EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2012

2012 No. 697

1. This explanatory memorandum has been prepared by The Food and Environment Research Agency (Fera) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Plant Health (England) Order 2005 (S.I. 2005/2530) 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).

2.2 The instrument also amends the Plant Health (England) Order 2005 to provide for an information gateway between Her Majesty's Revenue and Customs (HMRC) and the Secretary of State.

2.3 The instrument also amends the Potatoes Originating in Egypt (England) Regulations 2004 (S.I. 2004/1165) 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.

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

3.1 None.

4. Legislative Context

4.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU ("the Plant Health Directive") establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in England, for non-forestry matters, by the Plant Health (England) Order 2005. Similar but separate legislation operates in Scotland, Wales and Northern Ireland.

4.2 Annex 4 of the agreement between the EU and the Swiss Confederation on trade in agricultural products is intended to facilitate trade between the parties in plants, plant products and other objects subject to plant health measures. Decision 1/2010 (2011/83/EU) of the Joint Committee on Agriculture responsible for administering the agreement amends the appendices to Annex 4 to reflect changes to the legislative provisions of the EU and Switzerland regarding plant health. Annex 4 is implemented

in England by the Plant Health (England) Order 2005 and this instrument makes the necessary amendments to the Order.

4.3 In 2004, following interceptions of *Ralstonia solanacearum* (Smith) Yabuuchi et al. (which causes potato brown rot) on potatoes from Egypt, the Commission introduced emergency measures (Decision 2004/4/EC) to prevent the introduction of the disease into the EU on potatoes originating in Egypt. The measures were implemented in England through the Potatoes Originating in Egypt (England) Regulations 2004. Commission Implementing Decision 2011/787/EU repeals and replaces Decision 2004/4/EC and its subsequent amendments. No significant new requirements have been introduced, although the Decision now focuses just on EU import arrangements, leaving pre-export arrangements for the Egyptian legislation, which has been the subject of consideration within the EU's Standing Committee on Plant Health. This instrument makes the necessary amendments to the Potatoes Originating in Egypt (England) Regulations 2004.

5. Territorial Extent and Application

5.1 This instrument applies to England only. Similar legislation will be applied in Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Plant Health Directive establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. Plant material originating in Switzerland (as a non-member of the EU) would normally be subject to the plant health controls set out in the Directive applicable to third countries.

7.2 Annex 4 of the agreement between the EU and the Swiss Confederation is intended to facilitate trade between the EU and Switzerland in plant material subject to plant health controls. Appendices to Annex 4 set out how what controls should be applied to plant material originating in either the EU and 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.

7.3 Decision 1/2010 (2011/83/EU) amends appendices 1, 2 and 4 of Annex 4 to reflect changes in the plant health legislative provisions of both parties which are intended to further facilitate trade by further extending the range of plant health material for which equivalence arrangements apply.

7.4 The Regulations also introduce a new provision to the Plant Health (England) Order 2005, agreed with HMRC, to allow the transfer of data for the purposes of the Order

from HMRC to the Secretary of State and an associated offence for wrongful disclosure of information so provided.

7.5 Under the Commissioners for Revenue and Customs Act 2005 ("CRCA"), HMRC are unable to provide 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.

7.6 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 an 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 on disclosure in section 18(1) of that Act by the disclosure of information relating to an identifiable person.

7.7 *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 of 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 England through the Potatoes Originating in Egypt (England) Regulations 2004.

7.8 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. During the 2010/2011 import season no interception of *Ralstonia solanacearum* (Smith) Yabuuchi et al. was recorded in the EU on potatoes imported from Egypt. 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.

- ***Consolidation***

7.9 A consolidation of the Plant Health (England) Order 2005, including the Potatoes Originating in Egypt (England) Regulations 2004, will be undertaken at an appropriate opportunity.

8. Consultation outcome

8.1 Consultation on this instrument has not been undertaken. The changes as regards Swiss trade and Egyptian potatoes are minor and the addition of the information gateway provision has no impact on stakeholders. The plant health regime itself is currently under review and stakeholders are being consulted as part of that process.

9. Guidance

9.1 The legislative changes will be confirmed with stakeholders and relevant publicity and guidance will be included on the Fera website.

10. Impact

10.1 No impact on charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 An impact assessment has not been prepared as the changes have minimal impact on the costs for business.

11. Regulating small business

11.1 The legislation applies equally to all businesses trading in plant health controlled material, including small businesses.

12. Monitoring & review

12.1 EU and national plant health legislation is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments.

13. Contact

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