EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (FEES) (ENGLAND) (AMENDMENT) REGULATIONS 2015

2015 No. 1996

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This instrument amends Regulation 3 of the Plant Health (Fees) (England) Regulations 2014 (S.I. 2014/ 601) ("the principal Regulations") which provides for the payment of fees in relation to certain statutory functions arising under the Seed Potatoes (England) Regulations 2006 (S.I. 2006/1161).

2.2 It also amends Schedule 2 of the principal Regulations which provides for fees to be charged for certain plant health examinations, namely documentary checks, identity checks and plant health checks (physical inspections), on certain plants and plant products imported from third countries. This is a minor annual adjustment to reflect changes in inspection levels according to risk.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

Fees in relation to certain statutory functions arising under the Seed Potatoes (England) Regulations 2006

4.1 Council Directive 2002/56/EC on the marketing of seed potatoes establishes an uniform certification scheme to ensure that seed potatoes produced and marketed within the EU meet certain quality standards. The Directive is implemented in England through the Seed Potatoes (England) Regulations 2006. Similar legislation applies in Scotland, Wales and Northern Ireland. The Regulations are applied through the Seed Potato Classification Scheme (SPCS), which aims to ensure that seed potatoes are healthy, true to variety and free from mixtures.

4.2 Commission Implementing Directives 2013/63/EU (of 17 December 2013), 2014/20/EU and 2014/21/EU (of 6 February 2014) and Commission Implementing Decision 2014/105/EU (of 24 February 2014) modify the annexes of Council Directive 2002/56/EC as a result of technical changes in the assessment of risks presented by particular pests and diseases and introduce new measures to address

risks presented by other pests and diseases. These amendments are to be implemented through the Seed Potatoes (England) Regulations 2015 (S.I. 2015/1953), which revoke and replace the Seed Potatoes (England) Regulations 2006 come into force on 1st January 2016.

4.3 Regulation 3 of the principal Regulations provides for the payment of fees in relation to certain statutory functions arising under the Seed Potatoes (England) Regulations 2006. These Regulations make minor amendments to the principal Regulations to reflect certain changes in terminology and other changes made by Seed Potatoes (England) Regulations 2015. The fees payable remain unchanged.

Annual adjustment of import inspection fees to reflect changes in inspection levels according to risk

4.4 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[1] (OJ No. 169, 10.7.2000, p. 1) ("the Plant Health Directive") establishes the EU plant health regime. The Plant Health Directive is implemented in England, for non-forestry matters, by the Plant Health (England) Order 2005 (S.I. 2015/610). Similar but separate legislation operates in Scotland, Wales and Northern Ireland. For forestry matters, the Plant Health Directive has been implemented by the Plant Health (Fees) (Forestry) Regulations 2006 (S.I. 2006/2697), which apply throughout Great Britain.

4.5 The Plant Health Directive has been amended, among other amendments, by Council Directive 2002/89/EC (OJ No. L 355, 30.12.2002, p. 45).[1] 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. 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 (Article 13d(2)).

4.6 The powers of APHA inspectors to carry out these examinations are provided in the Plant Health (England) Order 2015 and the authority to charge fees for these inspections is contained in the principal Regulations. The purpose of these Regulations is to reflect changes in certain charges.

4.7 These Regulations are made in exercise of powers conferred by section 56(1) of the Finance Act 1973 (c. 51) which permits a Government department to 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. As such, the Regulations require Treasury consent.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 This instrument applies to England only.

[1] This Directive can be found at http://europa.eu.int/eur-lex/en/search/index.html.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required**.**

7. Policy background

What is being done and why

Fees in relation to certain statutory functions arising under the Seed Potatoes (England) Regulations 2006

7.1 In line with the principle that the costs of statutory services should be borne by users who benefit directly from a service, charges apply for seed potato certification services. Regulation 3 of the principal Regulations provides for the payment of fees in relation to certain statutory functions provided by the Animal and Plant Health Agency on behalf of Defra arising under the Seed Potatoes (England) Regulations 2006. These Regulations make minor amendments to the principal Regulations to reflect certain changes in terminology and other changes made by Seed Potatoes (England) Regulations 2015. The fees payable remain unchanged.

Annual adjustment of import inspection fees to reflect changes in inspection levels according to risk

7.2 Each year, England imports from non-EU countries about 90,000 consignments of plants and plant produce which pose a risk of introducing new plant pests and diseases to European crops and ecosystems. The Plant Health Directive requires mandatory examinations (documentary checks, identity checks and physical inspection) of plants for planting, potatoes, major fruits other than bananas and grapes, cut flowers and some leafy vegetables imported from countries outside the EU.

7.3 Under the Plant Health Directive, the required level for inspections is specified at 100%. However, there is provision for the level of physical inspection to be reduced for consignments of plant produce (e.g. cut flowers, fruit and vegetables) from specific countries if there is evidence that material from that source has been found to be free from pests and diseases during trade over a three year period. In plant health terms, plant produce poses a significantly lower risk than planting/propagating material as it is not planted or propagated and is generally either consumed or disposed of away from agricultural and horticultural production sites. Planting material and potatoes are excluded from risk-targeted checks arrangements and are subject to the mandatory 100% inspection level.

