

2004 No. 1165

PLANT HEALTH, ENGLAND

The Potatoes Originating in Egypt (England) Regulations 2004

Made - - - - *19th April 2004*

Laid before Parliament *21st April 2004*

Coming into force - - *15th May 2004*

The Secretary of State, being designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred upon her by the said section 2(2), hereby makes the following Regulations:

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Potatoes Originating in Egypt (England) Regulations 2004 and shall come into force on 15th May 2004.

(2) These Regulations extend to England and Wales but apply only in relation to England.

Interpretation

2. In these Regulations—

“the Decision” means Commission Decision 2004/4/EC authorising Member States temporarily to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt(c);

“inspector” means any person authorised by the Secretary of State to be an inspector for the purposes of the Order;

“the Order” means the Plant Health (Great Britain) Order 1993(d);

“phytosanitary certificate” has the same meaning as in article 2(1) of the Order; and

“potato” means any tuber of *Solanum tuberosum* L.

Imports of Potatoes originating in Egypt

3.—(1) For the purposes of article 3(1)(e) of the Order a phytosanitary certificate in respect of potatoes originating in Egypt will be a valid phytosanitary certificate only if it complies with paragraph 1(b)(xi) of the Annex to the Decision.

(a) SI 1972/1811. The functions of the Minister of Agriculture, Fisheries and Food under this Order were transferred to the Secretary of State by article 2(3) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (SI 2002/794).

(b) 1972 c.68.

(c) OJ No. L2, 6.1.2004, p.50. (*Pseudomonas solanacearum* (Smith) Smith is now known as *Ralstonia solanacearum* (Smith) Yabuuchi et al.)

(d) SI 1993/1320; as amended by SI 1993/3213, 1995/1358 and 2929, 1996/25, 1165 and 3242, 1997/1145 and 2907, 1998/349, 1121 and 2245, 1999/2126 and 2726, 2001/2342, 2002/1067 and 2003/1157.

(2) The requirement imposed by point 25.8 of Section 1 of Part A of Schedule 4 to the Order (an official statement that potatoes originate in areas where *Ralstonia solanacearum* (Smith) Yabuuchi et al. is not known to occur) shall not apply to imports of potatoes originating in Egypt.

Approval of premises for treatment of potatoes originating in Egypt

4.—(1) Subject to paragraph (4), no person shall carry out in the course of business any treatment, including washing, of potatoes originating in Egypt other than in premises that the Secretary of State has approved in writing for that purpose.

(2) Applications for the approval required by paragraph (1) may be made in writing to the Secretary of State.

(3) The Secretary of State may suspend or revoke in writing any approval granted pursuant to paragraph (1).

(4) Paragraph (1) does not apply to the packing or preparation of potatoes in a shop, restaurant, canteen, club, public house, school, hospital, or similar establishment (including a vehicle or a fixed or mobile stall), for delivery to the final consumer.

Powers of an inspector

5.—(1) The provisions of this regulation are without prejudice to the powers conferred on an inspector by the Order.

(2) On having reasonable grounds for suspecting a contravention or likely contravention of regulation 4(1), an inspector may exercise the power conferred by article 22(2) of the Order as read with article 24(1) to (3) of the Order, as if a potato originating in Egypt was a plant kept or moved in contravention of the Order.

(3) Any notice served by virtue of paragraph (2) shall have effect as if served under article 22(2) of the Order and articles 24(4) to (6), 26 to 28, 32 and 33(1)(b) and (c) and (6) of the Order shall apply accordingly.

(4) An inspector may, for the purpose of checking compliance with regulation 4(1), exercise the powers conferred by article 25 of the Order, as if checking compliance with the Order.

(5) The exercise of a power by virtue of paragraph (4) shall be treated as the exercise of the power for the purposes of the Order and articles 28 and 33(1)(c) and (6) of the Order shall apply accordingly.

