

# Welsh Statutory Instrument 2004 No. 2245 (W.209)

## The Potatoes Originating in Egypt (Wales) Regulations 2004

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### STATUTORY INSTRUMENTS

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#### 2004 No. 2245 (W.209)

#### PLANT HEALTH, WALES

#### The Potatoes Originating in Egypt (Wales) Regulations 2004

*Made*

*31 August 2004*

*Coming into force*

*1 September 2004*

The National Assembly for Wales, being designated<sup>[1]</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>[2]</sup> in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by the said section 2(2), hereby makes the following Regulations:

### **Citation, application and commencement**

1. - (1) These Regulations may be cited as the Potatoes Originating in Egypt (Wales) Regulations 2004; they apply in relation to Wales and come into force on 1 September 2004.

### **Interpretation**

2. In these Regulations -

"the Decision" ("*y Penderfyniad*") 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[3];

"inspector" ("*archwilydd*") means any person authorised to be an inspector for the purposes of the Order;

"the Order" ("*y Gorchymyn*") means the Plant Health (Great Britain) Order 1993[4];

"phytosanitary certificate" ("*tystysgrif ffytoiechydol*") has the same meaning as in article 2(1) of the Order; and

"potato" ("*taten*") 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.

(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) will 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 may carry out in the course of business any treatment, including washing, of potatoes originating in Egypt other than in premises that the National Assembly for Wales has approved in writing for that purpose.

(2) Applications for the approval required by paragraph (1) must be made in writing to the National Assembly for Wales.

(3) The National Assembly for Wales 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) will 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 will 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) will 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 will 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 must, if required, pay to the National Assembly for Wales a fee of £37.50 in respect of each lot sampled.

### **Offences**

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

(2) A person guilty of an offence under paragraph (1) will 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 Wales -

- (a) the Potatoes Originating in Egypt Regulations 1998<sup>[5]</sup>; and
- (b) the Potatoes Originating in Egypt (Amendment) Regulations 1998<sup>[6]</sup>.

(2) The following Regulations are revoked -

- (a) the Potatoes Originating in Egypt (Amendment) (Wales) Regulations 2000<sup>[7]</sup>;
- (b) the Potatoes Originating in Egypt (Amendment) (Wales) Regulations 2001<sup>[8]</sup>; and
- (c) the Potatoes Originating in Egypt (Amendment) (Wales) Regulations 2002<sup>[9]</sup>.

Signed on behalf of the National Assembly for Wales under section 66(1) of

the Government of Wales Act 1998[10].

*John Marek*

The Deputy Presiding Officer of the National Assembly

31 August 2004

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## EXPLANATORY NOTE

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

These Regulations, which apply in relation to Wales, consolidate with amendments the Potatoes Originating in Egypt Regulations 1998 ("the 1998 Regulations"). The Regulations implement Commission Decision 2004/4/EC 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 the Community 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 Order") to accompany imports of potato tubers into Wales 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 section 50(3) offence replaces a similar offence of importing potatoes in breach of the 1998 Regulations, contained in those Regulations.

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 National Assembly for Wales. 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 National Assembly for Wales 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.

A Regulatory appraisal has been prepared and is available from the Animal and Plant Health Policy Division, National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ.

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*Notes:*

[1] S.I. 1999/2788.[back](#)

[2] 1972 c.68.[back](#)

[3] OJ No. L2, 6.1.2004, p.50.[back](#)

[4] S.I. 1993/1320; as amended by S.I. 1993/3213, 1995/1358 and 2929, 1996/25, 1165 and 3242, 1997/1145 and 2907, 1998/349, 1121 and 2245, 1999/2641 (W.8), 2001/2500 (W.203), 2001/3761 (W.310), 2002/1805 (W.175) and 2003/1851 (W.201).[back](#)

[5] S.I. 1998/201, as amended by S.I. 1998/3167, 2000/22 and 2963, 2001/3574 and 2002/2902.[back](#)

[6] S.I. 1998/3167.[back](#)

[7] S.I. 2000/350.[back](#)

[8] S.I. 2001/2356 (W.194).[back](#)

[9] S.I. 2002/120 (W.14).[back](#)

[10] 1998 c.38.[back](#)

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