EXPLANATORY MEMORANDUM TO THE PLANT HEALTH (IMPORT INSPECTION FEES)(ENGLAND)(AMENDMENT) REGULATIONS 2009

2009 No. 2053

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.

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

2. Purpose of the Instrument

The Regulations replace earlier Regulations which provide 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. The present Regulations amend some of the fees prescribed in the earlier Regulations.

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

The Regulations, which amend the Plant Health (Import Inspections Fees)(England) Regulations 2006, amend the fees to be charged for plant health examinations of certain imported material and also amend the list of trades eligible for reduced rate inspections. The amended fees are set out in regulation 4 and the Schedule of the present Regulations (amending Schedule 2 to the original Regulations). The changes, which are outlined in paragraph 7.2 below, come into force in two stages – the first stage on 1 September 2009; the second on 1 January 2010.

4. Legislative Context

4.1 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[1] ("the Plant Health Directive") establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Directive is implemented in England, for non-forestry matters, by the Plant Health (England) Order 2005 (SI 2005 No. 2530). Similar but separate legislation operates in Scotland, Wales and Northern Ireland. For forestry matters the Directive has been implemented by the Plant Health (Fees)(Forestry) Regulations 2006, which applies throughout Great Britain.

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

4.2 The Directive was amended, among other amendments, by Council Directive 2002/89/EC of 28 November 2002.[2] 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)).

4.3 The powers of Defra inspectors to carry out these examinations are provided in the Plant Health (England) Order 2005 but the authority to charge fees for these inspections is contained in separate legislation, currently the Plant Health (Import Inspection Fees) (England) Regulations 2006 (SI 2006 No. 1879) ("the 2006 Regulations)", as amended by the Plant Health (Import Inspection Fees) (England) (Amendment) Regulations 2007 (SI 2007 No. 788), the Plant Health (Import Inspection Fees) (England) (Amendment) (No.2) Regulations 2007 (SI 2007 No. 3013) and the Plant Health (Import Inspection Fees) (England) (Amendment) Regulations 2008 (SI 2008 No. 3233). The purpose of the present Regulations is to reflect further changes in certain charges.

4.4 This instrument is made under section 56(1) of the Finance Act 1973 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 Community obligation. As an instrument made under section 56(1) of the Finance Act 1973, the Regulations are subject to Treasury consent.

5. Territorial Extent and Application

This instrument applies to England only. Similar legislation will be applied in Scotland, Wales and Northern Ireland.

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

7.1 Each year England imports from non-EC countries about 40,000 consignments of plants and plant produce which pose a risk of introducing new plant pests and diseases to European crops and ecosystems. Under the Plant Health Directive[3], we are required to check these imports to ensure they comply with EC rules and to minimise the plant health risks associated with their import. In broad terms these checks cover plants, potatoes, the major fruit other than bananas and grapes, cut flowers and some leafy vegetables. The required level for inspections is specified at 100%, except for certain trades subject to the Directive's "reduced

[2] This Directive can be found at http://europa.eu.int/eur-lex/en/search/index.html.
[3] Council Directive 2002/89, amending Council Directive 2000/29

checks" provision which allows lower levels of physical checks to be agreed on the basis of past experience of compliance.

7.2 Under the 2006 Regulations reduced checks applied to 52 trades. The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission. The Plant Health (Import Inspection Fees) (England)(Amendment) Regulations 2009 implement the latest changes agreed by the Commission Working Group held in June this year, which saw the addition of 1 new trade, the removal of 2 trades and changes to the levels of inspection on 11 trades previously agreed to take account of additional data on compliance.

7.3 In line with the usual Commission timetable the changes will apply from 1 January 2010. However, removal of the 2 trades (Cut roses from India and Uganda) reflects a high level of interceptions of quarantine pests and diseases associated with those trades necessitating more urgent action. The increase in inspection levels for those trades will therefore apply from 1 September 2009.

7.4 The Directive requires charges to be raised to cover the costs of those inspections, either through adoption of a scale of minimum charges set out in an Annex, or through a national system based on calculation of specified costs. Where "reduced checks" apply, the Directive states that a proportionally reduced fee should be collected for every imported consignment. Charges for these inspections, based on the minimum charges set out in the Directive, were introduced in England in April 2005, under the Plant Health (Import Inspection Fees)(England) Regulations 2005 (S.I. 2005 No. 906) and replaced in August 2006 by the Plant Health (Import Inspection Fees) (England) Regulations 2006, which were subsequently amended by as amended by the Plant Health (Import Inspection Fees) (England) (Amendment) Regulations 2007, the Plant Health (Import Inspection Fees) (England) (Amendment) (No.2) Regulations 2007 and the Plant Health (Import Inspection Fees) (England) (Amendment) Regulations 2008 (SI 2008 No. 3233).

