

Statutory Instrument 1991 No. 1905 (S.159)

The Soft Fruit Plants (Scotland) Order 1991

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STATUTORY INSTRUMENTS

1991 No. 1905 (S.159)

PLANT HEALTH

The Soft Fruit Plants (Scotland) Order 1991

Made 21st August 1991

Laid before Parliament 23rd August 1991

Coming into force 13th September 1991

The Secretary of State, in exercise of the powers conferred on him by sections 1(2) (b), 3(1), 3(2), 3(4) and 4(1) of the Plant Health Act 1967^[1], and section 20 of the Agriculture (Miscellaneous Provisions) Act 1972^[2] and of all other powers enabling him in that behalf, with the consent of the Treasury, hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Soft Fruit Plants (Scotland) Order 1991 and shall come into force on 13th September 1991.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order, unless the context otherwise requires-
- "agricultural unit" shall have the meaning assigned to that expression in section 86(2) of the Agriculture (Scotland) Act 1948^[3];
 - "approved stock" means any stock which has been approved by the Secretary of State other than certified stock;
 - "blackcurrant bush" includes cuttings or any part of a blackcurrant bush for planting;
 - "certificate" means a certificate issued by or on behalf of the Secretary of State under article 4 of this Order in accordance with the requirements of Schedules 1 to 3 to this Order stating, in respect of the plants to which it relates, the particulars specified in Schedule 4 to this Order;
 - "certified stock" means-
 - (a) in relation to stock produced in Scotland, any plants which are the subject of a certificate issued in accordance with the requirements of Schedules 1 to 3 to this Order; and
 - (b) in relation to stock produced outside Scotland, any plants which are the subject of a certificate issued by the authority concerned with the certification of plants in the country or place where the plants were produced;
 - "inspector" means an officer authorised by the Secretary of State for Scotland;
 - "plant" means a strawberry plant, a raspberry plant or a blackcurrant bush;
 - "raspberry" includes *Rubus* hybrids;
 - "sale" includes possession with a view to sale, offer for sale, exposure for sale and sale of a plant and any agreement between parties-
 - (a) under which the property in a plant is transferred from one person to another; or
 - (b) under which a plant is made over by one person to another in pursuance of a contract under which the plant will be used for producing further plants,
 - and "sell" and "sold" shall be construed accordingly;
 - "strawberry plant" includes runners or any other parts of a strawberry plant for planting but does not include the plant commonly known as "alpine strawberry" or any part of such plant;
 - "raspberry plant" includes a rooted cane and any other part of a raspberry plant for planting.

Restriction on sale of soft fruit plants

3.—(1) Subject to paragraph (3) of this article, no person shall sell or cause to be sold any plant which does not form part of certified stock or approved stock.

(2) Subject to paragraph (3) of this article, a person who sells any plant shall on or before the sale of the plant issue to the purchaser a statement in writing identifying the certificate relating to the plant or indicating that it forms part of approved stock.

(3) This article shall not apply as respects any sale under and in accordance with the conditions of a licence granted under article 8 of this Order.

Certification

4.—(1) An application for certification of stock in respect of purity and health shall be made in writing to the Secretary of State with such information in such form and in such manner as he may require.

(2) Where the Secretary of State is satisfied, after inspection by an inspector, that a stock meets all of the relevant requirements for certification of that stock prescribed in paragraph (3) of this article, he may issue a certificate to that effect in respect of that stock.

(3) The requirements for the certification of strawberry plants, raspberry plants and blackcurrant bushes are prescribed respectively in Schedules 1, 2 and 3 to this Order.

(4) A certificate issued by or on behalf of the Secretary of State under this article shall contain the particulars specified in Schedule 4 to this Order.

Withdrawal of certificate

5.—(1) The Secretary of State may withdraw any certificate issued under this Order where he is satisfied that—

- (a) the requirements of this Order have not been met in relation to the stock in respect of which the certificate was issued; or
- (b) the conditions under which the certificate has been issued have not been strictly observed.

