
STATUTORY INSTRUMENTS

2005 No. 279

PLANT HEALTH, ENGLAND

The Dutch Potatoes (Notification) (England) Order 2005

Made - - - - *9th February 2005*
Laid before Parliament *11th February 2005*
Coming into force - - *7th March 2005*

The Secretary of State, in relation to England, in exercise of the powers conferred by sections 2, 3(1), (2)(b) and (4) and 4(1)(b) of the Plant Health Act 1967(1), and now vested in her(2), makes the following Order:

Title, commencement, extent and application

1.—(1) This Order may be cited as the Dutch Potatoes (Notification) (England) Order 2005 and shall come into force on 7th March 2005.

(2) This Order extends to England and Wales but applies only in relation to England.

Interpretation

2. In this Order—

“Dutch potato” means any potato which was grown in the Netherlands during 2004 or subsequently;

“Dutch seed potato” means any Dutch potato intended for planting;

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

“potato” means any tuber or true seed or any other plant of *Solanum tuberosum* L. or other tuber-forming species or hybrid of the genus *Solanum* L.;

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- (1) 1967 c. 8; section 1(2) of the Plant Health Act 1967 defines “competent authorities” for the purposes of the Act. Sections 2(1) and 3(1) and (2) were amended by the European Communities Act 1972 (c. 68), section 4(1) and Schedule 4, paragraph 8; section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c. 48).
- (2) Under the Transfer of Functions (Wales) (No.1) Order 1978 (S.I.1978/272), article 2(1) and Schedule 1, the functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 were, so far as they are exercisable in relation to Wales, transferred to the Secretary of State; and under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1, the functions transferred to the Secretary of State by the 1978 Order were transferred to the National Assembly for Wales. Under article 2(1) and (2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), the remaining functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 were transferred to the Secretary of State.

“premises” has the same meaning as in the principal Order; and
 “the principal Order” means the Plant Health (Great Britain) Order 1993(3).

Notification of imports

3.—(1) No person shall, in the course of business, import into England potatoes which he knows to be or has reasonable cause to suspect to be Dutch potatoes unless he has given written notification to an inspector, at least two days prior to the intended date of introduction into England of the potatoes, of his intention to import the potatoes and of—

- (a) the proposed time, date and means of introduction;
- (b) the proposed point of entry into England;
- (c) the intended use of the potatoes;
- (d) the proposed destination of the potatoes;
- (e) the variety of the potatoes;
- (f) the quantity of potatoes; and
- (g) the producer’s identification number.

(2) Any person who, after 1st September 2004 and before the coming into force of this Order, imported, in the course of business, Dutch seed potatoes into England shall, so far as is as reasonably practicable and no later than 21st March 2005, give written notification to an inspector of—

- (a) the date the potatoes were imported;
- (b) the point of entry;
- (c) the intended use of the potatoes;
- (d) the destination or proposed destination of the potatoes;
- (e) the variety of the potatoes;
- (f) the quantity of potatoes; and
- (g) the producer’s identification number.

Powers of an inspector

4.—(1) The provisions of this article are without prejudice to the circumstances in which an inspector may by virtue of the principal Order exercise the powers conferred by that Order.

(2) If an inspector knows or has reasonable grounds for suspecting that any Dutch potatoes are likely to be, or have been, landed in England in contravention of article 3(1), he may—

- (a) for the purpose of checking compliance with the principal Order; or
- (b) for the purpose of exercising any of his powers under paragraph (4),

and on production of his authority if so required, take the steps in paragraph (3).

(3) The steps referred to in paragraph (2) are—

- (a) to require any person, including any person in charge of the vessel, aircraft, vehicle, hovercraft or freight container from which the potatoes are likely to be landed or have been landed, to move the potatoes to any premises; or
- (b) to prohibit any such person from moving, treating or destroying the potatoes or any container or package.

(3) S.I. 1993/1320; amended by S.I. 1993/3213, 1995/1358 and 2929, 1996/25, 1165 and 3242, 1997/1145 and 2907, 1998/349, 1121 and 2245 and 1999/2126 and 2726, 2001/2343, 2002/1067, 2003/1157 and 2004/2365.

(4) For the purpose of checking compliance with this Order, an inspector may, on production of his authority if so required and at all reasonable times, enter any premises, other than premises used wholly or mainly as a dwelling, and—

- (a) examine, photograph or mark any part of the premises or any object on the premises, including any potatoes;
- (b) take samples of or from any potatoes or any container or package; and
- (c) inspect, make copies of or, for the purpose of making copies, remove any documents or records (in whatever form they may be held) relating to the production of or trade in any potatoes.

(5) An inspector may, for the purpose of exercising any of his powers under paragraph (4), open, or authorise any person to open on his behalf, any container or package or require the owner or any person in charge of any container or package to open it, in such manner as the inspector may specify.

(6) Where any such document or record as is mentioned in paragraph (4)(c) is kept by means of a computer, an inspector may—

- (a) have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the document or record; and
- (b) require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

Offences

5.—(1) A person shall be guilty of an offence if, without reasonable excuse, proof of which shall lie on him—

- (a) he contravenes or fails to comply with a requirement of article 3; or
- (b) he intentionally obstructs an inspector or any person authorised by an inspector in exercise of his powers under article 4.

(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.

9th February 2005

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 7th March 2005, places certain notification requirements upon persons importing potatoes from the Netherlands which have been grown during 2004 or later.

Article 3 requires any person importing Dutch potatoes, grown during 2004 or later, into England in the course of business to give at least two days' notice in writing to a Plant Health inspector of the Department for Environment, Food and Rural Affairs, providing specified details as to, among other things, when and where the potatoes are to be introduced into England (article 3(1)). It also requires persons who imported Dutch seed potatoes into England after 1st September 2004 but before the coming into force of this Order to provide to an inspector, so far as is reasonably practicable, specified information of a similar nature no later than 21st March 2005 (article 3(2)).

Article 4 provides inspectors with powers, for the purpose of checking compliance with this Order or the Plant Health (Great Britain) Order 1993 ("the principal Order"), to require the movement of potatoes to any premises or to prohibit the movement, treatment or destruction of potatoes or any container or package. For the purposes of checking compliance with this Order, inspectors also have a power to enter premises in order to carry out examinations or inspections of certain items found there. These provisions are without prejudice to the circumstances in which an inspector may by virtue of the principal Order exercise the powers conferred by that Order.

Article 5 provides that a person shall be guilty of an offence if, without reasonable excuse, he contravenes or fails to comply with a requirement of article 3 or he intentionally obstructs an inspector or any person authorised by an inspector in exercise of his powers under article 4.

No Regulatory Impact Assessment has been prepared for this Order.