

**2019 No. 621**

**PLANT HEALTH, NORTHERN IRELAND**

**The Plant Health (Northern Ireland) (Amendment) Regulations  
2019**

*Made* - - - - - *20th March 2019*

*Laid before Parliament* *21st March 2019*

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union(b).

**Citation and commencement**

1. These Regulations may be cited as the Plant Health (Northern Ireland) (Amendment) Regulations 2019 and come into force immediately before exit day.

**Amendment of the Plant Health Order (Northern Ireland) 2018**

2. The Plant Health Order (Northern Ireland) 2018(c) is amended in accordance with regulations 3 to 6.

**Amendment of Schedule 13**

3. In Schedule 13, in paragraph 3, for “A notice under Article 33 may require” substitute “An inspector must serve a notice under Article 33 requiring”.

**Amendment of Schedule 14**

4. In Schedule 14—

- (a) omit paragraph 1;
- (b) for paragraph 2 substitute—

“2. In this Schedule—

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(a) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), the Schedule, Part 1. It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act).

(b) S.I. 1972/1811. The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794.

(c) S.R. 2018 No. 184.

“field” means an area which has been demarcated as a field for the purposes of Article 3 of Directive 2007/33/EC(a);

“host plants” means plants with roots of *Capsicum* spp., *Solanum lycopersicum* L. or *Solanum melongena* L.;

“infested field” means a field which is recorded as infested pursuant to paragraph 5;

“susceptible bulbs” means bulbs, tubers or rhizomes, grown in soil and intended for planting, other than those for which there is evidence by their packaging or by other means that they are intended for sale to final consumers not involved in professional plant or cut flower production, of *Allium ascalonicum* L., *Allium cepa* L., *Dahlia* spp., *Gladiolus* Tourn. Ex L., *Hyacinthus* spp., *Iris* spp., *Lilium* spp., *Narcissus* L. or *Tulipa* L.;

“susceptible material” means host plants, susceptible bulbs or susceptible plants;

“susceptible plants” means plants with roots of *Allium porrum* L., *Asparagus officinalis* L., *Beta vulgaris* L., *Brassica* spp. or *Fragaria* L.”.

(c) after paragraph 2 insert—

#### **“Official investigations and surveys**

**2A.** The Department must ensure that—

- (a) official investigations are carried out in accordance with Articles 4 and 5 of Directive 2007/33/EC 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;
- (b) official surveys are carried out in accordance with Article 6 of Directive 2007/33/EC for the presence of Potato cyst nematodes in fields used for the production of potatoes, other than those intended for the production of seed potatoes.

#### **Official records**

**2B.** The Department must ensure that the results of each official investigation or official survey carried out pursuant to paragraph 2A are recorded to indicate whether Potato cyst nematodes were found in the field during the investigation or survey.

**2C.** Where the officially approved measures set out in Section 3(C) of Annex 3 to Directive 2007/33/EC have been taken in a field which has been recorded as infested pursuant to paragraph 2B and, following the completion of those measures, the presence of Potato cyst nematodes is not confirmed, the Department must ensure that the record is updated accordingly.”;

(d) in paragraph 3—

(i) omit the heading;

(ii) for the words from “the field”, in the first place it occurs, to the end, substitute “an infested field which specifies the boundaries of the field”;

(e) in paragraph 4, for the words from “pursuant” to “Directive 2007/33/EC” substitute “in accordance with paragraph 2C”;

(f) after paragraph 4 insert—

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(a) OJ No. L 156, 16.6.2007, p. 12.

### **“Official designation**

**4A.** An inspector must by notice designate as contaminated any susceptible material which comes from a field that has been officially recorded as infested under paragraph 2B or any susceptible material which has been in contact with soil in which Potato cyst nematodes have been found.”;

- (g) in paragraph 5—
  - (i) in sub-paragraph (a) for “a demarcated” substitute “an infested”;
  - (ii) in sub-paragraph (b), for the words from “in a” to the end substitute “any susceptible material which is intended for planting in an infested field”;
- (h) in paragraph 6, for the words from “in a” to the end substitute “of susceptible bulbs or susceptible plants in an infested field”;
- (i) in paragraph 8, for the words from “plants” to “field”, in the second place it occurs, substitute “host plants which have been designated as infested pursuant to paragraph 4A”;
- (j) after paragraph 9 insert—

### **“Controls on potatoes for industrial processing or grading**

**9A.** No person may move any potatoes which have been designated as infested pursuant to paragraph 4A and are intended for industrial processing or grading, unless authorised to do so by an inspector.