(2) Before withdrawing a certificate under the provisions of paragraph (1) of this article the Secretary of State shall—

- (a) give to the person to whom the certificate was issued written notification of the reasons for the action proposed to be taken by him;
- (b) afford that person the opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose; and
- (c) consider the report by a person so appointed and supply a copy of the report to the person to whom the certificate was issued.

(3) A certificate which is withdrawn by the Secretary of State under this article shall cease to have effect as a valid certificate from the date on which the withdrawal is notified to the person to whom the certificate was issued.

Restriction on the planting of raspberry plants

6. No person shall plant or cause or permit to be planted any raspberry plant unless it forms part of certified stock or approved stock.

Powers of entry and examination and sampling

7. An inspector, on production if so required of his authority, may for any purpose of this Order enter any land or premises at all reasonable times and may examine and take samples of any plants which are on such land or premises.

Licences

8.—(1) Notwithstanding the provisions of this Order, any plant may be sold or planted under and in accordance with the conditions of a licence issued by the Secretary of State.

(2) Any licence issued in accordance with paragraph (1) of this article may be varied or revoked by the Secretary of State as he thinks fit.

Fees

9. Every person to whom a certificate is issued shall pay to the Secretary of State the fee specified in column 2 of Schedule 5 to this Order in respect of any matter specified in column 1 of that Schedule.

Procedure when plants are sold or planted in contravention of this Order

10.—(1) If an inspector has reason to believe that any plant has been sold or planted contrary to the provisions of article 3(1) or article 6 of this Order he may, by notice in writing served on any person in whose charge or possession such plant appears to be, prohibit the planting thereof or the removal thereof from any land or premises specified in the notice, otherwise than in accordance with such conditions as

may be so specified and may by such notice require the treatment or destruction thereof or the removal thereof to any other place so specified, in accordance with such conditions as may be specified.

(2) If any person shall fail to comply with the terms of a notice served in accordance with paragraph (1) of this article, then without prejudice to any proceedings under this Order consequent upon such failure, an inspector may enter upon the land or premises at all reasonable times and treat or destroy such plant and the cost of taking such steps shall be recoverable by the Secretary of State as a debt due from the person in default.

Service of notices

11.—(1) For the purposes of this Order a notice shall be deemed to be served on or given to any person if it is delivered to him personally or left for him at his last known place of abode or business, or sent through the post in a letter addressed to him there.

(2) In the case of a body corporate, a notice may be served on the Secretary or Clerk of that body at the address of the registered or principal office, and in the case of a partnership or firm, be served on a partner or person having the control or management of the partnership or firm at the principal office.

Information

12.—(1) Every person who has or has had in his possession or under his charge or has sold any plant shall, if so required in writing by the Secretary of State or an inspector, provide the Secretary of State or the inspector, as the case may be, with all such information as may be required, shall produce for inspection any documents relating to the sale or purchase of such plant, and shall permit the Secretary of State or the inspector to take copies or make extracts from any such documents.

(2) Where any information is held in a computer it shall be produced in a form in which it is visible and legible and in which it can be taken away.

Offences

13. Any person who-

- (a) fails to comply with articles 3, 6, 10(1) or 12 of this Order; or
- (b) fails to comply with the terms of any notice served or licence issued under this Order; or
- (c) obstructs any person in the exercise of his powers under this Order; or
- (d) wilfully or negligently makes any statement for the purpose of this Order which is false in any material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Revocation

14. The Sale of Strawberry Plants and Blackcurrant Bushes (Scotland) Order 1947⁽⁴⁾ is hereby revoked.

Strathclyde

Parliamentary Under Secretary of State, Scottish Office
St. Andrew's House, Edinburgh

12th August 1991
We consent,

Thomas Sackville

Sydney Chapman

Two of the Lords Commissioners of Her Majesty's Treasury

21st August 1991

Notes:

[1] 1967 c. 8; sections 2(1), 3(1) and (2) and 4(1) were amended by the European Communities Act 1972 (c. 68), section 4(1) and Schedule 4, paragraph 8; and section 3(4) was substituted by the Criminal Justice Act 1982 (c. 48), section 42. [back](#)

[2] 1972 c. 62. [back](#)

[3] 1948 c. 45. [back](#)

[4] S.I. 1947/408. [back](#)