

## **Explanatory Memorandum to The Plant Health (Miscellaneous Amendments) (Wales) Regulations 2014**

This Explanatory Memorandum has been prepared by the Natural Environment & Agriculture Team within the Natural Resources and Food Department 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 (Miscellaneous Amendments) (Wales) Regulations 2014.

Minister for Natural Resources and Food

5 June 2014

## 1. Description

This Order amends the Plant Health (Wales) Order 2006 (S.I. 2006 No. 1643 (W 158)) (“the PH Order”) to implement Decision 1/2010 of the Joint Committee on Agriculture set up by the agreement between the European Community (now the European Union) and the Swiss Confederation on trade in agricultural products (2011/83/EU). It also amends the PH Order to provide for an information gateway between Her Majesty’s Revenue and Customs (HMRC) and the Welsh Ministers.

This Order also amends The Potatoes Originating in Egypt (Wales) Regulations 2004 (S.I. 2004 No. 2245 (W 209)) to implement Commission Implementing Decision 2011/787/EU, which concerns emergency measures which may be taken against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards potatoes originating in Egypt.

## 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

The Welsh Ministers are designated for the purposes of making regulations under s2(2) of the European Communities Act 1972 in relation to the common agricultural of the European Union, by virtue of the European Communities (Designation) (No. 5) Order 2010 (SI 2010/2690). The Welsh Ministers make these Regulations in exercise of those powers.

This instrument will follow the negative resolution procedure.

## 4. Purpose & intended effect of the legislation

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<sup>1</sup> (“the Plant Health Directive”) establishes the EU plant health regime. The Directive (and, therefore, the PH Order) is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. The Plant Health Directive is implemented in Wales by the PH Order and by the Plant Health (Forestry) Order 2005 (S.I. 2005 No. 2517) which extends to Great Britain. Similar but separate legislation to the PH Order operates in England, Scotland and Northern Ireland.

Plant material originating in Switzerland (as a non-member of the EU) would normally be subject to plant health controls set out in the Directive applicable to third countries. Annex 4 of the agreement between the EU and the Swiss Confederation on trade in agricultural products is intended to facilitate trade between the EU and Switzerland in plant material subject to plant health controls. Appendices to Annex 4 set out what controls should be applied to plant material originating in either the EU or Switzerland and moving to the other party and to material arriving in either party via the other from a third country. In most cases Switzerland is treated as a Member State for plant health purposes.

Decision 1/2010 (2011/83/EU) of the Joint Committee on Agriculture responsible for administering the agreement amends appendices 1,2 and 4 of Annex 4 to reflect changes in the plant health legislative provisions of the EU and Switzerland which are intended to further facilitate trade by extending the range of plant health material for which equivalence arrangements apply. Annex 4 is implemented in Wales by the Plant Health (Wales) Order 2006 and this instrument makes the necessary amendments to the Order.

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<sup>1</sup> This Directive can be found at [http://europa.eu/eu-law/legislation/index\\_en.htm](http://europa.eu/eu-law/legislation/index_en.htm)

The Regulations also introduce a new provision to the Plant Health (Wales) Order 2006, agreed with HMRC, to allow the transfer of data for the purposes of the Order from HMRC to the Welsh Ministers and an associated offence for wrongful disclosure of information so provided.

Under the Commissioners for Revenue and Customs Act 2005 (“CRCA”), HMRC are unable to provide the Food and Environment Research Agency (FERA) with data on seizures made from passengers, commercial importers and postal traffic or for any other bulk information exchanges which may be sought for plant health risk assessment purposes without a statutory information gateway in place in plant health legislation. HMRC considers that there is no need for an information gateway to exchange consignment specific information with plant health inspectors for routine customs clearance purposes, as such exchange is permitted by section 18(2)(a)(i) of CRCA. However the gateway is needed in order to cover bulk information exchanges.

The criminal offence for wrongful onward disclosure is a necessary part of the gateway provision and provides that it is an offence for a person who has received information by that route from a HMRC official to disclose it to another person, if the data relates to an identifiable person, the disclosure is not for the purposes of the Order, and HMRC have not consented to the disclosure. This offence parallels that in section 19(1) of CRCA, which provides that a person commits an offence if he contravenes the restriction of disclosure in section 18(1) of that Act by the disclosure of information relating to an identifiable person.

*Ralstonia solanacearum* (Smith) Yabuuchi et al. is an organism harmful to potato tubers and as such is subject to measures provided for by the Plant Health Directive and Council Directive 98/57/EC of 20 July 1998 on the control of *Ralstonia solanacearum* (Smith) Yabuuchi et al. Following interceptions of *Ralstonia solanacearum* (Smith) Yabuuchi et al. on potato tubers originating in Egypt, the Commission adopted Decision 2004/4/EC on 22 December 2003 authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt. That Decision prohibited the entry into the Union of potato tubers originating in Egypt unless certain requirements were complied with. Requirements included the establishment of pest-free areas in Egypt for growing potatoes for export to the EU. The measures were implemented in Wales through the Potatoes Originating in Egypt (Wales) Regulations 2004.

As interceptions of *Ralstonia solanacearum* (Smith) Yabuuchi et al. continued to occur on potatoes originating in Egypt emergency measures have remained in place. As a result of actions taken by Egypt, in particular a new control regime for the production and export of potatoes to the EU, the situation has improved, although not to the extent that the requirements can be revoked. In discussion with Egypt, it has been concluded that this improvement should be recognised through revoking the existing derogation and replacing it with a Decision, which focuses only on import elements. Pre-export arrangements will now be covered by Egyptian legislation, which has previously been considered by the EU’s Standing Committee on Plant Health. Commission Implementing Decision 2011/787 repeals and replaces Decision 2004/4/EC and its various amendments to give effect to this development. No significant change to the import requirements are being introduced.

## **5. Consultation outcome**

A shortened four week consultation on the various amendments to legislation included in this instrument was carried out in 2012 and no responses were received.

## **6. Regulatory Impact Assessment (RIA)**

There has been no regulatory impact assessment undertaken as the amendments to the PH Order are technical changes only. There is no impact on charities or voluntary bodies foreseen or on the public sector.

The Food and Environment Research Agency (FERA), is an executive agency of the Department for Environment, Food and Rural Affairs (DEFRA) and is responsible in Wales, on behalf of the Welsh Ministers for provision of plant health statutory services to facilitate trade and prevent the introduction of plant pests and diseases. FERA have confirmed that they have no record of any importation of plant or plant material through Welsh ports.