**9B.** An authorisation under paragraph 10A must be by notice and must require the potatoes to be delivered to a processing or grading plant that has appropriate and officially approved waste disposal procedures that ensure that there is no risk of Potato cyst nematodes spreading.”.

- (k) in paragraph 10, for the words from “plants” to the end substitute “susceptible bulbs or susceptible plants which have been designated as contaminated pursuant to paragraph 4A, unless they have been subject to the measures set out in Section 3(A) of Annex 3 to Directive 2007/33/EC and an inspector has confirmed by notice that they are no longer contaminated.”;
- (l) omit paragraph 11;
- (m) at the end insert—

### **“Further investigations**

**12.** If any suspected occurrence or confirmed presence of Potato cyst nematodes in Northern Ireland results from a breakdown or change in the effectiveness of a resistant potato variety which relates to an exceptional change in the composition of nematode species, pathotype or virulence group, the Department must ensure that the species of Potato cyst nematode and, where applicable, the pathotype and virulence group involved, is investigated and confirmed by appropriate methods.”.

## **Amendment of Schedule 15**

**5.** In Schedule 15—

- (a) in paragraph 1, at the appropriate places insert—
  - “official testing” means testing in an official laboratory or an officially supervised laboratory;
  - ”zone” means any area, including any individual premises.”;
- (b) after paragraph 1 insert—

## “PART A

### Official surveys and testing

**1A.** The Department must ensure that systematic official surveys for Potato ring rot are carried out on tubers of *Solanum tuberosum* L. and, where appropriate, on plants of *Solanum tuberosum* L., originating in Northern Ireland in accordance with Article 2(1) of Directive 93/85/EEC(a).

**1B.** Where the presence of Potato ring rot in susceptible material is suspected, the Department must ensure that—

- (a) official testing is carried out using the method set out in Annex 1 to Directive 93/85/EEC and in accordance with the conditions specified in point 1 of Annex 2 to Directive 93/85/EEC to confirm or refute its presence; and
- (b) the following are retained and appropriately conserved pending completion of the official testing—
  - (i) all tubers samples, and wherever possible, all plants sampled;
  - (ii) any remaining extract and additional preparation material for the screening tests;
  - (iii) all relevant documentation; and
- (c) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of Potato ring rot have been seen or symptoms of Potato ring rot have been identified by a positive immunofluorescence test or other appropriate positive test—
  - (i) the movement of all lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato ring rot spreading;
  - (ii) steps are taken to trace the origin of the suspected occurrence; and
  - (iii) additional appropriate precautionary measures based on the level of estimated risk to prevent any spread of the plant pest are taken.

**1C.** A notice may contain measures for the purposes of paragraph 1B(b)(i) to (iii).

## PART B

### Measures to be taken following the confirmation of the presence of Potato ring rot

**1D.** If the presence of Potato ring rot is confirmed in a sample of susceptible material following official testing carried out pursuant to paragraph 1B(a) or 1E, the Department must ensure that—

- (a) the susceptible material, the consignment or lot and any object from which the sample was taken and, where appropriate, the place of production and field from which the susceptible material was harvested is designated as contaminated by an inspector;
- (b) an inspector determines the extent of the probable contamination through pre- or post-harvest contact or through any production link with anything designated as contaminated under sub-paragraph (a), taking into account the provisions in point 1 of Annex 3 to Directive 93/85/EEC;

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(a) OJ No. L 259, 18.10.1993, p. 1, as amended by Directive 2006/56/EC (OJ No. L 182, 4.7.2006, p. 1).

- (c) a zone is demarcated by an inspector on the basis of the designation made under sub-paragraph (a), taking into account the provisions in point 2 of Annex 3 to Directive 93/85/EEC.

**1E.** Where susceptible material has been designated as contaminated under paragraph 1D(a), the Department must ensure that testing is carried out on potato stocks which are clonally related to that susceptible material in the manner specified in paragraph 1B in order to determine the probable primary source of infection and the extent of the probable contamination.

