

Explanatory Memorandum to the Plant Health (Wales) (Amendment) Order 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 (Wales) (Amendment) Order 2010.

Elin Jones

Minister for Rural Affairs

12 July 2010

1. Description

This Order amends the Plant Health (Wales) Order 2006 to implement Council Directive 2007/33/EC on the control of potato cyst nematodes. Directive 2007/33/EC introduces measures to detect and control European populations of Potato Cyst Nematode.

2. Matters of special interest to the Constitutional Affairs Committee

The Plant Health (Wales) Order 2006 was made in English only due to its highly technical nature and size (138 pages). In addition, the Order and any subsequent amendments are targeted at a very limited audience within Wales.

3. Legislative background

These Regulations are made in exercise of powers under the Plant Health Act 1967. Those powers are exercisable in relation to Wales, by the Welsh Ministers.

This statutory instrument follows a negative procedure timetable.

4. Purpose & intended effect of the legislation

Potato cyst nematodes (PCN) are serious pests of potato crops world-wide, causing significant yield loss. They feed on potato roots and can spread with potato tubers, as well as on plants, soil and machinery. They were among the first plant pests to be subject to European plant health legislation, in 1969. PCN were considered as 'quarantine' (i.e. of economic importance but not established in the EU) pests and are included in the Plant Health Directive, meaning that their introduction and spread is banned. The Seed Potatoes Marketing Directive – which includes obligatory requirements for those who wish to market seed potatoes - also requires that both the production ground of seed potatoes and individual lots of seed potatoes are free of PCN.

Potatoes are an important crop for the United Kingdom. Maintaining the supply of seed potatoes free of organisms of plant health concern, such as PCN, is vital to the ware or eating, potato industry, which relies on healthy planting stock. It is also important for export sales, to meet the requirements of importing countries. Therefore, PCN control is important to maintain the UK's plant health status for certain crops and also to comply with EU requirements. However, much ware potato production area is now infested with PCN due to the restricted scope of the 1969 Directive and the limited effectiveness of some control methods, so it is also important to find solutions for those who are affected by outbreaks of this pest. The 1969 Directive provides only limited opportunities to make use of land found infested with PCN.

An updated Directive on PCN control (2007/33/EC) was adopted by the European Council in 2007 to take account of changes in the understanding of the biology of the pest, its distribution across the EU and practices within the potato industry. It includes strengthened soil testing requirements, to improve protection for seed potato production, and the option of implementing a control

programme on infested land, allowing ware potatoes to be grown, which is helpful for growers in this situation. The possibility of growing certain plant species on infested land has also been introduced, provided they are disinfested after harvesting. The new Directive has to be implemented by Member States from 1 July 2010, in preparation for planting in 2011.

The controls on PCN are currently implemented in Wales through:

- Schedules 1 and 4 of the Plant Health (Wales) Order 2006, which implement the requirements of the Plant Health Directive in relation to the introduction and movement of PCN, seed potatoes and plants with roots intended for planting.
- Schedule 15 of the Plant Health (Wales) Order 2006 implements the requirements of the PCN Control Directive relating to land contaminated with PCN.
- Schedule 1 of the Seed Potatoes (Wales) Regulations 2006 implements the requirements of the Seed Potatoes Marketing Directive that both the production ground of seed potatoes and individual lots of seed potatoes are free of PCN.

To give effect to the conclusions arising from the 2009 consultation exercise and to implement the measures in the new Control Directive, the Plant Health (Wales) (Amendment) Order 2010 will replace Schedule 15 of the Plant Health (Wales) Order 2006. In particular, there will be requirements on the demarcation of fields infested with PCN, planting restrictions for such fields and a requirement to undertake a PCN control programme if ware potatoes are to be grown.

A key aim of the new Directive is to produce a harmonised approach to testing for PCN, in particular that the sampling rate for official pre-crop soil testing is the same across the EU. A single standard sampling rate will therefore be imposed. A lower rate will be set for land where no potatoes have been grown in the previous six years, or where previous official tests have found the land to be free of PCN. Both the standard and the lower rate may be reduced for larger fields, which will help to offset the higher probability of detecting PCN when larger fields are tested.

A separate amendment to the Seed Potatoes (Wales) Regulations 2006 will implement the required changes to complete the transposition of Council directive 2007/33/EC.

5. Consultation

Consultation was undertaken on an England and Wales basis between March and June 2009.

6. Regulatory Impact Assessment (RIA)

Regulatory Impact assessment is not considered necessary because these Regulations transpose Commission Directive 2007/33/EC and only slightly amend the existing legislation.

7. Competition Assessment

These Regulations are not expected to have a significant impact on competition, because the amount of seed potatoes marketed will be small in relation to the total market, and all producers will have to comply with the Order.

8. Post implementation review

The new arrangements will be monitored in England and Wales by the Food and Environment Research Agency (Fera) under existing enforcement procedures and will be reviewed annually until the required review at European Union level in 2011.