

Explanatory Memorandum to the Plant Health (Fees) (Forestry) (Wales) Regulations 2019.

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government 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) (Forestry) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

7 March 2019

PART 1

1. Description

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 Wales from third countries (and consolidates the Plant Health (Fees) (Forestry) Regulations 2006). These fees are set out in Schedules 3, 3A and 4 to the Regulations and are being increased so that they enable full cost recovery for the checks, bringing Welsh fees in line with those charged in England and Scotland. These Regulations also make an adjustment to the fees to reflect changes in inspection levels that apply to imports of wood of maple from Canada and the United States of America.

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

Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the SI because it is giving effect to EU provisions and we are not amending primary legislation.

3. Legislative background

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.

The Plant Health (Fees) (Forestry) (Wales) Regulations 2019 are being made pursuant to powers in the European Communities Act 1972.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union (S.I. 2010/2690)

Section 2(2) of the European Communities Act 1972 provides discretion as to which procedure to use. As we are obliged to implement EU law and we are not amending primary legislation, these Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

To enable cost effective implementation of plant health regime to forestry by bringing the Welsh Fees regime into line with the fees in England and Scotland and revoking other Orders as required.

These Regulations will apply to Wales only. These Regulations would have a direct financial impact on future importers of material covered by the Regulations using Welsh entry points. However, the Forestry Commission has confirmed that there have been no controlled timber inspections performed in Welsh ports in recent years and there have been no registered forestry trader inspections which would have resulted in plant health fees being applied. The regulation will bring Welsh fees in line with those charged in England and Scotland correcting the current disparity.

The reduced rate fees in relation to plant health checks on consignments of *Acer saccharum* from Canada and the United States of America are removed. Under the procedure provided for in Articles 13a(2) and 18(2) of Council Directive 2000/29/EC, these consignments are no longer subject to reduced levels of plant health checks and are therefore no longer eligible for reduced rate fees;

5. Consultation

No consultation has been conducted due to the lack of importers to Wales in recent years.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: keep the status quo

No increase would be made to the fees charged in Wales. Welsh fees would remain out of step with those in England and Scotland.

Option 2: make the legislation

These Regulations would bring the fees in Wales in line with the rest of Great Britain. The changes are as follows—

- (a) the fees for plant health checks increase from £26 to £31.20 per consignment (and from £0.20 to £0.25 for each additional m³ in excess of 100m³ in relation to a consignment of wood other than wood in the form of shavings, chips or sawdust);
- (b) the reduced rate fees in relation to plant health checks on consignments of *Acer saccharum* from Canada and the United States of America are removed. N.B. Under the procedure provided for in Articles 13a(2) and 18(2) of Council Directive 2000/29/EC, these consignments are no longer subject to reduced levels of plant health checks and are therefore no longer eligible for reduced rate fees;

(c) the fees for documentary checks increase from £6 to £7.20 per consignment and for identity checks from £6 to £7.20 and, for bulk loads of 100m³ or more, from £12 to £14.40, per consignment.

Other than those stated above the fees remain the same as in the Plant Health (Fees) (Forestry) Regulations 2006.

7. Costs and benefits

Option 1 Cost/Benefit analysis:

The Forestry Commission has confirmed that there have been no controlled timber inspections performed in Welsh ports in recent years and there have been no registered forestry trader inspections which would have resulted in plant health fees being applied. In the event that any importers decide to use Wales in the future then they would be charged fees at the current rate for the required plant health checks rather than the higher fees imposed when importing through England or Scotland.

The current situation creates a disparity between Wales and the rest of Great Britain. This could result in Wales being seen as a more attractive importing destination in the future due to lower fees for plant health checks in comparison with England and Wales with consequently a higher number of inspections being required.

The Forestry Commissioners currently deliver a range of functions on a cross-border basis within Great Britain. The Scottish Parliament has recently approved the Forestry and Land (Scotland) Act 2018 which brings to an end the functions of the Forestry Commission as a cross-border public body. This means that from 1st April 2019 the part of the Forestry Commission which delivered those cross-border functions will be wound up and new arrangements are required to secure the continued delivery of these functions. These will be set out in a Memorandum of Understanding (MoU) between Welsh Ministers, Defra Ministers, Scottish Ministers and the Forestry Commissioners.

One of the Functions covered by the MoU relates to Plant Health and Forest Reproductive Materials and covers the inspections referred to in this proposed Regulation. It is important that the Welsh legislation referred to in this Policy Instruction is updated to bring the fees in Wales in line with England and Scotland before the new arrangements under the MoU come into effect to ensure parity across GB in the delivery of the functions.

Option 2 Cost/Benefit Analysis

This option will mean that any notional future importers of the material covered by the Regulation would be charged higher fees when importing to Wales than is currently the case, the amounts of the increases are as set out above. However, the Forestry Commission has confirmed that there have in fact been no controlled timber inspections performed in Welsh ports in recent years.

There is no increase in costs to the Welsh Ministers through Option 2. The proposed Regulation will support environmental good practice by strengthening the plant health and biosecurity measures in place in Wales by closing the

current “opportunity” created by the lower fees for importing of restricted materials and ensuring parity with the rest of GB.

Summary

Option 2 has been selected in order to bring Welsh fees into line with those charged in the rest of GB. This brings parity across the GB marketplace and supports a joined-up approach across the 3 Nations of GB to strengthen the implementation of plant health and biosecurity measures.

8. Consultation

Not applicable

9. Competition Assessment

This regulation would have a direct financial impact on future importers of material covered by the regulation using Welsh entry points. However, the Forestry Commission has confirmed that there have been no controlled timber inspections performed in Welsh ports in recent years and there have been no registered forestry trader inspections which would have resulted in plant health fees being applied. The regulation will bring Welsh fees in line with those charged in England and Scotland correcting the current disparity.

10. Post implementation review

The Welsh Government has a seat on the Cross-Border Plant Health Steering Group where plant health inspections and fees are discussed at a GB-level. This will provide the forum for the Welsh Government to review the effectiveness of this legislation.