EXPLANATORY MEMORANDUM TO

THE DUTCH POTATOES (NOTIFICATION) (ENGLAND) ORDER 2005

2005 No.279

1. This explanatory memorandum has been prepared by The Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order supports the UK's obligations under Article 12 of Council Directive 2000/29 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, by enabling targeted checks to be carried out on the import of potatoes from the Netherlands. The Order establishes a requirement on importers of Dutch potatoes to notify Plant Health inspectors, prior to their introduction into England, of the intended import of the potatoes and of certain other information. The Order also establishes a similar requirement on persons who imported Dutch potatoes after 1 September 2004 but before the coming into force of the Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Article 12 of Council Directive 2000/29 requires Member States to organise official checks to ensure compliance with the Directive. Ordinarily, these checks are to be carried out at random but Member States may conduct targeted checks if facts have come to light to suggest that one or more provisions of the Directive have not been complied with. The potential movement of potatoes infected with ring rot being introduced into England from the Netherlands is a situation which is considered to justify the introduction of targeted checks and the Order is required to enable these checks to be carried out.

4.2 The provisions of the Order establishing the notification requirements are authorised by section 2 of the Plant Health Act 1967 which allows the Secretary of State, as the competent authority in relation to England, to make such orders as she thinks expedient (or called for in any Community obligation) for preventing the introduction of pests into Great Britain, including regulating the introduction of articles likely to introduce such pests, and by section 3(1) of that Act which allows the Secretary of

State to make such orders as she thinks expedient (or called for in any Community obligation) for preventing the spread of pests in Great Britain.

4.3 For the purposes of checking compliance with or enforcing the Order, inspectors may require or prohibit the movement of potatoes known or suspected to be Dutch potatoes and have certain powers to enter premises in order to carry out examinations, take samples or inspect documents. (These powers are similar to existing powers under the Plant Health (Great Britain) Order 1993). The authority to provide these powers is contained in sections 3(2)(b) and 4(1)(b) of the 1967 Act.

4.4 The Order makes it an offence to contravene or to fail to comply with one or more of the notification requirements or to intentionally obstruct an inspector in the exercise of his powers. Authority to create this offence is contained in section 3(4) of the Plant Health Act.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 Council Directive 2000/29 and the associated Control Directive 93/85 include measures to protect member states against potato ring rot. However this is a notoriously difficult organism to detect and control and an increasing number of member states are being affected by outbreaks.

7.2 Potato ring rot is not established in the UK, although there have been three outbreaks, all in stocks grown from Dutch seed potatoes. Should it become established, the impact on UK growers is likely to be substantial, in terms of direct losses and marketing consequences.

7.3 To enhance protection against the risk of establishment, additional measures are already in place to improve monitoring of potatoes from sources where there have been substantial numbers of ring rot outbreaks, notably Germany and Poland. Such measures require prior notification of imports so sampling and testing of the potatoes can be arranged on entry as necessary.

7.4 Statutory notification of imports to facilitate monitoring for ring rot has not previously applied to imports from the Netherlands, where there have been only limited numbers of outbreaks in recent years. In addition, there has been good compliance with a voluntary notification system, although this has not included all imports of seed potatoes or any ware potatoes. In response to an increased number of

outbreaks in 2004 and the level of trade in potatoes from the Netherlands, particularly seed potatoes intended for multiplication where the potential consequences from an outbreak are greatest, an extension of the statutory notification system to include Dutch potatoes is now considered to be justified. As well as improving the likelihood of detecting ring rot infection at an early stage, this will also improve tracing in the event of any future problems.

7.5 All the major trade organisations support a statutory notification requirement, which they consider will enhance protection against ring rot. The very limited notification requirements, together with good compliance with existing voluntary measures, means that any additional burden on businesses will be negligible.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has negligible impact on businesses, charities or voluntary bodies.

8.2 The impact on the public sector is negligible. Many imported stocks of Dutch seed potatoes are already notified to Defra. Additional stocks of seed potatoes and all ware potatoes that are notified will need to be recorded, but a system is already in place and the details to be recorded are limited. Any additional sampling and testing can be accommodated within the overall plant health monitoring programme and there are potential savings if further outbreaks of potato ring rot, which involve very intensive sampling and testing, can be prevented.

9. Contact

Richard McIntosh at Defra (Tel: 01904 455177, Email: richard.mcintosh@defra.gsi.gov.uk) can answer any further queries regarding the instrument.