

**EXPLANATORY MEMORANDUM TO THE PLANT HEALTH ETC.
(MISCELLANEOUS FEES) (WALES) (AMENDMENT) REGULATIONS 2019**

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. (Miscellaneous Fees) (Wales) (Amendment) Regulations 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

24 October 2019

1. Description

These Regulations amend the Plant Health (Export Certification) (Wales) Order 2006 (the “2006 Order”) which specify fees for export certification services. They also amend the Plant Health etc. (Fees) (Wales) Regulations 2018 (the “2018 Regulations”) which specify fees payable to the Welsh Ministers in relation to plant health services and the certification of seed potatoes and fruit plants and fruit plant propagating material.

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

These Regulations are made, in part, under powers conferred on the Welsh Ministers by sections 3(1) 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.

These Regulations are also made, in part, 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.

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.

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 2018 Regulations 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.

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. The Animal and Plant Health Agency (“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. The 2006 Order provides for such export certification services and their fees.

These Regulations implement changes to fees for plant health statutory services to ensure that the full cost of service provision continues to be recovered. The changes also reflect adjustments in the cost of service delivery, as well as changes to ensure that all eligible costs are fully recovered and fees are applied fairly.

These Regulations require and have received Treasury consent.

These Regulations are subject to the negative resolution procedure.

4. Policy background

The 2006 Order, and the 2018 Regulations, implemented in Wales the outcome of an England and Wales public consultation in 2017 on proposed changes to fees for import inspection, sampling and testing of potatoes originating in Egypt and the Lebanon, plant passporting, licensing, certification of seed potato and fruit plant and propagating material and export certification material services provided by APHA in England and Wales.

Those instruments implemented changes to the charging structure and fees for statutory plant health services, aligning them more closely to the cost of delivering the services to individual customers. The changes also reflected adjustments in the cost of service delivery, as well as changes to ensure that all eligible costs are fully recovered.

The response to the public consultation, published in March 2018, acknowledged that there were several outstanding charging issues which needed further review. Further issues were raised by stakeholders during 2018. These Regulations implement changes to fees to address those concerns.

Fees are reviewed annually to ensure full cost recovery is maintained. These Regulations also implement changes resulting from the latest review. In general fees are decreasing (as costs have decreased) but with significant increases in fees for monitoring compliance with licence terms and conditions, where a phased implementation is being put in place.

The significant changes to the package of fees being implemented by these Regulations are:

Amendment of the 2006 Order

In the response to the 2017 consultation, the concessionary rate for export charges which has been in place since 1988 to support small-scale operators was reviewed. Small businesses and individuals who export small volumes of plant material are, subject to meeting certain criteria, eligible for a 50% reduction in export fees, up to a maximum value of services of £250 in any one financial year. Services required when this total is exceeded are charged at full price. The £250 maximum has not been updated for many years and is now out of step with export fees, which since April 2019 have been at full cost recovery and as such the benefit of the concessionary rate to small-scale exporters has been eroded away. Regulation 2(2) of these Regulations amend the 2006 Order so that those eligible for the concession will now get a 50% reduction in fees for export services up to a £750 maximum per year instead of the current maximum of £250 per year.

Under Regulation 2(3) the fees for export certification services set out in Schedule 3 of the 2006 Order are amended to ensure that full cost recovery is maintained.

Amendment of the 2018 Regulations

At Regulation 3(6) the mechanism by which the fee for carrying out inspections in connection with the certification of fruit propagation material is calculated is changing from an hourly charge applied against site, travel and admin time, to an hourly charge applied against site time only.

The mechanism by which the fee for monitoring compliance with licence terms and conditions is calculated is changing from an hourly charge applied against site, travel and admin time, to an hourly charge applied against site time only. This will provide consistency with similar hourly charges for other plant health inspection services.

Given the increases in the hourly fee for licensing services, their introduction will be phased in steps so that full-cost recovery is achieved by October 2020, in order to support businesses and give them time to plan and prepare.

Currently, when an imported consignment includes plant material subject to a full rate of import inspection and also material subject to a reduced level of inspection (because it is from a lower risk country and involves a lower risk commodity) and consequentially a reduced fee, the importer is charged twice - both the full inspection fee (under Schedule 1 of the 2018 Regulations) and the reduced fee (under Schedule 2). In practical terms only a single inspection is carried out and in effect the importer is penalised for sourcing lower risk material. Regulation 3(2)(b)(ii) of these Regulations provide for a single fee for mixed consignments, whereby the importer would be charged the full import inspection fee, with no additional charge for plant material in the same consignment eligible for a reduced inspection rate.

Regulation 3(8) substitutes Schedule 2 to the 2018 Regulations which sets out reduced rate fees for certain plants and plant products which are subject to reduced levels of plant health checks agreed under the procedure provided for in Articles 13a(2) and 18(2) of Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No 169, 10.7.2000, p1). This gives effect to the latest notification published by the European Commission of the reduced plant health checks applicable to certain plants and plant products.

Regulation 3(11) substitutes Schedule 5 of the 2018 Regulations which sets out fees for soil sampling and testing and certification of seed potatoes including the provision of labels. The charges for seed potato labels have been revised to make it more equitable, particularly for those selling or exporting in small bags.

Current fees for inspecting basic and certified seed potatoes are set per 0.5 hectares, with part hectares rounded up to the nearest 0.5 hectare. The fees for pre-basic seed potatoes are set per 0.25 hectare, with part hectares rounded to 0.25 hectares. In response to the 2017 consultation, some stakeholders raised concerns that charging to nearest 0.5 hectare led to overcharging for this service. On further consideration, and in order to apportion the costs more fairly across seed potato growers, the part hectare charges for growing season inspections of all grades of seed potatoes, except pre-basic grade PBTC, will be rounded to 0.1 hectare.

5. Consultation

The England and Wales consultation on proposed changes to fees for statutory plant health services provided by the APHA ran from 6th September to 31st October 2017. The changes made by these Regulations are in line with the outcome of that consultation. A summary of the responses to the consultation has been published and can be viewed here.

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

6. Regulatory Impact Assessment

The impact on business, charities or voluntary bodies is minimal. A concessionary (reduced) rate is in place for small-scale exporters.

There is no impact on the public sector.

A regulatory impact assessment has not been prepared for these Regulations.

7. Monitoring and review

Welsh Government officials will continue to work with UK Government to identify efficiencies and better ways of working in order to further drive down costs.

The levels of fees are reviewed annually.