

Explanatory Memorandum to The Plant Health (Fees) (Wales) Regulations 2012

This Explanatory Memorandum has been prepared by Sustainable Futures, Natural Environment & Agriculture Team and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with:

Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Plant Health (Fees) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

John Griffiths

Minister for Environment & Sustainable Development

5 June 2012

1. Description

The purpose of this instrument is to provide for an increase in the fees payable in relation to plant health services provided by the Food and Environment Research Agency on behalf of Welsh Government, as part of a move towards full cost recovery of such fees, and in doing so, to consolidate several separate fees instruments into one new instrument covering all plant health fees payable in Wales (except export certification fees).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3 Legislative background

3.1 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 (“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 is implemented in England, for non-forestry matters, by the Plant Health (Wales) (Order) 2006 (SI 2006/1643). Similar but separate legislation operates in England, Scotland and Northern Ireland.

3.2 Article 13d of the Plant Health Directive requires Member States to recover the cost of the import inspections required by the Directive through fees. The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 (S.I. 2010/2917) implement that requirement in Wales. Where reduced checks have been set for trade in a particular commodity from a particular country, on the basis of the compliance record of that trade, a reduced fee is charged.

3.3 In line with the principle that the costs of statutory services should be borne by users who benefit directly from a service, charges also apply for the following activities required by the Plant Health Directive:

- Import inspections on potatoes imported from Egypt through the Potatoes Originating in Egypt (Wales) Regulations 2004 (S.I. 2004/2245)
- Plant health licensing services through the Plant Health (Licence Fees) (England and Wales) Regulations 1996 (S.I. 1996/26)
- Plant passporting services through the Plant Health (Plant Passport Fees) (Wales) Regulations 2007 (S.I. 2007/1765)
- Seed potato certification services through the Seed Potatoes (Fees) (Wales) (No.2) Regulations 2006 (S.I. 2006/2961).

3.4 The reason for making this instrument is to provide for increases in fees payable in relation to plant health, as part of a phased move towards full cost recovery of such fees, and, whilst doing so, to consolidate the various fees instruments specified above into one new instrument.

3.5 The instrument is subject to annulment (the negative procedure).

4 Purpose & intended effect of the legislation

4.1 FERA is responsible in Wales, on behalf of Welsh Government, for provision of plant health statutory services to facilitate trade and prevent the introduction and spread of plant pests and diseases.

4.2 Charging for these services is consistent with the principle that businesses using the service should bear the costs of any measures to prevent harm that they might otherwise cause by their actions or non-actions, since most serious pests and diseases that arrive in this country do so via commercial trade in plants and plant produce. Fees for plant health statutory services have not increased for many years and the current fees do not reflect the true cost of providing the services; with income received from business users currently less than 35% of the cost of the service provision.

4.3 Following a public consultation a phased increase in fees is being introduced to achieve full cost recovery over three years, with 50% of the gap being closed in 2012 and the remainder in two stages in 2013 and 2014. The Plant Health (Fees) (Wales) Regulations 2012 implement the first stage of the move towards cost recovery.

4.4 Most fees are substantially increased: import inspection fees by 229%, fees in relation to seed potatoes by 52%, licensing fees by 160%, fees for inspection of Egyptian potatoes by 184% and fees for plant passporting services by 55%. Full details of the old and new fees are given in the Annex.

5 Consultation

5.1 A consultation into these proposals to revise fees for five plant health services ran from 11 October to 5 December 2011, and was carried out by FERA on an England and Wales basis. The majority of respondents, although opposed to any increase in fees, favoured a phased increase in fees to achieve full cost recovery over three years.

5.2 Details of the consultation on FERA's review of fees for statutory plant health services, including a summary of responses, can be found at: <http://www.fera.defra.gov.uk/plants/feesChargingReview/consultation.cfm>

6. Regulatory Impact Assessment (RIA)

Please see below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Full Impact Assessments into the proposals were prepared by the Food and Environment Research Agency as part of the Consultation process. Five Impact Assessments were prepared to cover the five pieces of legislation being amended:

- The Plant Health (Licence Fees) (England and Wales) Regulations 1996 (S.I. 1996/26)
- The Potatoes Originating in Egypt (Wales) Regulations 2004 (S.I. 2004/2245)
- The Seed Potatoes (Fees) (Wales) (No.2) Regulations 2006 (S.I. 2006/2961).
- The Plant Health (Plant Passport Fees) (Wales) Regulations 2007 (S.I. 2007/1765)
- The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 (S.I. 2010/2917)

In each case, three options were presented

1. Do nothing
2. Introduction of fee increases to achieve full cost recovery during 2012.
3. Phased introduction of fee increases to achieve Full Cost Recovery by Year 3 of implementation (2014).

Full details of the Impact Assessments can be found in Doc 4.

Consultation

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Competition Assessment

A Competition Assessment has been completed, it is considered unlikely that the new Regulations will have an adverse affect on competition.

Post implementation review

A post implementation review will be undertaken once full cost recovery has been achieved.

