

## **REGULATORY APPRAISAL**

### **PLANT HEALTH, WALES**

#### **THE PLANT HEALTH (EXPORT CERTIFICATION) (WALES) ORDER 2006**

##### **Purpose and intended effect of the measure**

1. The Plant Health (Export Certification) (Wales) Order 2006, reintroduces charges made to the potato industry and the plant and plant products industry for services relating to the issue of both phytosanitary certificates and phytosanitary certificates for re-export and also pre-export inspections of plants, plant products or other objects for export to countries outside of the European Union. A phytosanitary certificate provides written verification that plants or plant products have been inspected according to official procedures and are considered to be free from harmful pests or diseases. The charges of £81 per hour, are charged for the time an Inspector spends on site. However, the charges also cover the issuing of any phytosanitary certificates and related administration. Small exporters are charged at a concessionary rate.
2. Under the International Plant Protection Convention, the UK Government agreed to a number of measures to control pests and diseases of plants and plant products and prevent their introduction and spread across national boundaries. The UK's obligations under the Convention are primarily implemented, in Wales, by the Plant Health (Wales) Order 2006, which will replace the Plant Health (Great Britain) Order 1993.
3. The Plant Health (Export Certification) (Wales) Order 2006, implements the UK's obligations under the Convention to provide for the issue of phytosanitary certificates to exporters to countries outside the European Union. Phytosanitary certificates are necessary in order to meet the requirements of those countries' phytosanitary regulations. The Plant Health (Export Certification) (Wales) Order 2006 also obliges the UK to allow exporters to meet similar requirements imposed by non-signatory states. These obligations are not covered by The Plant Health (Wales) Order 2006.
4. Although invoicing was suspended in 1999, Defra's Plant Health and Seeds Inspectorate (PHSI) has continued to issue both phytosanitary and phytosanitary certificates and to conduct pre-export inspections of plants, plant products and other objects for export to countries outside the European Union without charge, whilst the Department for Food, Environment and Rural Affairs (Defra) undertook a review to determine whether express statutory authority should be provided in respect of those charges. This review, which included services provided in other areas of plant health as well as animal health and forestry, concluded that the legislative bases were not properly in place for the services described. The Welsh Assembly Government is now looking to put these charges on a proper legal footing with the intention that the provision of these services is, as far as possible, cost neutral.

5. The charges prescribed by this Order are to be re-introduced at the same rate as applied prior to suspension and reflect the cost of performing the services for which charges are made. The charge is £81 per hour that an Inspector is on site, with a minimum payment of £40.50. Small exporters will be charged at concessionary rates, which are half the rates that would otherwise be payable i.e. £40.50 per hour with a minimum payment of £20.25. The charges also cover the issuing of any phytosanitary certificates and related administration. To be eligible for these concessionary rates exporters must either not be registered for VAT or have a value of certified exports of less than £5,000 in the previous financial year.

### **Risk Assessment**

6. A number of risks arise if this legislation is not reintroduced. The main risk centres on the allocation of adequate resources to undertake this work. Currently Defra's Plant Health and Seeds Inspectorate (PHSI) manage the Export Certification Scheme in Wales on behalf of, and at no additional cost to, the National Assembly. By achieving cost recovery, PHSI is better able to keep pace with industry demands for services.
7. A further risk is that failure to reintroduce charging could be considered by the European Commission as subsidising industry and therefore contrary to EU law on State Aids. Charges are presently levied by European counterparts for equivalent services. Finally, if the offence provisions that relate to information supplied to obtain a certificate are not brought into force there is an increased risk that the UK's obligations under the International Plant Protection Convention may be breached.

### **Options**

#### Option 1 - Do Nothing

8. Although invoicing was suspended in 1999, PHSI has continued to issue both phytosanitary certificates, phytosanitary certificates for re-export and to conduct pre-export inspections of plants, plant products or other objects for export to countries outside of the European Union without charge.. In so doing, this has increased the running costs of plant health services and presented a conflict with the other areas where charging has been ongoing.

