

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH (AMENDMENT NO 3) ORDER (NORTHERN IRELAND)**

**2010 No. 307**

**Introduction**

1. The Department of Agriculture and Rural Development<sup>(1)</sup>, in exercise of the powers conferred on it by sections 2(2) 3(3) and 4 (1) (4)of the Plant Health Act (Northern Ireland) 1967<sup>(5)</sup>, and of every other power enabling it in that behalf, makes the above-named Order, which is subject to negative resolution.

2. **Description**

2.1 This SI proposes to amend the Plant Health Order (Northern Ireland) 2006 to implement Council Directive 2007/33/EC on the control of potato cyst nematodes by introducing measures to detect and control European populations of potato cyst nematode. This Directive mainly updates testing and sampling methods, the main change is that there is to be more stringent sampling rates and regular sampling of ware potato land.

3. **Matters of special interest to the Examiner of Statutory Rules**

3.1 In order to avoid infraction proceedings, we anticipate breaking the 21 day rule.

4. **Legislative Background**

4.1 This Order amends the Plant Health Order (Northern Ireland) 2006 on the control of potato cyst nematode.

5. **Consultation**

5.1 A 12 week consultation was conducted in April 2008. Two organisations responded to the consultation, stating that they support the necessity to control Potato Cyst Nematode for the longer term good of the potato industry here. Both organisations supported the proposed implementation, but agreed a number of proposals regarding specific points, which will be considered by the Department in finalising implementation procedures.

6. **Territorial Extent and Application**

6.1 This instrument applies to Northern Ireland.

---

(1) Formerly the Department of Agriculture for Northern Ireland; *see* S.I. 1999/283 (N.I. 1) Art. 3(4)

(2) As amended by S.R.& O. (N.I.) 1972 No. 351 Art.3 and Sch.2;1979 c.2 s.177(1) and Sch 4 Pt II; and S.I. 1984/702 (N.I.) Art.15(2)

(3) Section 3(1) was amended by S.R.&O. (N.I.) 1972 No 351 Art.3 and Sch.2; Section 3B was inserted by S.I. 1984/702 (N.I. 2) Art.15(2)

(4) As amended by S.R.& O. (N.I.) 1972 No. 351 Art.3 and Sch.2 and S.I. 1984/702 (N.I.2) Art.15(2)

(5) 1967 c28 (N.I.)

## **7. European Convention on Human Rights**

7.1 As the instrument is subject to negative resolution procedure, no statement is required.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1 The proposed legislation has been screened for these issues and none were identified.

## **9. Equality Impact**

9.1 These regulations will apply in equal measures to all Section 75 groups. It is not expected that any of these changes will impact differently across any of the Section 75 groups.

## **10. Regulatory Impact**

10.1 A Regulatory Impact Assessment has not been prepared for this Statutory Rule as no direct financial impact on potato businesses, charities or voluntary bodies is anticipated. There are no equality or human rights issues.

## **11. Financial Implications**

11.1 There are no financial implications.

## **12. Policy background**

12.1 European Council Directive 2007/33/EC, was adopted in June 2007 and must be implemented by July 2010. It replaces the potato cyst nematode (PCN) control measures contained in Directive 69/465/EEC. The Commission has given a long implementation period due to the level of organisation and expense required to meet the enhanced sampling and testing regime. The burden will be greater on some Member States than others. Northern Ireland will not be significantly affected as our testing and sampling procedures are robust and stringent.

12.2 Potato Cyst Nematode affects potato roots, with the potential to have a detrimental affect on crop yields. Seed potato fields are sampled prior to planting and random sampling is done in ware potato crop fields to guard against an outbreak. Where it is detected in seed potato land, the control measures include scheduling (not permitting the planting of potatoes) the affected land for fifteen years.