Charges in respect of the sampling of imports of potatoes

6. Where the power to take samples conferred by article 25(1)(a) of the Order is exercised by an inspector in respect of potatoes originating in Egypt in order to ascertain whether, for the purposes of paragraph 3 of the Annex to the Decision, those potatoes are infected with *Ralstonia solanacearum* (Smith) Yabuuchi et al., the importer shall, if required, pay to the Secretary of State a fee of £37.50 in respect of each lot sampled.

Offences

7.—(1) A person shall be guilty of an offence if, without reasonable excuse, proof of which shall lie on him, he contravenes or fails to comply with regulation 4(1).

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Revocations

8.—(1) The following Regulations are revoked in respect of England—

- (a) the Potatoes Originating in Egypt Regulations 1998(a); and
 - (b) the Potatoes Originating in Egypt (Amendment) Regulations 1998(b).
- (2) The following Regulations are revoked—
- (a) the Potatoes Originating in Egypt (Amendment) (England) Regulations 2000(c);
 - (b) the Potatoes Originating in Egypt (Amendment) (No. 2) (England) Regulations 2000(d);
 - (c) the Potatoes Originating in Egypt (Amendment) (England) Regulations 2001(e); and
 - (d) the Potatoes Originating in Egypt (Amendment) (England) Regulations 2002(f).

19th April 2004

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) SI 1998/201, as amended by SI 1998/3167, 2000/22 and 2963, 2001/3574 and 2002/2902.
(b) SI 1998/3167.
(c) SI 2000/22.
(d) SI 2000/2963.
(e) SI 2001/3574.
(f) SI 2002/2902.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which apply only in relation to England, consolidate with amendments the Potatoes Originating in Egypt Regulations 1998 (“the 1998 Regulations”). The Regulations implement Commission Decision 2004/4/EC (OJ No. L2, 6.1.2004, p.50) authorising Member States temporarily to take additional measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith (now known as *Ralstonia solanacearum* (Smith) Yabuuchi et al.) as regards Egypt (“the Decision”). The Decision permits potatoes originating in Egypt, other than seed potatoes, to be imported into England only if the measures laid down in the Decision are complied with. It consolidates and repeals Commission Decision 96/301/EC (as amended).

Regulation 3(1) makes provision in respect of the phytosanitary certificate required by the Plant Health (Great Britain) Order 1993 (“the 1993 Order”) to accompany imports of potato tubers into England, and without which such imports are prohibited. In the case of potatoes originating in Egypt, the certificate must comply with the additional requirements imposed by the Decision. Any person who imports such potatoes without a valid phytosanitary certificate in contravention of the prohibition imposed by the 1993 Order with intent to evade such prohibition is guilty of an offence under section 50(3) of the Customs and Excise Management Act 1979 (c.2) and may be arrested.

Any person found guilty of such an offence under section 50(3) is liable, on summary conviction, to a penalty of £5,000 or of three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding 6 months, or to both; or, on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding 7 years, or to both.

This offence replaces the similar offence contained in the 1998 Regulations. A person found guilty of the offence under the 1998 Regulations would be liable on summary conviction to a fine of £5,000.

Regulation 3(2) removes, in respect of imports of potatoes originating in Egypt, the requirement under the 1993 Order for imports of potatoes to be accompanied by an official statement that the potatoes originate in areas where *Ralstonia solanacearum* (Smith) Yabuuchi et al. is not known to occur.

Regulation 4 imposes a requirement for premises (other than certain premises used for the packing or preparation of potatoes for delivery to the final consumer) used for treating potatoes originating in Egypt to be approved for that purpose by the Secretary of State. Failure to comply with this requirement is an offence carrying liability on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000) (regulation 7).

Regulation 5 makes provision for the enforcement of the Regulations by inspectors and regulation 6 provides the Secretary of State with a power to charge a fee of £37.50 for the taking of samples from potatoes originating in Egypt to ascertain whether they are infected with *Ralstonia solanacearum* (Smith) Yabuuchi et al. in accordance with the Decision. This is unchanged from the fee payable in respect of such sampling under the 1998 Regulations.

No Regulatory Impact Assessment has been prepared for these Regulations.

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