EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (FEES) (FORESTRY) (AMENDMENT) (ENGLAND AND SCOTLAND) REGULATIONS 2014

2014 No. 589

1. This explanatory memorandum has been prepared by the Forestry Commission and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

These Regulations amend the Plant Health (Fees) (Forestry) Regulations 2006 (S.I. 2006/2697) ("the principal Regulations") which implement Article 13d(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. L 169, 10.7.2000, p.1) ("the Plant Health Directive"). They increase fees for Plant Health Inspection Services from their previous levels in order to achieve full cost recovery and remove the current taxpayer funded subsidy for the statutory provision of Plant Health Inspection Services due to under recovery.

3. Matters of special interest to the Joint Committee on Statutory Instruments

These Regulations increase the fees to be charged relating to the documentary, identity and plant health checks of wood, wood products and isolated bark coming into England and Scotland from third countries. These fees are set out in Schedules 3, 3A and 4 to the principal Regulations, as amended by these Regulations, and are being increased so that they enable full cost recovery for the checks.

4. Legislative Context

4.1 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 (Articles 13a and 13d) requires the National Plant Protection Organisation to carry out certain checks on imported plants and plant products, including certain types of wood and wood products, and to charge fees for those inspections. In most cases, it requires inspections to be carried out on all imports of controlled material.

4.2 The Plant Health Directive is implemented in Great Britain, with respect to certain wood, wood products and bark, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) and the principal Regulations. [Similar but separate legislation operates in Northern Ireland.] For non-forestry matters, the Plant Health Directive is implemented in England by the Plant Health (Fees) (England) Regulations 2013 (S.I. 2013/494) and the Plant Health (England) Order 2005 (S.I. 2005/2530). Similar but separate legislation operates in Scotland, Wales and Northern Ireland.

4.3 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). 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)).

4.4 The powers of inspectors of the Forestry Commissioners to carry out these examinations are provided in the Plant Health (Forestry) Order 2005 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.

5. Territorial Extent and Application

This instrument applies to England and Scotland.

6. European Convention on Human Rights

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

7.1 In 2006, in response to the amendment of the Plant Health Directive by Council Directive 2002/89/EC (see paragraph 4.3), the Forestry Commission's Plant Health Service consulted with its stakeholders on proposals to revoke and replace the Plant Health (Fees) (Forestry) (Great Britain) Regulations 1996 (as amended) (S.I. 1996/2291) ("the 1996 Regulations") with new Regulations charging for plant health inspections. Having considered the responses to the consultation exercise, the Forestry Commission implemented changes to its plant health charging regime via the principal Regulations which revoked and replaced the 1996 Regulations and came into force on 6th November 2006.

7.2 In accordance with the consultation process the Forestry Commission undertook to operate a Trading Account, which would reflect the full costs of carrying out the inspections and the amount of income received, in order to assess whether the charges have been set at an appropriate level, with a formal review taking place at least every 12 months.

7.3 Prior to the global recession having an impact on the timber import trade, the Forestry Commission managed to achieve full cost recovery for its inspection service. However, due to a significant down-turn in imports of controlled bulk coniferous material in the 2012/13 financial year, it has under-recovered its costs. Having calculated the costs of providing an inspection service in the 2013/14 financial year, the Forestry Commission has concluded that it must seek to increase its plant health

inspection fees in order to fully recover these costs, especially in view of the fact that the import trade of bulk coniferous material is unlikely to return to pre-recession volumes in the short-term.

7.4 Additionally, each year, England and Scotland imports from non-EU countries about 3,500 consignments of sawn wood products which pose a risk of introducing new forestry pests and diseases to European forests, woodlands and urban trees. The Plant Health Directive requires mandatory examinations (documentary checks, identity checks and physical inspection) of wood, wood products and bark imported from countries outside the EU.

7.5 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. wood, wood products and bark) 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. It should be noted that there are a number of provisos which govern what is eligible for a reduced frequency of inspection, one of which is that any commodity subject to either a derogation or emergency measures cannot be considered. Wood of oak is currently subject to emergency measures while wood of conifers from North America is subject to a number of derogations permitting alternative documents to the more usual phytosanitary certificate e.g. certificates of heat treatment etc. For these reasons, the options available for reduced frequency inspection levels for forest products are limited.

7.6 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. 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.

7.7 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.

7.8 Under the principal Regulations, reduced checks applied to 2 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 2 trades (to 75% and 100% in the case wood of maple from Canada and the USA respectively) because of decreases in the volume of trade, with matching increases in fees as follows:

- Wood of maple from Canada (50% to 75%), and
- Wood of maple from the USA (75% to 100%)

7.9 Import levels of wood of maple from the USA and Canada amounted to less than 100 consignments from each country. Therefore, adopting these provisions does not result in significant savings in terms reduced import checks, however, the trade and Ministers are committed to make use of the provisions wherever possible.

- Consolidation

7.10 Whilst this is the fourth instrument amending fees in the principal Regulations, a consolidation of the legislation is not being undertaken on this occasion as further amendments to the fees set out in Schedules 1, 2 and 5 are planned for the end of the 2013/14 financial year. New charges for other areas of work involving authority to move relevant material from infected areas for processing are also planned within the same timescale, as are plans to incorporate fees for export phytosanitary certification, currently detailed in the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004 (S.I. 2004/1684), into the fees Regulations. It is therefore considered more appropriate to consolidate the legislation as part of that future amendment exercise.

8. Consultation outcome

8.1. The main stakeholders were consulted over a consultation period of 6 weeks from 30 September to 8 November 2013. The short consultation was considered appropriate because the proposed changes only affect a narrow and specific group of stakeholders who were last consulted on the same issue in 2010 when only one response from a trade association was received. Two organisations responded on this occasion and one commented that the proposed increase in fees seemed excessive in relation to inflationary rises which over the past three years have been around 3% per annum. A further review of the fees was suggested with a view to reducing the increase to around 10% which was in line with inflation. The other respondent commented that whilst the increase of approximately 20% on current pricing levels was not welcome, it was understood. In response to the two specific questions raised in the consultation paper, one company commented that increased fees across the two modes of transportation (bulk and containerised shipments) would be the only fair option. It was considered that there was a trend towards containerisation of timber and to have a realistic chance of improving that trend it was thought that a level playing field in terms of plant health inspection charges was required for both modes of transport.

8.2 After considering the comments, the Forestry Commission concluded that the preferred proposal of full cost recovery should be implemented as to do otherwise the UK and Scottish Governments would have to subsidise the trade.

9. Guidance

The main stakeholders have been provided with guidance on the amendments to the legislation via the issue of an explanatory newsletter. An amendment to the more formal Plant Health Guide will be made in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is £36,000 per annum distributed across approximately 62 regular importers and 3,500 transactions.

10.2 The impact on the public sector is nil.

10.3 An Impact (Business Engagement) Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

The legislation applies to small business.

12. Monitoring & review

A Trading Account as mentioned at paragraph 7.2 will be prepared at the end of the 2013/14 financial year and these accounts will be reviewed and if it is deemed necessary the fees will be further amended.

13. Contact

Ian Brownlee at the Forestry Commission Tel: 0300 067 5034 or email: ian.brownlee@forestry.gsi.gov.uk can answer any queries regarding the instrument.