**1F.** Any such testing must be carried out on as much susceptible material as is necessary to determine the probable primary source of infection and the extent of the probable contamination.

**1G.** Any designation by an inspector under this Part must be made by notice.

**1H.** Where any susceptible material or object is determined by an inspector under paragraph 1D(b) to be possibly contaminated, the inspector must by notice designate that material or object as possibly contaminated.

## PART C”;

- (c) in paragraph 3—
  - (i) for the words before sub-paragraph (a) substitute “Where susceptible material or an object has been designated as contaminated or possibly contaminated under Part B, an inspector must serve a notice requiring that”;
  - (ii) in sub-paragraphs (a) and (b)—
    - (aa) at the beginning insert “in the case of”;
    - (bb) after “material” insert “, the material”;
  - (iii) in sub-paragraph (c)—
    - (aa) at the beginning insert “in the case of” and after “object”, in the second place it occurs, insert “, the object”;
    - (bb) in paragraph (ii), after “Potato ring rot” insert “surviving or”;
- (d) in paragraph 5—
  - (i) in the heading, omit “which may be required”;
  - (ii) in the words before sub-paragraph (a), for “may” substitute “must”;
- (e) in paragraph 6(c), at the end insert “, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to Directive 93/85/EEC”;
- (f) in paragraph 7(c)—
  - (i) after “potatoes for” insert “seed or”;
  - (ii) at the end insert “, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to Directive 93/85/EEC”;
- (g) in paragraph 8—
  - (i) in sub-paragraph (a)—
    - (aa) at the beginning insert “where an inspector is satisfied that the risk of volunteer potato plants and other naturally-found host plants of Potato ring rot has been eliminated,”;
    - (bb) in paragraph (iii), omit the words from “and an” to the end;
  - (ii) in sub-paragraph (d), at the end, insert “and a requirement that official testing be carried out on harvested tubers in each field using the method set out in Annex 1 to Directive 93/85/EEC.”;

- (h) in paragraph 9, for “A notice may” substitute “Except where the Department has published a notice under Part D, a notice must”;
- (i) after paragraph 10 insert—

“**10A.** Where an inspector serves a notice containing the first set of eradication measures, the Department must ensure that an official survey is carried out in relation to the field mentioned in paragraph 6(d) in accordance with Article 2 of Directive 93/85/EEC.”;
- (j) for paragraph 12 substitute—

“**12.** An inspector may not grant an authorisation under paragraph 11 unless—

  - (a) all of the measures to eliminate Potato ring rot and to remove all host plants which are specified in a notice in relation to the place of production in which the unit is situated have been complied with;
  - (b) the growing medium in the unit has been completely changed; and
  - (c) the unit and all equipment used on the unit has been cleansed and disinfected to eliminate Potato ring rot and to remove all host plant material.”;
- (k) after paragraph 13 insert—

## “PART D

### **Demarcation of zones for the control of Potato ring rot**

**14.** This Part applies where an inspector has demarcated a zone pursuant to paragraph 1D(c).

**15.** The Department may, by notice, specify—

- (a) how long the zone is to remain demarcated; and
- (b) the measures which apply in the demarcated zone.

**16.** A notice under paragraph 15—

- (a) must be in writing;
- (b) must describe the extent of the demarcated zone;
- (c) must specify the date on which each measure takes effect;
- (d) must be published in a manner appropriate to bring it to the attention of the public; and
- (e) may be amended, suspended or revoked, in whole or in part, by further notice.

**17.** Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this Schedule, except where the part which is outside the demarcated zone is not in Northern Ireland.

**18.** A notice published in accordance with paragraph 15 is to be treated as having been served on—

- (a) any occupier or other person in charge of any premises within the demarcated zone;
- (b) any person who operates machinery or carries out any other activity in relation to the production of potatoes within the demarcated zone.

**19.** A notice under paragraph 15 must specify that—

- (a) any machinery or storage facilities at premises within the demarcated zone which are used for potato production must be cleansed and disinfected in an appropriate manner so that there is no identifiable risk of Potato ring rot surviving or spreading;

- (b) during the specified period, only certified seed potatoes or seed potatoes grown under official control may be planted and any seed potatoes grown in a place of production which is possibly contaminated must be officially tested after harvesting;
- (c) during the specified period, potatoes intended for planting must be handled separately from all other potatoes at premises within the zone or that a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed and ware potatoes.