APPENDIX A

The Competition Assessment

1. There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. If the test results show that the risk is low (and there are no anticipated significant benefits for competition) you will only need to record the results of the filter test (including a brief description of any competition effects that are anticipated). If, on the other hand, the test results show that the risk is high you will need to contact D E & T Operations Team for further advice on whether a more detailed assessment and possible further action is needed.
2. You should consider the market that will be affected, i.e. the firms that compete against one another to sell the same or similar products or services. A regulation or proposal may impact directly on just one sector or on several, and some regulations may have indirect effects on other, linked, sectors which either supply goods or services to the affected sectors or buy products from them. (e.g. the recreational craft directive affects the engines needed for boats used for leisure purposes. Within this though there are two distinct markets: engine manufactures that make standard engines, and boat builders who modify them for use on leisure boats.) Some regulations impact almost universally on a very wide range of sectors (e.g. the national minimum wage).
3. For a meaningful competition assessment you must ensure that affected markets are correctly identified. Help and /or advice can also be obtained from the OFT, which has published guidance on markets, entitled "Market definition" (OFT403)
http://www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft403.pdf.

The competition filter test

4. This has nine straightforward questions. Where the regulation is likely to have an impact directly on more than one sector (whether directly or indirectly) the competition filter test should be carried out for each sector affected. Where a regulation might impact on many sectors, you will need to identify those sectors that might be affected to the greatest extent. Please contact D E & T Operations Team for further advice
5. The competition filter test is set out below, together with points to consider in answering the questions. Further detail is contained in the OFT's published Guidelines for Competition Assessment (OFT 876) together with examples and references [Competition Policy - The Office of Fair Trading](#)

| The competition filter test | |
|--|---------------------|
| Question | Answer yes or no |
| Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? | No |
| Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share? | No |
| Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? | No |
| Q4: Would the costs of the regulation affect some firms substantially more than others? | Yes |
| Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation? | No |
| Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| Q8: Is the sector characterised by rapid technological change? | No |
| Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products? | NO |

6. Each “yes” answer indicates a possible competition concern.

- “Yes” answers to less than half the questions suggest that the regulation is unlikely to have a significant detrimental effect on competition. As new information comes to light, this result should be re-affirmed by re-applying the filter test.
- “Yes” answers to more than half of the questions indicate that there is some risk that the regulation may have a significant effect on competition and a detailed assessment is necessary. Please contact D E & T Operations Team for further advice.

Questions 1 to 3: the market

7. Where there are a few large firms in the market, or it is difficult to establish a new firm, competition concerns are more likely.

Question 4: substantially different effect on businesses/organisation

8. Will the costs fall differently on different businesses/organisation? This is relevant where the costs of complying with a regulation are not proportional to output.

Question 5: changes to market structure

9. If regulations are likely to penalise certain firms, then this may affect whether those firms stay in business. This could then alter the number or size of firms in the market. The most likely case is where small firms are affected more than large ones are.
10. Consider whether firms that face a greater impact will be able to stay in the market given the additional costs they face. If they have to raise prices as a result of the regulation will customers move to other suppliers?

Questions 6 and 7: penalising new suppliers

11. Consider whether new suppliers to the market would be affected differently from existing suppliers. An example would be where new firms must meet higher standards immediately, while established firms have a longer period in which to meet them. This could make it harder for the new firms to compete. However, such an effect might be offset by new firms not having to face the costs of changing existing equipment and/or processes, or where existing suppliers have already, voluntarily, decided to carry out the actions required under the regulation.

Question 8: technological change

12. New technologies may advantage some companies over others who may be driven out of the market. Consider whether technological change will affect the number or size of firms in the market. Where only small changes in technology are happening continuously, this question should be answered "no".

Question 9: restrictions on suppliers

13. Will the regulation stop suppliers providing products or services that they would otherwise provide? An example would be a regulation imposing minimum standards, thus preventing suppliers from selling lowest cost or quality options. Further examples would be regulations imposing price restrictions or restrictions on what firms use to make their products. If locations are restricted, customers may suffer, especially if there are local markets.

Presenting the results of the competition filter test

14. The findings of the competition filter test should be written up as part of the draft regulatory impact assessment (and should also be included in the final impact assessment if no detailed assessment is required). You should include a clear statement setting out whether there is likely to be any detrimental effects on competition, with reasoning and evidence presented to support this conclusion. If you anticipate any beneficial effects, you should assess these and include them in the write-up. This will improve internal and external consultation and inform Ministers.

The detailed assessment

15. The aim of the detailed assessment is to understand in more depth the potential competition impacts identified whilst carrying out the competition filter test. The Office of Fair Trading's (OFT) "Guidelines for Competition Assessment" (OFT 876) [Competition Policy - The Office of Fair Trading](#) provide detailed guidance on how to approach the detailed assessment. The OFT publication "Market Definition" (OFT 403) http://www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft403.pdf provides guidance on how to identify the relevant markets.