EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2019

2019 No. 621

1. Introduction

1.1 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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument ensures that the Plant Health Order (Northern Ireland) 2018 (S.R. 2018 No. 184) fully transposes the EU Directives that protect the plant health of potatoes. This relates in particular to the official control of quarantine organisms effecting potato production and places of production. In addition it concerns official investigations and surveys, official designations of infected areas and demarcation zones for control and measures to be taken following confirmation of outbreaks for potato cyst nematode, potato brown rot and potato ring rot.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid before Parliament fewer than 21 days before it comes into force, and the Department regrets the necessity to break the 21-day rule. This arose because it was decided that an instrument to be made under the European Union (Withdrawal) Act 2018 (c. 16) might be required to be made under the urgent procedure as a 'made affirmative' instrument, given the need to ensure that the Regulations are in force by exit day. The provisions in this instrument therefore had to be removed from the Plant Health (Amendment)(Northern Ireland)(EU Exit) Regulations 2019 as it is not possible to make an instrument under the European Communities Act 1972 (c. 68) using the 'made affirmative' procedure. The provisions in this instrument must be in force before the provisions in the related exit Regulations as the exit Regulations make operable the Plant Health Order (Northern Ireland) 2018 as amended by this instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument transposes requirements set out in Council Directive 93/85/EEC on the control of potato ring rot (OJ No. L 259, 18.10.1993, p. 1), Council Directive 98/57/EC on the control of Ralstonia solanacearum (Smith) Yabuuchi et al. (OJ No. L 235, 21.8.1998, p. 1) and Council Directive 2007/33/EC on the control of potato cyst nematodes (OJ No. L 156, 16.6.2007, p. 12).

7. Policy background

What is being done and why?

7.1 The Government shares the public's regard for plant health and the desire of local industries' to maintain high standards for maintaining the status of plant health for the potato sector. The amendments made by this instrument ensure that the high standards that protect the plant health of the potato sector are maintained.

7.2 Directive 93/85/EEC specifies the requirements for systematic official surveys for potato ring rot which member states are required to adopt. Annex 1 to the Directive sets out the official testing method for the presence of potato ring rot with conditions specified to confirm or refute its presence. This also sets out conditions to be met prior to completion of official testing with regard to tuber samples, sample movement and all relevant documentation. Annex 3 sets out the requirements for a demarcation zone and further testing of potato stocks clonally related to susceptible material. This also specifies the conditions whereby an inspector may serve a notice. The legislation specifies that the period in relation to a zone demarcated must be at least three growing seasons after the year in which the zone was demarcated.

7.3 Directive 98/57/EC establishes the processes for carrying out annual systematic surveys for potato brown rot. This sets out official testing and actions to be taken following confirmation of the presence of potato brown rot. Annex 4 to the Directive sets out actions to be taken by an inspector in the case of susceptible material. Annex 5 sets out demarcation zones.

7.4 Directive 2007/33/EC sets out rules concerning official investigations and surveys for the presence of potato cyst nematodes in fields in which seed potatoes or susceptible material intended for the production of plants for planting are to be planted or stored. Annex 3 to the Directive sets out how to maintain official records and updating. It also sets out controls on potatoes for industrial processing and grading.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 It is not considered necessary to consolidate the Plant Health Order (Northern Ireland) 2018.

10. Consultation outcome

10.1 The devolved administration in Northern Ireland has been consulted about this instrument. Given its technical nature, no public consultation was considered necessary.

11. Guidance

11.1 There is no associated guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of the low level of impact on business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was that this instrument does not introduce duties or burdens on businesses and they will not need to change their current practices as a result of it.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Department of Agriculture, Environment and Rural Affairs will monitor and review the impact of the instrument as part of its standard policy-making procedures.

14.2 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 (c. 26), Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, has made the following statement:

"Given that the amendments relate to Northern Ireland legislation, it is not considered appropriate to include a review clause. In addition, there is not expected to be a significant annualised net impact on business (greater than +/- £5 million net annualised)."

15. Contact

15.1 Diane Stevenson at the Department of Agriculture, Environment and Rural Affairs Telephone: 028 6634 3012 or email: Diane.Stevenson@daera-ni.gov.uk can be contacted with any queries regarding the instrument.

15.2 John Joe O'Boyle, Chief Executive of the Forest Service, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.