12.3 Due to the expansion of the EU, bringing in more potato growing countries with varying levels of pest and disease numbers and types, and a general review of the provisions for controlling PCN, the previous EC Directive has been replaced by Directive 2007/33/EC. This Directive mainly updates testing and sampling methods. The main change is that there is to be more stringent

sampling rates and regular sampling of ware potato land. These measures mean that there will be increased sampling work to be done here by DARD's Quality Assurance Branch inspectors and by AFBI.

### **13. Contact**

Renee McDowell at the Department of Agriculture Tel: 02890 520855 or e-mail: [renee.mcdowell@dardni.gov.uk](mailto:renee.mcdowell@dardni.gov.uk) can answer any queries regarding the instrument.

### Transposition Note

This note explains how Commission Directive 2007/33/EU repealing Directive 69/465/EEC on protective measures to detect and control European populations of Potato Cyst Nematode within the Community is transposed in the Plant Health (Amendment No. 3) Order (Northern Ireland) 2010.

The Plant Health (Amendment No 3) Order (Northern Ireland) 2010 amends the Plant Health Order (Northern Ireland) 2006.

#### Commission Directive (EC) 2007/33/EU

Article	Objective	Implementation
Article 4	Requires member States to undertake official investigations for the presence of Potato Cyst Nematode in fields where plants listed in Annex I to Directive 2007/33/EC (if they are intended for the production of plants for planting, or seed potatoes intended for the production of seed potatoes) are to be planted or stored.	No requirement in legislation to carry out an official investigation. The process is set out in administrative instructions. Prohibition on moving/planting PCN host material in Schedule 4B to the Plant Health Order (Northern Ireland) 2006.
Article 6	Requires member States to undertake official surveys in fields used for the production of potatoes (other than those intended for the production of seed potatoes), to determine the distribution of Potato Cyst Nematode.	Article 31(1) of the Plant Health Order (Northern Ireland) 2006.
Article 9.1	Requires member States to regulate (as follows) the planting, storage and movement of potatoes and other plants in, or from, fields infested with European populations of Potato Cyst Nematode	Schedule 15 to the Plant Health Order (Northern Ireland) 2006.
Article 9.1 (a)	Requires member States to ensure that potatoes intended for the production of seed potatoes are not planted in fields infested with Potato Cyst Nematode	Paragraph 3(1)(a) of Schedule 15 to the Plant Health Order (Northern Ireland) 2006.

Article 9.2 (b) 1 <sup>st</sup> sentence	Requires member States to ensure that plants listed in Annex 1 to Directive 2007/33/EC that are intended for replanting are not planted or stored in fields infested with Potato Cyst Nematode.	Paragraph 3(1)(b) of Schedule 15 to the Plant Health Order (Northern Ireland) 2006.
Article 9.1 (b) 2 <sup>nd</sup> sentence	Provides that plants listed in point 2 of Annex 1 to Directive 2007/33/EC can be planted in a field infested with Potato Cyst Nematode if they are subject to the measures to disinfect and remove soil set out in Section III(A) of Annex III to that Directive.	Paragraphs 3(2) and (3) of Schedule 15 to the Plant Health Order (Northern Ireland) 2006 (as amended by article 9 of the Plant Health (Amendment No.3) Order (Northern Ireland) 2010).
Article 9.2	Requires the responsible official body to prescribe that fields infested with Potato Cyst Nematode in which potatoes (other than those intended for seed potatoes) are to be planted must be subject to an official control programme to suppress Potato Cyst Nematode	Paragraph 4 of Schedule 15 to the Plant Health Order (Northern Ireland) 2006.
Article 10(1)(a)	Requires member States to ensure that seed potatoes and plants listed in point 1 of Annex I to Directive 2007/33/EC that come from a field infested with Potato Cyst Nematode are not planted unless they have been decontaminated	Paragraph 5 of Schedule 15 to the Plant Health Order (Northern Ireland) 2006.
Article 10(1)(b)	Requires member States to ensure that potatoes intended for industrial processing or grading shall be subject to the measures set out in Section III(b) of Annex III to Directive 2007/33/EC	Article 32(4) of the Plant Health (England) Order (Northern Ireland) 2006 (power to serve notices requiring steps to be taken to prevent the spread of any plant pest)
	Requires member States to ensure that plants listed in point 2 of Annex I to Directive 2007/33/EC that come from a field infested with Potato Cyst Nematode are not planted unless they have been subject to the measures to disinfect and remove soil	Paragraph 5 of Schedule 15 to the Plant Health Order (Northern Ireland) 2006.