8. Consultation outcome

The original consultation in 2004 included the possibility of new trades being added to the reduced rate regime in the future. Details of all the trades subject to reduced levels of physical inspection and the relevant fees are in Schedule 2 to the 2008 Regulations.

9. Guidance

We have informed the main stakeholders and a summary of the changes will be placed on our website.

10. Impact

The Regulatory Impact Assessment which was prepared in respect of the Plant Health (Import Inspections Fees) (England) Regulations 2005 foresaw changes to the fees for plant health import inspections to which these Regulations apply. This was placed in the Library of each House of Parliament. A copy is attached at Annex A.

11. Regulating small business

The legislation applies to all businesses importing controlled plant health material, including small businesses. The fees specified in the Regulations are the minimum possible under the EU Plant Health Directive. The changes introduced through the present Regulations give effect to the latest agreed reduced rates for inspection of certain material.

12. Monitoring and review

The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission.

13. Contact

Iain Johnstone, Fera, First Floor, The Quadrant, Newburn Riverside, Newcastle Upon Tyne, NE15 8NZ; Tel: 0191 229 5482; e-mail: iain.johnstone@fera.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

FINAL REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSAL

INTRODUCTION OF CHARGES FOR PLANT HEALTH IMPORT INSPECTIONS

2. PURPOSE AND INTENDED EFFECT

2.1 Objective

To implement in England the requirement in Council Directive 2002/89/EC that Member States charge for plant health inspections on certain material imported from outside the EU.

Directive 2002/89/EC applies throughout the United Kingdom. However, this assessment has been prepared on an England only basis as implementation is being considered separately in Scotland, Wales and Northern Ireland.

2.2 Background

There are many plant pests and diseases that, if they were to become established in the United Kingdom, could cause serious damage to our crops and plants. To guard against the spread of these harmful organisms official controls apply to the import of plants and plant produce from outside the EU, including inspection of imported material. These controls are based on EU and UK legal provisions.

Council Directive 2000/29/EC (the 'Plant Health Directive') establishes the Community plant health regime and contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Directive is implemented in Great Britain by the Plant Health (Great Britain) Order 1993. Separate but similar legislation operates in Northern Ireland.

Council Directive 2002/89/EC introduces an extensive package of amendments to the Plant Health Directive, including a requirement for Member States to charge for plant health inspections on certain material imported from outside the EU.

Charging is consistent with the principle that 'risk owners pay for risk mitigation', since most quarantine pests and diseases that arrive in this country do so via commercial trade in plants and plant produce. There has long been agreement among Member States over the need to introduce a harmonised charging regime to cover the cost of inspection of consignments of plants and plant produce imported from third countries. Some Member States already had such fees, while others, including the UK had waited, for a Community basis for charging.

The Directive provides two options for charging. Either Member States can charge according to a standard schedule of charges as set out in Annex VIIIa of Directive 2000/29/EC, or they can establish their own charges based on the actual cost of inspections, if the standard fees are insufficient to fully recover those costs.

2.3 Risk assessment

There are two main risks if the requirement to introduce charges is not implemented. Firstly, there is the risk of action by the European Commission. Infraction proceedings would be initiated. Secondly, we would be out of line with the rest of the Community and not charging could therefore be considered by the Commission as subsidising industry and contrary to EU law on State Aids.

3. OPTIONS

Four options were identified. Alternative proposals were also sought from those consulted, although none were forthcoming.

Option 1 - Do nothing

Option 2 - Adopt the schedule of standard fees set out in Council Directive 2000/29/EC

Option 3 - Establish our own fees that cover the cost of carrying out import inspections in England

Option 4 - Adopt the schedule of standard fees set out in Council Directive 2000/29/EC initially and review the position after a year

4. COSTS AND BENEFITS

4.1 Business sectors affected

The main businesses affected are commercial importers of plants and plant produce that require a plant health (or phytosanitary) certificate when imported from non-EU countries. In broad terms this includes plants, potatoes, the major fruit other than bananas and grapes, cut flowers and some leafy vegetables. Charities and voluntary organisations should not be affected unless they are involved in the commercial importation of controlled material.

4.2 Issues of equity and fairness

Based on pre-consultation discussions with trade organisations and individual businesses and responses to the written consultation exercise, it is envisaged that none of these measures will have an unfair impact on any particular sector of the industry. Our initial view that the likely burden on small businesses will not be any more onerous in relation to size, than it would be for larger businesses was challenged by 7 respondents to the consultation. However, the costs associated with inspecting a consignment of a certain size are the same whether it is imported by a large organisation or a small non-commercial importer. We will look at the impact on small businesses as part of the review process prior to any move towards increasing charges to cover costs.

