EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH ETC. (MISCELLANEOUS FEES) (AMENDMENT) (ENGLAND) REGULATIONS 2023

2023 No. 1391

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.

2. Purpose of the instrument

2.1 This instrument is made under powers conferred by the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") to amend legislation in the field of plant health. It extends the Movement Assistance Scheme; the exemption from the payment of fees to Defra and to the Forestry Commission, for pre-export and export certification services for certain movements of regulated plants, plant products and other objects ("regulated material") to Northern Ireland, to facilitate trade between England and Northern Ireland.

2.2 Regulation 2 amends the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 (S.I. 2015/350) ("the 2015 Regulations") to extend 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, wood products, isolated bark or used forestry machinery.

2.3 Regulation 3 amends the Plant Health etc. (Fees) (England) Regulations 2018 (S.I. 2018/289) ("the 2018 Regulations") to extend an exemption in certain circumstances from the payment of fees in respect of applications to the Secretary of State for a phytosanitary certificate for export (or re-export) or a pre-export service relating to certain consignments of plants, plant products or other objects to be transported to Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 Lord Benyon, Minister of State, has made the following statement regarding Human Rights:

"In my view the provisions of The Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023 are compatible with the Convention rights.

6. Legislative Context

6.1 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 pre-export services (such as inspections of consignments), and export certification services in respect of regulated material to comply with third country entry requirements relating to plant health regulated material.

6.2 The changes to the 2015 Regulations and the 2018 Regulations in this instrument extend the exemption from the payment of fees for pre-export and export certification services relating to regulated material moving from England to a business or private individual in Northern Ireland. This ensures that the current policy for intra-UK trade is maintained.

6.3 The Protocol on Ireland / Northern Ireland means Northern Ireland remains in the EU plant health regime. Movements of certain regulated material between Great Britain and Northern Ireland must therefore meet EU third country requirements, including being accompanied by a phytosanitary certificate. This would add additional costs to businesses when carrying out trade within the UK internal market.

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 pre-export and export certification services should not be an additional financial burden to businesses when moving regulated material within the UK internal market.

7.2 The purpose of this instrument is to extend the exemption from the payment of fees for pre-export and export certification services relating to regulated material which is moving from England to a business or private individual in Northern Ireland. This is known as the Movement Assistance Scheme and will continue to facilitate trade between England and Northern Ireland.

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

Explanations

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

7.4 The 2015 Regulations and the 2018 Regulations currently enable the Movement Assistance Scheme, providing an exemption from the payment of fees for pre-export and export certification services in respect of certain movements of regulated material from England to Northern Ireland, following the UK's withdrawal from the European Union.

Why is it being changed?

7.5 The fees exemptions legislated for by the 2015 Regulations and the 2018 Regulations are currently due to expire at the end of 31st December 2023. This expiration date needs to be extended to prevent costs for pre-export and export certification services

to businesses or private individuals who move regulated material from England to Northern Ireland under certain circumstances.

What will it now do?

7.6 This instrument extends the Movement Assistance Scheme; the exemption from the payment of fees to Defra and to the Forestry Commission, for pre-export and export certification services for certain movements of regulated material to Northern Ireland, to 30th June 2025.

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 paragraph 7 of Schedule 4 and paragraph 21 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.

9. Consolidation

9.1 This is not a consolidation.

10. Consultation outcome

10.1 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 regulated material within the UK internal market.

10.2 Feedback from informal stakeholder engagement was strongly supportive of the proposed extension, given its benefits to trade.

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

11. Guidance

11.1 The relevant guidance is provided on the gov.uk webpage: Movement Assistance Scheme: get help with moving agrifood goods to Northern Ireland - GOV.UK (www.gov.uk)

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

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

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 This instrument applies equally to all businesses trading in regulated 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 Plant health fees 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 Suzie 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 Lord Benyon, Minister of State, at the Department for Environment, Food and Rural Affairs 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
Appropriate-ness	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. Appropriateness statement

1.1 The Minister of State, Lord Benyon, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2023 does no more than is appropriate".

1.2 This is the case because this instrument makes changes to ensure that 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 certain regulated material within the UK internal market.

2. Good reasons

2.1 The Minister of State, Lord Benyon, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are that the extending the Movement Assistance Scheme will prevent unnecessary costs to traders and individuals who move certain regulated material from England to Northern Ireland.

3. Equalities

3.1 The Minister of State, Lord Benyon, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

3.2 The Minister of State, Lord Benyon, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Lord Benyon have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

4. Explanations

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