	set out in Section III(A) of Annex III to that Directive	
Article 11	Requires member States to ensure that the presence of Potato Cyst Nematode that results from a breakdown or change in the effectiveness of a resistant potato variety which relates to an exceptional change in the composition of nematode species, pathotype or virulence group is reported to the responsible official body	Article 41(3)(b) of the Plant Health Order (Northern Ireland) 2006
Article 13	Requires member States lift restrictions on a field when it is confirmed pursuant to resampling and testing set out in Section III(C) of Annex III that Potato Cyst Nematode is no longer present	Paragraph 2 of Schedule 15 to the Plant Health Order (Northern Ireland) 2006.

# Equality and Human Rights Screening Template

December 2007



Department of  
**Agriculture and  
Rural Development**

[www.dardni.gov.uk](http://www.dardni.gov.uk)

# DARD Equality and Human Rights Screening Template

DARD has a statutory duty to screen. This includes our strategies and plans, policies, legislative developments; and new ways of working such as – the introduction, change or end of an existing service, funding arrangement or facility. This screening template is designed to help business areas consider the likely equality and human rights impacts of their proposed decisions on DARD's customers, service users, staff and visitors.

**Section A** - asks you to provide details about the policy / decision that is being screened.

**Section B** - has 4 key questions that require you to consider the likely impact on Section 75 equality groups.

**Section C** - has 4 key questions in relation to obligations under the Disability Discrimination Order and the Human Rights Act.

**Section D** - is the formal record of the screening decision.



Click on the Word icon to download the Screening Guidance

# Section A

## Details about the policy / decision to be screened

### **Title of policy / decision to be screened:-**

Consultation on proposed implementation of European Commission Directive 2007/33/EC on control measures for potato cyst nematode.

### **Brief description of policy / decision to be screened:-**

This proposed policy consultation seeks industry views on the way forward in implementing changes to the control measures for potato cyst nematode. Due to the expansion of the EU, bringing in more potato growing countries with varying levels of pest and disease numbers and types, and a general review of the provisions for controlling PCN, the previous EC Directive has been replaced by Directive 2007/33/EC. This Directive mainly updates testing and sampling methods. The main change is that there is to be more stringent sampling rates and regular sampling of ware potato land.

Potato Cyst Nematode affects potato roots, with the potential to have a detrimental affect on crop yields. Seed potato fields are sampled prior to planting and random sampling is done in ware potato crop fields to guard against an outbreak. Where it is detected in seed potato land, the control measures include scheduling (not permitting the planting of potatoes) the affected land for fifteen years.

### **Aims and objectives of the policy / decision to be screened:-**

To protect Northern Ireland from an increase in potato cyst nematode (PCN) in potatoes.

**On whom will the policy / decision impact:-**

This proposed policy will impact on the potato industry in Northern Ireland, including on potato importers bringing potatoes into Northern Ireland from Egypt (currently 13 seed merchant companies dealing in NI). It will affect the 108 seed potato growers and approximately 438 ware potato growers in Northern Ireland. There are also 30 ware merchants and 49 processors who may be affected.

## Section B

### 1. Is there any evidence of higher or lower participation or uptake by different groups?

	Yes	No	Don't know
Religious belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Racial group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marital status	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dependants	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### Evidence held? Outline all supporting evidence:

This policy is specific to the potato industry. There is no evidence of higher or lower participation or uptake by the different Section 75 groups.