Existing plant health chargeable services operate on a full cost recovery basis. The Forestry Commission also charges for plant health checks on imported timber on a full-cost recovery basis. They are currently reviewing those charges to take account of increased inspection costs. Full cost charges have been in place for some time for veterinary checks on imported animals and meat products.

Import inspection charges designed to cover costs have been introduced in the Netherlands (the main comparator for UK importers) and in Austria in advance of implementation of harmonised charging arrangements, with a charge per inspection of around £40 and £37 respectively. France and Spain intend to adopt the schedule of standard charges as set out in Annex VIIIa of Directive 2000/29/EC. Belgium are planning to do likewise and review the position after a year with a view to a move to full-cost recovery.

Option 1 - Do nothing

Benefits

- Industry would continue to receive import inspection services without charge.

Costs

- Failure to meet Government objective of cost-recovery, effectively subsidising a commercial sector where there is no economic rationale to do so.
- Annual loss of income to Defra of the order of £814k (Options 2 and 4) or £985k (Option 3). This is on the basis of inspection of around 24,000 consignments of controlled plants and plant produce per year and an average charge per inspection of £25 (Options 2 and 4) and up to £40 (Option 3).
- Potential for significant costs associated with dealing with infraction procedures and possibly action under EU law on State aids.
- Inconsistent policy between different Departments performing similar services.

Option 2 - Adopt the schedule of standard fees set out in Council Directive 2000/29/EC

Benefits

- Level playing field between English importers and ports and some of those on the continent with which they compete.

Costs

- Probable failure to meet Government objective of cost-recovery, assisting a commercial sector where there is no economic rationale to do so.
- Annual loss of income to Defra of the order of £171k (see above).
- Additional financial burden to industry - total annual cost of around £814k.
- Inconsistent policy between different Departments performing similar services

Option 3 - Establish our own fees that cover the cost of carrying out import inspections in England

Benefits

- Total cost of services provided is met by those who require import inspections for their business rather than the general taxpayer.
- Consistent policy between different Departments performing similar services.
- Possible distortion of trade as a result of charges in England being lower than those in some other Member States.

Costs

- Additional financial burden to industry - total annual cost of around £985k.
- Possible distortion of trade as a result of charges in England being higher than those in some other Member States.

Option 4 - Adopt the schedule of standard fees set out in Council Directive 2000/29/EC initially and review the position after a year

Benefits

- Level playing field between English importers and ports and some of those on the continent with which they compete.
- Phased approach to full-cost recovery easier for industry to absorb.
- Chance to assess full-cost of import inspection effort under new EU import regime.

Costs

- Probable initial failure to meet Government objective of cost-recovery, effectively subsidising a commercial sector where there is no economic rationale to do so.
- Additional financial burden to industry - total cost in first year of around £814k.
- Loss of income to Defra in first year of the order of £171k.

6. CONSULTATION WITH SMALL BUSINESS: THE 'SMALL FIRMS IMPACT TEST'

A significant proportion of companies in this sector are small to medium sized enterprises. A number of small businesses, and some trade organisations which include small businesses within their membership (e.g. British Ornamental Plant Producers, Flower Import Trade Association, Fresh Produce Consortium), took part in pre-consultation meetings to discuss how best to implement the requirement to introduce charges to cover the costs of import inspections. In common with the majority of businesses and trade organisations with whom we have discussed the issue, those small businesses who responded to the consultation would prefer to see

charges set which do not place them at a competitive disadvantage with their competitors in other Member States.

There was also concern that a single, across the board charge would unfairly penalise small-scale and non-commercial importers. There is no option to apply charges at a level below the standard fees set out in Council Directive 2000/29/EC but, as part of the review and consultation process prior to any move towards increasing charges to cover costs, we would check that there was no disproportionate effect on small businesses.

The Small Business Service has been consulted as part of this assessment.

7. COMPETITION ASSESSMENT

Implementation of options 2, 3 and 4 would impact upon a number of different markets, all of which are already subject to regulatory controls that may, in themselves, inhibit competition to some extent. However, we do not anticipate that implementation of any of the proposed options will result in any significant further restriction in competition in any particular market. A detailed assessment has therefore not been prepared.

The introduction of inspection charges will be an additional cost to businesses. Contrary to our initial assessment, based on responses to the written consultation it appears that in some cases it may not be possible for businesses to pass on the cost to customers or consumers, or to absorb them themselves. There may be some markets, particularly where profit margins are currently low, where demand is insufficiently robust for consumers to pay increased prices. If this is the case then there is the chance that some markets may not remain commercially viable.