**20.** The Department must ensure that during the specified period—

- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by inspectors;
- (b) an official survey is carried out in accordance with Article 2 of Directive 93/85/EEC;
- (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

**21.** For the purposes of paragraphs 19 and 20, the “specified period”, in relation to a zone demarcated pursuant to paragraph 1D(c), must be at least three growing seasons after the year in which the zone was demarcated.”.

## **Amendment of Schedule 16**

**6.** In Schedule 16—

- (a) in paragraph 1, at the appropriate place insert—
  - “‘zone’ means any area, including any individual premises.”;
- (b) after the heading of Part A insert—

### **“Official surveys and testing**

**1A.** The Department must ensure that annual systematic official surveys are carried out to identify the presence of Potato brown rot on susceptible material originating in Northern Ireland in accordance with Article 2 of Directive 98/57/EC(a).

**1B.** Where the presence of Potato brown rot is suspected the Department must ensure that—

- (a) official testing is carried out to confirm or refute its presence:
  - (i) in the case of susceptible material, using the method set out in Annex 2 to Directive 98/57/EC and in accordance with the conditions specified in point 1 of Annex 3 to Directive 98/57/EC;
  - (ii) in any other case, using any officially approved method;
- (b) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of Potato brown rot have been seen and a positive result in a rapid screening test has been obtained or a positive result in the screening tests specified in point 2 of section 1 and section 3 of Annex 2 to Directive 98/57/EC has been obtained—
  - (i) the movement of all plants and tubers from all crops, lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato brown rot spreading;
  - (ii) steps are taken to trace the origin of the suspected occurrence; and

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(a) OJ No. L 235, 21.8.1998, p. 1, as amended by Directive 2006/63/EC (OJ No. L 206, 27.7.2006, p. 36).

- (iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of Potato brown rot.

**1C.** A notice may contain measures for the purposes of paragraph 1B(b)(i) to (iii).

## PART B

### **Measures to be taken following confirmation of the presence of Potato brown rot**

**1D.** If the presence of Potato brown rot is confirmed following official testing carried out pursuant to paragraph 1B, the Department must ensure that the actions specified in paragraphs 1E to 1G are taken in accordance with sound scientific principles, the biology of Potato brown rot and the relevant production, marketing and processing systems of host plants of Potato brown rot.

**1E.** In the case of susceptible material, the actions are—

- (a) an investigation by an inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to Directive 98/57/EC;
- (b) further official testing, including on all clonally related seed potato stocks;
- (c) the designation of the following as contaminated by an inspector—
  - (i) the susceptible material and consignment or lot from which the sample was taken;
  - (ii) any objects which have been in contact with that sample;
  - (iii) any unit or field of protected crop production and any place of production of the susceptible material from which the sample was taken.
- (d) a determination by an inspector of the extent of probable contamination through pre- or post-harvest contact, through production, irrigation or spraying links or through clonal relationship;
- (e) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (c), the determination made under sub-paragraph (d) and the possible spread of Potato brown rot in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

**1F.** In the case of host plants, other than susceptible material, where the production of susceptible material is identified to be at risk by an inspector, the actions are—

- (a) an investigation by an inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to Directive 98/57/EC;
- (b) the designation by an inspector of host plants from which the sample was taken as contaminated;
- (c) a determination of the probable contamination by an inspector;
- (d) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (b), the determination made under sub-paragraph (c) and the possible spread of Potato brown rot in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

**1G.** In the case of surface water and associated wild solanaceous host plants where production of susceptible material is identified by an inspector to be at risk through irrigation, spraying or flooding of surface water the actions are—

- (a) an investigation by an inspector to establish the extent of the contamination, which includes an official survey at appropriate times on samples of surface water and, if present, wild solanaceous host plants;



- (b) the designation of surface water from which the sample was taken by an inspector, to the extent appropriate and on the basis of the investigation under sub-paragraph (a);
- (c) a determination by an inspector of the probable contamination on the basis of the designation made under sub-paragraph (b);
- (d) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (b), the determination made under sub-paragraph (c) and the possible spread of Potato brown rot in accordance with point 2(ii) of Annex 5 to Directive 98/57/EC.