However, regarding the sector in general, as part of the Review of Future Support Arrangements for the Northern Ireland Potato Sector, 2005-7, a 'Need for an EQIA' document was prepared (31 Jan 07), and forwarded to Equality Branch. It concluded that there is no imbalance across the Section 75 equality groups regarding social, economic and environmental aspects.

Also, there is the anecdotal evidence of officials, gleaned from familiarity with the sector, which suggests there is no evidence of higher or lower participation or uptake by different Section 75 groups.

Other evidence: on Section 75 groups in farms in general in Section 7.3 of "Farmers and Farm Families in NI - 2001/2" report by Sheila Magee (DARD) but it holds no specific information on the potato sector in particular.

**No evidence held? Outline how you will obtain it:**

**2. Do different groups have different needs, experiences, issues and priorities in relation to this policy issue?**

	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
Religious belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Racial group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marital status	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dependants	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Evidence held? Outline all supporting evidence:**

This policy is specific to the potato industry. There is no evidence that the different Section 75 groups have different needs, experiences, issues or priorities in relation to this policy issue.

However, regarding the sector in general, as part of the Review of Future Support Arrangements for the Northern Ireland Potato Sector, 2005-7, a 'Need for an EQIA' document was prepared (31 Jan 07), and forwarded to Equality Branch. It concluded that there is no imbalance across the Section 75 equality groups regarding social, economic and environmental aspects.

Also, there is the anecdotal evidence of officials, gleaned from familiarity with the sector, which suggests the different Section 75 groups do not have any notably different needs, experiences, issues and priorities in relation to this policy issue.

Other evidence: on Section 75 groups in farms in general in Section 7.3 of "Farmers and Farm Families in NI - 2001/2" report by Sheila Magee (DARD) but it holds no specific information on the potato sector in particular.

**No evidence held? Outline how you will obtain it:**

**3. Consultation is an integral part of policy development and policy screening. Have consultations with relevant groups, organisations or individuals indicated that policies of this type create problems that are specific to them?**

	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
Religious belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Racial group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marital status	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dependants	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Evidence held? Outline all supporting evidence:**

This policy is specific to the potato industry. It has not required consultation. There is no evidence from consultations for other pieces of legislation or policy or from elsewhere that policies of this type create problems that are specific to any of the different Section 75 groups.

However, regarding the sector in general, as part of the Review of Future Support Arrangements for the Northern Ireland Potato Sector, 2005-7, a 'Need for an EQIA' document was prepared (31 Jan 07), and forwarded to Equality Branch. It concluded that there is no imbalance across the Section 75 equality groups regarding social, economic and environmental aspects.

Also, there is the anecdotal evidence of officials, gleaned from familiarity with the sector, which suggests that policies of this type do not create problems that are specific to the various Section 75 groups.

Other evidence: on Section 75 groups in farms in general in Section 7.3 of "Farmers and Farm Families in NI - 2001/2" report by Sheila Magee (DARD) but it holds no

specific information on the potato sector in particular.

**No evidence held? Outline how you will obtain it:**

**4. In relation to implementing this policy, is there an opportunity to better promote equality of opportunity or good relations by altering the policy or by working with others in Government or in the larger community?**

	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
Religious belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Racial group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marital status	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dependants	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Evidence held? Outline all supporting evidence:**

Anecdotal evidence: opinion of officials from familiarity with the sector suggests there is no evidence for either positive or negative discrimination towards any of these groupings, accordingly there is no need to use this as an opportunity to promote equality of opportunity or good relations in the larger community.

**No evidence held? Outline how you will obtain it:**

## Section C

DARD also has legislative obligations to meet under the Disability Discrimination Order and Human Rights Act. Questions 5 -9 relate to these two areas.

### Consideration of Disability Duties

5. Does this proposed policy / decision provide an opportunity for DARD to better promote positive attitudes towards disabled people?

**Explain your assessment in full**

No. Not applicable. Issue does not lend itself to either negative or positive disability discrimination.

6. Does this proposed policy / decision provide an opportunity for DARD to actively increase the participation by disabled people in public life?