7.4 A European Commission working group meets annually to consider applications from member States for reductions in inspection levels and reviews agreed levels using trade and interception data from member States over the previous year. The working group makes recommendations for future inspection levels for consideration by the Plant Health Standing Committee. Levels of inspection can be increased or eligibility for any reduction withdrawn altogether if member States report any pest or disease problems identified with a trade approved for reduced checks. If more than 1% of consignments imported into the EU have been found to contain pests or diseases in any year then that trade is not eligible for reduced inspection levels. Since the risk-targeted checks regime was introduced in 2006, several trades which had been approved for reduced inspections have had that approval removed in response to interceptions of pests or diseases by member States. None of those cases resulted in a pest or disease outbreak within the EU.

7.5 Implementation of the risk-targeted check provisions is discretionary. Member States can choose not to apply reduced inspection levels and continue to inspect all imported plants and plant produce. However, the reduced checks system reflects the principle of risk-targeting which Ministers have agreed should be a key objective to pursue in the context of the review of the EU plant health regime. Adopting these provisions saves around 30,000 inspections on low risk produce in England per year and allows resources to be focussed instead on targeting trade in planting/propagating material which represents the highest risks. It also means that inspections of material which is currently unregulated under the Plant Health Directive can be carried out, looking for evidence of emerging threats which can then be considered for incorporating in the EU plant health regime. In the past 12 months around 2,800 consignments of unregulated material were inspected on arrival in England, with over 400 serious pests or diseases found. This evidence feeds into an EU process to consider actions in response to persistent interceptions, which may include Food and Veterinary Office audits to the exporting country concerned, or new import requirements (for instance, fresh peppers were previously unregulated under the EU plant health regime, but now require a phytosanitary certificate to be imported, in response to pest findings). A new EU working group has been established to monitor interception levels and make recommendations. The reduced frequency of import checks arrangements therefore allow us to target resources away from products which represent a very low risk, to those which represent a higher threat or where the plant health status is unknown.

7.6 The Plant Health Directive requires charges to be raised to cover the costs of those examinations, either through the adoption of a scale of minimum charges set out in an Annex, or through a national system based on the calculation of specified costs. Where risk-targeted checks apply, the Plant Health Directive states that a proportionally reduced fee should be collected for every imported consignment.

7.7 Under the principal Regulations, reduced checks applied to 48 trades. These Regulations implement the latest changes recommended by the European Commission's Reduced Checks Working Group held in June this year, which were agreed by the Plant Health Standing Committee in October this year. The outcome of this year's meeting was the agreement of increases in levels of inspection on 7 trades (to 100% in the case of guava from Brazil and citrus fruit from Uruguay) because of pest or disease findings or decreases in the volume of trade, resulting in matching increases in fees, as follows:

- Cut flowers of Dianthus from Kenya (from 5% to 10%);
- Passion fruit from Kenya (from 10% to 15%);
- Stone fruit from Argentina (from 50% to 75%);
- Stone fruit from USA (from 10% to 50%);
- Pears from China (from 50% to 75%);
- Guava from Brazil(from 75% to 100%);
- Citrus fruit from Uruguay (from 75% to 100%).

7.8 Further evidence of compliance was available for 4 trades resulting in levels of inspection decreasing, with matching decreases in fees, as follows:

- Cut flowers of *Rosa* from Ethiopia (from 10% to 5%);
- *Citrus* fruit from Tunisia (from 75% to 50%);
- *Capsicum* fruit from Morocco (from 10% to 5%);

- Bitter melon from Surinam (from 15% to 10%).

7.9 The overall levels of import inspection fees are unchanged by these Regulations, which simply amend the trades subject to risk-targeted checks or change the level of reduction for certain trades. Details of all the trades subject to reduced levels of physical inspection and the relevant fees are included within the revised Schedule 2 inserted by regulation 4 of these Regulations.

Consolidation

7.10 The principal Regulations (as amended by these Regulations) will be updated and consolidated in 2016.

8. Consultation outcome

8.1 A formal consultation on how the changes to Council Directive 2002/56/EC on the marketing of seed potatoes should be implemented ran from 24 November 2014 to 12 January 2015, involving participants of the seed potato certification scheme and trade associations responsible for this sector.

8.2 A consultation was held in 2004, prior to plant health import inspection fees being introduced in earlier legislation (the Plant Health (Import Inspection Fees) (England) Regulations 2005 (S.I. 2005/906)), which outlined the possibility of changes and new trades being added to the reduced rate regime in the future. No further consultation has been carried out on these Regulations as they implement annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

9. Guidance

9.1 Details of the fees for statutory plant health services are on the Defra website.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared in relation to the amendment of Regulation 3 of, and Schedule 4 to, the principal Regulations which provides for the payment of fees in relation to certain statutory functions arising under the Seed Potatoes (England) Regulations 2006.

10.4 An impact assessment was prepared in respect of the Plant Health (Fees) (England) Regulations 2012 (SI 2012/745) which the principal Regulations revoked and replaced. This was placed in the Library of each House of Parliament. The fee levels prescribed for in the principal Regulations form the third and final part of a phased move towards full cost recovery of statutory plant health fees over a period of three years. An impact assessment has not been prepared for these Regulations as they implement annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

11. Regulating small business

11.1 The legislation applies equally to activities undertaken by all businesses importing controlled plant health material, including small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The new measures will apply to all businesses, including micro-businesses, importing controlled plant health material. The risk of introducing harmful organisms is not mitigated by the size of the business importing material.

12. Monitoring and review

12.1 The levels of plant health fees are reviewed annually with a view to making any adjustments to ensure cost recovery is maintained. The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission.

13. Contact

13.1 Iain Johnstone, Defra, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel: 0300 060 3806; e-mail: iain.johnstone@defra.gsi.gov.uk can answer any queries regarding this instrument.