

**Explanatory Memorandum to
The Plant Health (Import Inspection Fees) (Wales) Regulations 2010**

This Explanatory Memorandum has been prepared by the Department for Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Plant Health (Import Inspection Fees) (Wales) Regulations 2010.

Elin Jones AM

Minister for Rural Affairs, one of the Welsh Ministers

7 December 2010

1. Description

The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 implements Council Directive 2000/29/EC which requires Member States to charge fees to cover costs of certain plant health examinations on plants and plant products imported from third countries. These Regulations revoke and remake the Plant Health (Import Inspection Fees) (Wales) (No 2) Regulations 2006 and change the fees prescribed in the earlier Regulations.

2. Matters of special interest to the Constitutional Affairs Committee

These Regulations amend the fees to be charged for plant health examinations of imported material, namely documentary checks, identity checks and physical inspections, and amend the list of trades eligible for reduced rate inspections because of high levels of compliance with regulatory requirements. The amended fees in Schedule 2 of the Regulations will come into force on 1 January 2011.

3. Legislative background

Council Directive 2000/29/EC on protective measures against the introduction of organisms harmful to plants or plant products and against their spread within the European Union establishes the EU plant health regime. Directive 2000/29/EC was amended, among other amendments, by Council Directive 2002/89/EC. Among the changes introduced by this Directive was clarification of the existing requirement for mandatory examinations on certain imported plants and plant produce and obligations to charge fees for these inspections. Directive 2000/29/EC, as amended, (Article 13a(2)) also contains a procedure for reducing the rate of inspections of certain imports and for charging a correspondingly reduced fee for inspections (Article 13d(2)).

The powers of Plant Health Inspectors to carry out official inspections of imported plant material in Wales are contained in the Plant Health (Wales) Order 2006. The authority to charge a fee for these inspections is provided for in a separate legislation, the Plant Health (Import Inspection Fees) (Wales) (No 2) Regulations 2006. The present Regulations revoke and remake the 2006 regulations and all subsequent amendments made to the 2006 principal regulations.

The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 are made with Treasury consent under section 56 (1) of the Finance Act 1973. Those powers are exercisable in relation to Wales by the Welsh Ministers by virtue of section 59 (5) of the Government of Wales Act 2006.

This statutory instrument follows a negative procedure timetable.

4. Purpose & intended effect of the legislation

Member States are required to carry out and charge for inspections on all consignments subject to plant health control which pose a risk of introducing new plant pests and diseases to the European Union. These checks cover plants, such as potatoes and fruit other than bananas and grapes, cut flowers and some leafy vegetables. In England and Wales, the official checks are undertaken on behalf of the Welsh Assembly Government by the Plant Health and Seed Inspectorate (PHSI), which is operated by the Food and Environment Research Agency (FERA).

In England and Wales, a risk-based approach is adopted to import inspections. A reduced level of inspection is permitted for certain trades with a history of compliance under the European Commission's 'reduced checks' arrangements. This means the omission of physical examination of plant material. However, documentary and identity checks must still be undertaken in such situations. A pro-rata reduction in the plant health check charge is applied to trades which qualify under the reduced check arrangements. The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission.

The standard fees for inspection are set out in Directive 2000/29/EC and are expressed in Euros. These charges were converted to sterling for the purposes of the Plant Health (Import Inspection Fees) (Wales) (No.2) Regulations 2006. At the time of the introduction of the fees it was understood that EU standard fees would fall some way short of what would be required to cover the cost of import inspections in England and Wales. Usual Government policy is that where charges are levied they are set at a level to provide for full cost recovery. However, following public consultation, it was decided that in order to give the trade time to adapt to the additional cost and to allow data to be collected on the cost of carrying out import inspections, the standard charges would be adopted as a temporary measure.

The Euro / Sterling exchange rate has altered significantly since the introduction of the Plant Health (Import Inspection Fees) (Wales) (No 2) Regulations 2006 and there is a need to bring the charges up to the equivalent EU minimum standards. The new Regulations set out revalorised fees based on the Euro / Sterling exchange rate as at 23 August 2010, resulting in an increase in the total charge for a typical consignment from £23.82 to £25.70 - an increase of 9%. This brings the fees back into line with the EU standard level, and therefore mitigates the risk of infraction proceedings for non-compliance with the EU requirements.

The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 will also introduce the most recent fees applicable under the reduced checks provisions of Directive 2000/29/EC. The level of fees and the trades which are affected by these changes were agreed on at the Commission Working Group Meeting in June 2010. As a result of the agreement, the levels of inspection increased on 5 trades (to 100% in the case of carnations from Israel and guavas from Brazil) because of pest or disease findings. The level of inspection are decreased on 6

trades in recognition of negative pest and disease findings as shown by records. In line with the usual Commission timetable the changes will apply from 1 January 2011.

5. Consultation

Consultation with industry on an England and Wales basis was completed prior to plant health inspection fees being introduced in Wales in 2006. The industry was content with the risk-based approach which allows new trades to be added to the reduced rate regime following the annual review of industry compliance by the Commission.

Consultation on the revalorisation was undertaken between 1 April and 24 June 2010 on an England and Wales basis. Most respondents were opposed to the increase in import inspection fees and we are proposing to consider with FERA some suggestions which would reduce the administrative and financial burden on the industry for future regulatory arrangements.

The consultation paper and a summary of responses can be found at:

<http://www.defra.gov.uk/corporate/consult/plant-health/index.htm>.

6. Regulatory Impact Assessment (RIA)

Regulatory Impact assessment has not been prepared because it was not deemed necessary.

The level of imports of plants and plant produce to Wales from third countries is low and any change to the current fee regime will have a minimal impact on Welsh businesses.

The changes to import inspections fees in Wales mirror the regulatory changes introduced in England by FERA. In Wales, FERA's PHSI carries out inspections and enforcement duties on behalf of the Welsh Assembly Government in relation to import inspections. Because of this arrangement, the aim is to align English and Welsh regulations and keep the fees at equivalent levels in England and Wales.