8. ENFORCEMENT AND SANCTIONS

It is a statutory obligation under Council Directive 2002/89 that Member States charge for plant health import inspections. Implementation in England will be through a new statutory instrument, enforced by Defra, setting out the charges to be paid. The service is likely to operate on an invoicing basis and any unpaid charges will be pursued accordingly.

9. MONITORING AND REVIEW

Defra will operate a Memorandum Trading Account, which will 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 the appropriate level, with a formal review taking place every 12 months.

10. CONSULTATION

10.1 Within Government

Other relevant sectors within Defra, HM Customs and Excise, the Cabinet Office, HM Treasury and the Small Business Service have all been consulted.

10.2 Public Consultation

A number of individual businesses and trade organisations took part in pre-consultation meetings to discuss how best to implement the requirement to introduce charges to cover the costs of import inspections. A written consultation exercise was launched on 9 July 2004 and was due to run until 4 October 2004. The deadline was subsequently extended until 12 October to allow time for further comments following a series of open meetings with interested parties at the end of September and in early October. A summary of responses received is attached. The views of interested parties had also been sought in July 2001, during negotiation of changes to the Plant Health Directive, and an update on the outcome of those negotiations was issued in November 2002 to all those consulted.

11. SUMMARY AND RECOMMENDATION

Option 1 - Do nothing

Not implementing the new provisions will place England out of line with the rest of the Community. It would also result in infraction proceedings by the Commission and possibly action under EU law on State aids. Charging is consistent with the principle that 'risk owners pay for risk mitigation', since most quarantine pests and diseases that arrive in this country do so via commercial trade in plants and plant produce.

Option 2 - Adopt the schedule of standard fees set out in Council Directive 2000/29/EC

Adopting the standard fees in the Directive would result in a basic inspection charge of around £25 per consignment for most categories of material, increasing in proportion with the size of the consignment. It would ensure a level playing field between English importers and ports and some of those on the continent with which they compete. However, the standard fees would probably not cover the cost of carrying out import inspections in England. Government policy is that where charges are made for services they should normally be set on a full cost recovery basis and not provided at the expense of the general taxpayer. Existing plant health and other Defra chargeable services operate on a cost recovery basis.

Option 3 - Establish our own fees that cover the cost of carrying out import inspections in England

Setting our own scale of fees would provide more flexibility in ensuring that we recovered the cost of our inspection effort but this would be likely to result in fees that were roughly double the standard fees in the Directive, with a cost per consignment of up to £40 for most categories of material, increasing in proportion with the size of the consignment.

The total value of horticultural imports into the UK from third countries in 2002/03 was around £2bn. The cost of the current import inspection regime is insignificant in comparison with this figure. In principle, therefore, overall cost recovery should not be a problem. However, trade bodies and individual stakeholders who have taken

part in pre-consultation meetings have expressed concern that the level of charges applied in England should not put them at a competitive disadvantage with importers and ports in other Member States. It could be argued that introducing import inspection charges which were higher than the standard charges set out in the Directive was in excess of the basic requirements we are obliged to implement; placing UK importers at a disadvantage compared to importers in some other Member States leading to possible diversion of trade.

Option 4 - Adopt the schedule of fees set out in Council Directive 2000/29/EC initially and review the position after a year

Our preferred option, and one which was favoured by most respondents to the written consultation, is to adopt the standard fees in the Directive as an explicitly temporary solution with a move to full-cost recovery after a year, if the standard fees are not recovering costs. As the new regime will require a fundamental change in the way in which imported consignments are dealt with such an approach would give things a chance to bed down and allow us to fully assess its impact on inspection levels and costs. Continuing uncertainties about how several of the key elements will operate in practise makes it difficult at this time to predict accurately the cost of operating the new regime. It would also provide businesses with time to absorb the new charges.

We are therefore proposing that for the first year we adopt the minimum fees in the Directive (which are set in euros), with an uplift of 10% to cover against any fluctuation in the exchange rate which could take the sterling equivalent below the Euro minimum and additional charges, where applicable, for inspections undertaken outside normal working hours. The basic charge per inspection would be of the order of £25 for most categories of material (higher charge for potato consignments) with the charge reduced proportionally for those trades subject to reduced levels of physical inspection.

Our plan is to introduce charges via a statutory instrument in April 2005, with a review after 8 or 9 months so that, if necessary we are in a position to reset them via a further S.I. in April 2006.

12. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister…….

Date……

13. CONTACT POINTS

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