#### Option 2 - Make the Legislation

9. The same fee rates would apply as those in place prior to suspension in 1999 (standard PHSI charge is £81 per hour). The £81 charge is for the on site time of an Inspector whilst making pre export inspections, however it also covers the cost of issuing any phytosanitary certificates and any related administration. This would allow PHSI to recoup the costs incurred in the operation of this scheme.

## **Benefits**

10. The benefits of making the legislation are:

- Cost-recovery - the services provided to the potato industry and the plant and plant products industry, will be self-funding. The costs will be borne by those who stand to make a financial gain rather than being funded by the taxpayer;
- Consistency – prior to suspension in 1999, charges were already being made for these services. Consequently, reintroducing fees will not constitute a new development for industry and will form part of an existing charging scheme within the range of plant health services;
- Fairness – the work involved and the amount of technical time needed for inspections can be accounted for by continuing to charge for technical input by the quarter hour, with a minimum fee; and
- Legal – the risk of Commission action in relation to State Aid rules would be removed.

## **Costs**

11. The costs arising from the implementation of this Order will be met by Defra's Plant Health and Seeds Inspectorate (PHSI), which has been appointed to operate in Wales on behalf of the National Assembly. Therefore, there are no financial implications for the Assembly. The costs of implementation will be met from within Defra's existing budgets. The collection of fees to cover pre-export services and associated costs are set against an agreed scale of fees in the Order.

12. The industry would be required to meet the actual costs for the provision of these services. This is a charge, of £81 per hour with a minimum payment of £40.50, is invoiced for the length of time an Inspector is on site. This charge covers all inspections, the issuing of any phytosanitary certificates and the cost of administration. The charge is payable each and every time an Inspector makes a visit. Small Exporters are charged at a concessionary rate, which is half the rate otherwise payable. this Order.

## **Competition Assessment**

13. The Competition Filter has been applied and the conclusion is that there is no significant risk of impact on competition. A detailed assessment has therefore not been prepared.

14. In applying the filter, the markets identified were the potato industry and the plant and plant products industry. In this sector, no businesses are known to have more than a 10% share of the market. The proposal will have no impact on market structure and will not adversely affect new firms compared to existing ones. Rapid technology change is not a characteristic of the markets. Finally, the introduction of this legislation has

no impact on the choice of firms in respect of price, quality, range or location of their products.

## **Consultation**

### With Stakeholders

15. A public consultation was carried out on this Order by Defra on an England only basis in September 2004. In Wales, a separate consultation with the National Farmers Union - Cymru and the Farmer's Union of Wales was carried out between 10 March 2006 and 7 April 2006. One response was received. The response recommended suspending the re-introduction of fees to give Welsh industry a financial advantage. This was considered but ruled out as a viable option as the failure to reintroduce charging would be considered by the European Commission as subsidising industry and therefore contrary to EU law on State Aids. In addition, the costs of running plant health services would need to be borne by the public purse thus presenting a conflict with other areas where industry charging has been ongoing.

### With Subject Committee

16. The Order was notified to the Environment, Planning and Countryside Committee via the list of forthcoming legislation on 4 February 2004 (EPC(2) 02-04 (p.4) item No. 18) and has remained on the list ever since. At that stage the Order was entitled The Plant Health (Export Certification) Wales Order 2004. The correct title of the legislation was notified to the Committee, via the list of forthcoming legislation on 1 February 2006 (EPC(2)-02-06(p.3). The Order was not identified for detailed scrutiny.

## **Review**

17. There is a continuous programme to monitor plant health developments, carried out at Community level by the Standing Committee on Plant Health. This takes into account developments within Member States, including new pest risk assessments and interceptions. This procedure will provide the opportunity where necessary, to consider any further changes to the plant marketing and passporting regime. The Commission's Food and Veterinary Office (FVO) undertakes audits of Member States' compliance with EC legislation, this will include monitoring compliance with this Order in Wales. This legislation may also be reviewed a year after implementation to take account of any changes that may arise.

## **Summary**

18. The Plant Health (Export Certification) (Wales) Order 2006, reintroduces charges made to industry for services relating to the issue of phytosanitary certificates, phytosanitary certificates for re-export and pre-export services carried out prior to an application for a certificate being submitted.