EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH ETC. (MISCELLANEOUS FEES) (AMENDMENT) (ENGLAND) REGULATIONS 2021

2021 No. 623

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 Her Majesty.

2. Purpose of the instrument

2.1 This instrument is made under powers conferred by the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") in order to modify pre-exit plant health export certification fees.

2.2 The instrument makes amendments to legislation in the field of plant health. Regulation 2 amends the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 (S.I. 2015/350) (the "2015 Regulations") to provide an exemption in certain circumstances from the payment of fees in respect of applications to the Forestry Commission for a phytosanitary certificate for export (or re-export) for consignments containing wood or wood products. Regulation 3 amends the Plant Health etc. (Fees) (England) Regulations 2018 (S.I. 2018/289) (the "2018 Regulations") to provide an exemption in certain circumstances from the payment of fees in respect of applications to Defra for pre-export and export certification services for plants, plant products or other objects.

Explanations

What did any relevant EU law do before exit day?

2.3 The 2015 Regulations and the 2018 Regulations set fees for delivery of plant health services in England by the Forestry Commission and Defra respectively. This includes fees for pre-export[1] and export certification services required to comply with third country entry requirements relating to plant health controlled material. All businesses that use these services are charged a fee to recover the cost of delivery.

Why is it being changed?

2.4 Amendments are being made to provide an exemption from the payment of fees for pre-export and export certification services where goods are moving from England to a business or private individual in Northern Ireland. The exemption also applies to movements of goods by private individuals in their passenger baggage.

[1] "pre-export service" means any plant health inspection or examination, including by the taking of samples, which is required to be carried out in relation to a plant, plant product or other object which is to be exported to a third country in order to satisfy the phytosanitary requirements of the third country, other than any such inspection or examination required for the issue of a certificate

What will it now do?

2.5 The instrument will ensure that trade between England and Northern Ireland is not subject to additional plant health costs following the end of the Transition Period.

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 The instrument does not have any minor or consequential effects outside England.

3.3 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.4 The Department has reached this view because it considers that the purpose of this instrument is to provide for the dis-application of fees for plant health export services, which is within the devolved legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the Welsh Parliament.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, but it applies in relation to England only.

4.2 The territorial application of this instrument is set out in Section 3 under "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)".

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding Human Rights:

"In my view the provisions of the Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The Withdrawal Act converts and preserves EU law at the end of the Transition Period into domestic law ("retained EU law"). This instrument is made under powers conferred by the Withdrawal Act, in order to amend pre-exit plant health fees.

6.2 The 2015 Regulations and the 2018 Regulations specify fees payable to the Forestry Commissioners and the Secretary of State respectively in relation to plant health services, including pre-export and export certification services, provided in England.

6.3 The Protocol of Ireland / Northern Ireland ("the Protocol") means Northern Ireland remains in the EU plant health regime. Therefore, all movements of regulated plants between GB and Northern Ireland must meet EU third country requirements, including being accompanied by a phytosanitary certificate. If pre-exit fees related to production of phytosanitary certificates were not amended, they would apply in full to trade in regulated plants, plant products and other objects between England and Northern Ireland. This would add additional costs to businesses when carrying out trade within the UK internal market. This instrument uses the powers in Section 8 of the Withdrawal Act to amend the relevant fees.

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 ensures the current policy for intra-UK trade is maintained; that services for pre-export and export certification to third countries should not be an additional financial burden to businesses when moving goods within the UK internal market.

7.2 The purpose of this instrument is to amend the relevant pre-export and export certification fees in the 2015 Regulations and the 2018 Regulations to ensure they do not apply for movements of goods between England and Northern Ireland. The costs that will be defrayed cover the application, examination, production and amendment of phytosanitary certificates and any associated inspections and testing that may be required in order to meet EU entry requirements.

7.3 Scotland and Wales plan to make parallel legislation, which will have the same effect in their devolved fees legislation.

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 paragraph 7 of Schedule 4, and paragraph 21(b) of Schedule 7, to the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This is not a consolidation and is the eighth amendment of the 2018 Regulations and the eleventh amendment of the 2015 Regulations.

10. Consultation outcome

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

10.2 The Scottish and Welsh Devolved Administrations have been consulted about the proposed amendments and plan to lay parallel legislation to amend devolved fees legislation to the same effect.

11. Guidance

11.1 The Animal and Plant Health Agency and the Forestry Commission are the relevant delivery body and are developing an implementation plan and associated guidance for publication on GOV.UK. Information on the new fees will be placed on the Plant Health section of Gov.uk prior to implementation.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies as a result of policy changes introduced under this instrument.

12.2 There is no, or no significant, impact on the public sector as a result of policy changes introduced under this instrument.

12.3 The result of the Withdrawal Act is that the UK leaves the EU single market with GB operating to GB plant health regulations and NI remaining within the EU plant health regime. This means any regulated GB goods entering Northern Ireland must comply with EU third country rules and be accompanied with a phytosanitary certificate. The amendments in this instrument maintain the current policy for intra-UK trade; that full export and pre-export services should not be an additional financial burden to businesses when moving goods within the UK internal market.

12.4 An Impact Assessment has not been prepared for this instrument because there are no significant impacts as a result of policy changes introduced under this instrument.

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 between England and Northern Ireland, including small businesses. The costs associated with this trade are not mitigated by the size of the business.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

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

15. Contact

15.1 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs Telephone: 02080 5654319 or email: kate.somerwill-owens@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.