around £180,000 per year.

Given the increases in fees for plant passporting services their introduction will be phased in so that full-cost recovery is achieved by April 2019, in order to support businesses and give them time to plan and prepare.

In addition, a new fee for handling and processing paper-based plant passporting applications is to be introduced which reflects the cost of putting the applications on-line.

Plant health licensing

Following a review of the way in which licensing services are delivered the annual licence renewal process and the associated fee have been removed and replaced with a much simpler process, involving the issue of annual letters of authority, rather than full licence renewal fee. Whilst this change in process has reduced the cost of providing licensing services, additional costs have been added to the cost base to take account of costs which are currently met by government. Consequently other scientific licensing fees will increase, and the travel cap of two hours for inspection visits will be removed.

Given the increases in fees for licensing services their introduction will be phased in so that full-cost recovery is achieved by April 2019, in order to support businesses and give them time to plan and prepare.

In addition, the scope of licensing has been clarified in this instrument to ensure that applications and inspections and associated charges reflect current and future licensing activities.

Seed potato certification

The changes to the package of fees for these services are intended to standardise and simplify the existing fees and improve fairness. Cost reductions were secured through efficiency gains and changes to the cost methodology. The changes are:

- i. A new fee for Potato Cyst Nematode soil sampling and testing. This will remove the current public subsidy for this service.
- ii. Change the growing season field-based inspection charges for pre-basic and approved stocks from a time-based charge to a hectare-based charge. The aim is to standardise charging for growing season inspections of seed potatoes and to simplify the fee structures. Only the fee for inspection of pre-basic tissue culture material will remain time-based, as this is carried out on very small quantities of material.
- iii. Change the inspection fee for harvested tubers from hectare-based to time-based, to improve simplicity.
- iv. Introduce a separate fee for the issue of printed labels. Growers who print their own labels will be charged for the issue of blank labels and be subject to annual auditing of label production records, the cost of which is included in the label fee.

- v. Introduce a new fee for processing paper-based applications, which reflects the cost of putting applications on line.

Three EU Implementing Directives on the certification of fruit plants and fruit plant propagating material came into force on 1 June 2017 introducing specific requirements for identity, quality, labelling and packaging. These harmonisation measures facilitate intra-community trade, are cost neutral and are voluntary in as much as they will only apply to producers choosing to certify their produce to EU standards. The existing fee for inspection of fruit plants and fruit propagation material under the voluntary scheme will be replaced by a statutory fee but for 2018/19 we propose keeping the fee for this service at the same level as the current voluntary scheme. A further review of costs and income is being undertaken by APHA with a view to adjusting the statutory fee level for 2019/20 if required.

5. Consultation

This instrument prescribes fees for the following statutory services:

- Inspection of imported plants and plant material
- Sampling and testing of potatoes imported from Egypt and the Lebanon
- Seed potato certification
- Plant passporting
- Plant health licensing
- Certification of fruit-propagating material

A consultation on proposed changes to fees for statutory plant health services provided by the APHA in England and Wales ran from 6 September to 31 October 2017. Eight trade bodies and 57 individual businesses (from a customer base of over 2600) responded to the consultation. A summary of the key points and the government's 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).

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The responses to the consultation were mixed – some supportive and others critical. The proposed fees for plant passporting attracted the most responses and those were critical overall. That reaction was not unexpected, given the proposed increases were to correct a current significant under-recovery of costs on that service. We carefully considered the responses against the need to achieve full cost recovery and the improvements offered by the new cost methodology, in terms of aligning charges to the cost of service delivery to each customer and decided to continue with the changes to fees as proposed in the consultation.

There was a very limited response to the consultation from businesses using import inspection services. The main trade body, which represents 900 large-scale importers, supported the changes. Another trade body, which represents mainly small or micro businesses, felt that fees should take account of risk factors associated with larger, high-risk consignments. Although the Welsh Government

does not wish to adversely affect such trade, from a biosecurity perspective the risk of introducing harmful organisms is not mitigated by the size of the business or the volume of material imported. The type of commodity imported and its origin are the key risk factors.

On seed potato certification, the limited responses received were generally negative, particularly around the proposed fees for dealing with paper-based applications and for the issue of labels. This negative response was not expected as the October 2016 meeting of the Industry Taskforce was largely supportive of the proposals and this sector had been supportive of simplifying the fees. It was decided to proceed as proposed in the consultation, including with regard to the proposed charges for labels and paper-based applications, as the new fees are more aligned with the costs of the services provided to individual customers. A couple of respondents said they preferred the charging arrangements in place in Scotland but fees there are not set to recover full-cost and label charges are in fact cheaper in Wales for bulk consignments.

On plant passporting services, there was a negative response overall, which was not unexpected, given the proposed increase in fees to correct the previous significant under-recovery of the costs of providing plant passporting services over many years. Similar comments to those made by some exporters around the timing of the fee changes given the current uncertainties around the UK's exit from the EU were also made by some businesses using plant passporting services.

The remaining three services had very few responses, which were either supportive or uncontroversial.

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. Impact

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. 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.