## PART C”;

- (c) in paragraph 3—
  - (i) for the words before sub-paragraph (a) substitute “Where susceptible material or any object has been designated as contaminated or possibly contaminated under Part B, an inspector must serve a notice requiring that”;
  - (ii) in sub-paragraph (a)—
    - (aa) at the beginning insert “in the case of “;
    - (bb) after “material” insert “the material”;
  - (iii) in sub-paragraph (b)—
    - (aa) at the beginning insert “in the case of”;
    - (bb) after “material” insert “, the material”;
  - (iv) in sub-paragraph (c)—
    - (aa) in the words before paragraph (i), at the beginning insert “in the case of” and after “object”, in the second place it occurs, insert “, the object”;
    - (bb) in paragraph (ii), after “Potato brown rot” insert “surviving or”;
- (d) in paragraph 5, for “may” substitute “must”;
- (e) in paragraph 6(c)—
  - (i) after “first”, insert “potato or tomato”;
  - (ii) at the end insert “and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to Directive 98/57/EC”;
  - (iii) after “weeds,” insert “during official inspections”;
- (f) in paragraph 7(b)—
  - (i) in paragraph (ii), at the beginning insert “during the fourth and fifth growing years,”;
  - (ii) in paragraph (iii), at the end insert “provided that the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of Potato brown rot, for at least the two consecutive growing years prior to planting, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to Directive 98/57/EC”;
- (g) in paragraph 8—
  - (i) in sub-paragraph (a), after “year” insert “no host plants of Potato brown rot be planted or”;
  - (ii) in sub-paragraph (e), at the end omit “and”;
  - (iii) in sub-paragraph (f), at the end insert—
    - “and;

- (g) official inspections of growing crops at appropriate times and official testing of harvested potatoes in accordance with the method set out in Annex 2 to Directive 98/57/EC.”;
- (h) in paragraph 9, for the words before sub-paragraph (a) substitute “Except where the Department has published a notice under Part D, a notice in relation to a contaminated place of production must”;
- (i) for paragraph 12 substitute—
  - “**12.** An inspector may not grant an authorisation under paragraph 11 unless—
    - (a) all of the measures to eliminate Potato brown rot and to remove all host plants of Potato brown rot which are specified in a notice in relation to the place of production in which the unit is situated have been complied with;
    - (b) the growing medium in the unit has been completely changed; and
    - (c) the unit and all of the equipment used on the unit has been cleansed and disinfected to eliminate Potato brown rot and to remove all host plant material.”.
- (j) after paragraph 13, the existing “Part B” becomes “Part D”;
- (k) in paragraph 19—
  - (i) for the words before sub-paragraph (a) substitute “A notice under paragraph 15 must specify that”;
  - (ii) in sub-paragraph (a), for “stores” insert “storage facilities”;
  - (iii) in sub-paragraph (b), after “crops,” insert “during the specified period”;
  - (iv) in sub-paragraph (c), at the beginning, insert “during the specified period”;
  - (v) in sub-paragraph (d), after “crops,” insert “during the specified period”;
- (l) after paragraph 20 insert—

“**21.** If the Department does not publish a notice under paragraph 15, an inspector must include those measures in a notice under paragraph 5 or 9.

**22.** The Department must ensure that during the specified period—

- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by inspectors;
- (b) an official survey is carried out in accordance with Article 2 of Directive 98/57/EC;
- (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

**23.** For the purposes of paragraphs 19 and 22, the “specified period”, in relation to a zone demarcated pursuant to paragraph 1D(c) must be at least three growing seasons after the year in which the zone was demarcated.”.

*Gardiner of Kimble*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

20th March 2019

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make amendments to the Plant Health Order (Northern Ireland) 2018 (S.R. 2018 No. 184) to transpose certain provisions in Council Directive 69/464/EEC on control of Potato Wart Disease (OJ No. L 323, 24.12.1969, p. 1), 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).

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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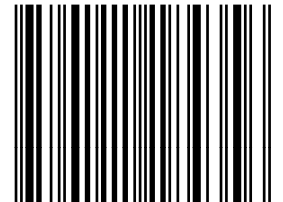
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