**Explain your assessment in full**

No. Not applicable. Issue does not lend itself to either negative or positive disability discrimination.

## Consideration of Human Rights

7. Indicate below (by placing an X in the appropriate box) any *adverse impacts* of the policy / decision in relation to the Human Rights Articles as set out in the European Convention of Human Rights.

Right to Life	<b>Article 2</b>	<input type="checkbox"/>
Prohibition of torture, inhuman or degrading treatment	<b>Article 3</b>	<input type="checkbox"/>
Prohibition of slavery and forced labour	<b>Article 4</b>	<input type="checkbox"/>
Right to liberty and security	<b>Article 5</b>	<input type="checkbox"/>
Right to a fair and public trial	<b>Article 6</b>	<input type="checkbox"/>
Right to no punishment without law	<b>Article 7</b>	<input type="checkbox"/>
Right to respect for private and family life, home and correspondence	<b>Article 8</b>	<input type="checkbox"/>
Right to freedom of thought, conscience and religion	<b>Article 9</b>	<input type="checkbox"/>
Right to freedom of expression	<b>Article 10</b>	<input type="checkbox"/>
Right to freedom of assembly and association	<b>Article 11</b>	<input type="checkbox"/>
Right to marry and to found a family	<b>Article 12</b>	<input type="checkbox"/>
The prohibition of discrimination	<b>Article 14</b>	<input type="checkbox"/>
Protection of property	<b>Protocol 1 Article 1</b>	<input type="checkbox"/>
Right to education	<b>Protocol 1 Article 2</b>	<input type="checkbox"/>
Right to free and secret elections	<b>Protocol 1 Article 3</b>	<input type="checkbox"/>

**8. Please explain any adverse impacts on human rights that you have identified**

None identified.

**9. Please indicate any ways which you consider the policy positively promotes human rights**

None identified.

## Section D

### Formal Record of Screening Decision

**Title of Proposed Policy / Decision being screened –**

Consultation on proposed implementation of European Commission Directive 2007/33/EC on control measures for potato cyst nematode.

I can confirm that the proposed policy / decision has been screened for –

- equality of opportunity and good relations
- disabilities duties; and
- human rights issues

On the basis of the answers to the screening questions, I recommend that this policy / decision is –

- \*Screened Out – No EQIA necessary
- \*Screened In – Necessary to conduct a full EQIA

\*(please check appropriate box above)

**Screening assessment completed by (Staff Officer level) -**

Name: NIALL MCGRATH

Grade: SO

Date: 14 Mar 08

Branch: Farm Policy Branch

Signature: please insert a scanned image of your signature below

*Niall McGrath*

**Screening decision approved by (must be G7 or above) -**

Name: Peter Toner

Grade: Grade 7

Date: 14 Mar 2008

Branch: Farm Policy Branch

Signature: please insert a scanned image of your signature below

*Peter Toner*

**Please save the completed screening form within TRIM**



Strategic Management DARD - Equality Promotion & Implementation - Equality Schemes - Equality Screening of Departmental Policies.tr5

**and also forward the TRIM reference for the signed electronic copy  
to Equality Branch at [equalitybranch@dardni.gov.uk](mailto:equalitybranch@dardni.gov.uk)**

For more information about screening, contact –

DARD Equality Branch  
Room 509  
Dundonald House  
Upper Newtownards Road  
Belfast BT4 3SB

Telephone 028 9052 4435  
Textphone 028 9052 4420

Or check out our intranet site

[http://dardintranet/coord\\_intranet/EqualityBranch/index.shtml](http://dardintranet/coord_intranet/EqualityBranch/index.shtml)



Department of  
**Agriculture and  
Rural Development**

[www.dardni.gov.uk](http://www.dardni.gov.uk)

---

AN ROINN

**Talmhaíochta agus  
Forbartha Tuaithe**

---

MÁNNYSTRIE O

**Fairms an  
Kintra Fordèrin**

---