

EXPLANATORY MEMORANDUM TO

The Plant Health (Amendment) Order (Northern Ireland) 2016

SR 2016 No. 259

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections 2, 3, 3A and 3B(1) of the Plant Health Act (Northern Ireland) 1967 and paragraph 1A of Schedule 2 to the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Statutory Rule amends The Plant Health Order (Northern Ireland) 2006 (S.R. 2006/82) ("the principal Order") which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It introduces specific control measures in Commission Implementing Decisions 2012/270/EU, 2014/679/EU, 2015/789/EU, 2015/2417/EU and 2016/764/EU and introduces measures against *Epitrix* on potatoes imported from Spain.

3. Background

- 3.1. Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms (serious pests and diseases) harmful to plants or plant products and against their spread within the EU ("the Plant Health Directive") establishes the EU plant health regime. The Plant Health Directive (and therefore the principal 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 Northern Ireland by The Plant Health Order (Northern Ireland) 2006 and similar but separate legislation implements the Plant Health Directive in the case of wood and bark matters. In England, Scotland and Wales similar legislation implements the Plant Health Directive in respect of forestry and non-forestry matters.
- 3.2. The EU instruments adopted will amend the principal Order by introducing new measures to address risks presented by particular pests and diseases. These amendments are to be implemented through this instrument which comes into operation on 5 July 2016.
- 3.3. Key changes include:
- 3.4. The adoption of measures set out by Commission Implementing Decision 2012/270/EU which introduces emergency measures to prevent the introduction and spread of *Epitrix cucumeris*, *Epitrix similaris*, *Epitrix subcrinita* and *Epitrix tuberis* (Tuber flea beetle) which causes harmful effects to potato tubers. The Order adds *Epitrix cucumeris*, *Epitrix similaris*, *Epitrix subcrinita* and *Epitrix tuberis* to the list of prohibited

insects, mites and nematodes in the principal Order and introduces new requirements for the import and movement of susceptible plants.

- 3.5. The adoption of measures set out by Commission Implementing Decision 2014/679/EU which amends Implementing Decision 2012/270/EU as regards its period of application and as regards the movement to packing facilities of potato tubers originating in areas demarcated in order to prevent the spread within the Union of *Epitrix cucumeris*, *Epitrix similaris*, *Epitrix subcrinita* and *Epitrix tuberis*.
- 3.6. Further national measures against *Epitrix* have been provided for in response to UK interceptions of *Epitrix* damaged potatoes from Spain in 2015. A Food and Veterinary Office (FVO) (the European Commission's auditors) mission in 2013 indicated that Spain was not effectively demarcating and controlling outbreak areas. Commission Implementing Decision 2012/270/EU has requirements for movement of potatoes from a demarcated area: these must be washed or brushed to remove excess soil. However, the effectiveness of brushing is under question as larvae intercepted by the UK were found under the skin of potatoes and thus would not have been removed by brushing. A further FVO mission took place in September 2015 which will help determine a case for review of Commission Implementing Decision 2012/270/EU. Nevertheless, if changes are proposed, it is unlikely that they will be introduced before summer 2016, the time for the potato import season.
- 3.7. In response to these developments, we are amending the Plant Health Order (Northern Ireland) 2006 to provide improved protection in advance of any further EU consideration of this issue. This Order will require all potatoes imported from non-demarcated areas of mainland Spain to be washed before export, in order to kill or remove any *Epitrix* which might be present. Similar measures have been implemented by England and Scotland.
- 3.8. Also adopted is Commission Implementing Decision 2015/789/EU, as amended by 2015/2417/EU and 2016/764/EU which implements and strengthens measures intended to prevent the introduction into and the spread within the EU of *Xylella fastidiosa* (a bacterium which causes harmful effects on a range of plants, particularly on olives) following new outbreaks in Italy.
- 3.9. Commission Implementing Decision 2012/270/EU, as amended and Commission Implementing Decision 2015/789/EU, as amended impose obligations on a member State to establish demarcated areas consisting of an infected zone and a buffer zone where the presence of the relevant organism is confirmed in its territory. In order to comply with such obligation in Northern Ireland the Department will therefore, still require statutory powers under domestic legislation to establish demarcated areas in accordance with the Decisions.
- 3.10. However, these measures have not been implemented at this stage as the Department is satisfied that, in the event that the presence of either disease is confirmed in Northern Ireland and it becomes necessary to establish demarcated areas, the principal Order contains sufficient powers to enable

eradication and containment measures to be put in place under that Order until such times as the powers available under the Commission Implementation Decisions are enacted.

4. Consultation

- 4.1. A consultation was held on the measures against Epitrix and stakeholders were supportive. The national measures will apply to all potatoes from mainland Spain not currently covered by the EU emergency measures (which apply to potatoes coming from demarcated areas and already require that they be washed or brushed, and accompanied by a plant passport) i.e. all potatoes from non-demarcated areas should be washed before export.
- 4.2. The other changes reflect those already in place at the EU level, which have been published by the EU Commission.

5. Equality Impact

- 5.1. The implementing measures will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the Section 75 groups.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment has not been prepared for this Statutory Rule as there will be no impact on costs for business, charities or voluntary bodies arising from the changes in EU legislation. The measures against Epitrix have no impact on business, charities or voluntary bodies, as the key impact will fall on Spanish potato exporters.

7. Financial Implications

- 7.1. The Order has no financial implications for business.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. This Statutory Rule does not have any human rights implications nor or they incompatible with EU law. The Order is therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. This legislation implements Commission Implementing Decisions 2012/270/EU, 2014/679/EU, 2015/789/EU, 2015/2417/EU and 2016/764/EU.

10. Parity or Replicatory Measure

- 10.1. Implementation of Commission Implementing Decisions 2012/270/EU, 2014/679/EU, 2015/789/EU, 2015/2417/EU and 2016/764/EU is required to retain parity with GB.

11. Additional Information

- 11.1. Not applicable.