

2012 No. 266

PLANT HEALTH

The Plant Health (Scotland) Amendment Order 2012

Made - - - - 27th September 2012

Laid before the Scottish Parliament 1st October 2012

Coming into force - - 15th November 2012

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967(a), section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(b), section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(c) and all other powers enabling them to do so.

This Order makes provision for preventing the spread of pests in Scotland and is called for by EU obligations in Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC(d), Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster)(e) (“Commission Decision 2012/138/EU”), Commission Implementing Decision 2012/219/EU recognising Serbia as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckerman and Kotthoff) Davis et al.(f), Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner)(g) and by Decision No 1/2010 of the Joint Committee on Agriculture set up by the agreement between the European Community and the Swiss Confederation on trade in agricultural products concerning the amendments to the Appendices to Annex 4(h).

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- (a) 1967 c. 8. Sections 2(1) and 3(1) were amended by the European Communities Act 1972 (c.68) (“the 1972 Act”), section 4(1) and Schedule 4, paragraph 8 and further amended by S.I. 2011/1043, Part 2, article 6(1)(e). Section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c.48) and the Statute Law (Repeals) Act 1993 (c.50), section 1(1) and Schedule 1, Part XIV. There are other amendments which are not relevant to this Order. The functions of the Secretary of State, so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (b) 1972 c. 62.
- (c) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred on the Minister of the Crown under section 2(2), so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Section 2(2) is relevant to the modifications made by article 6. Paragraph 1(d) of Schedule 2 to the European Communities Act 1972 has been modified by section 47 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) in order that the functions conferred under section 2(2) can be exercised to create an offence punishable on summary conviction by a fine of up to the statutory maximum. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, section 3(3) and Schedule, Part 1.
- (d) OJ L 156, 16.6.2007, p.12.
- (e) OJ L 64, 3.3.2012, p.38.
- (f) OJ L 114, 26.4.2012, p.28.
- (g) OJ L 132, 23.5.2012, p.18.
- (h) OJ L 32, 8.2.2011, p.9.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to Commission Decision 2012/138/EU to be construed as references to that instrument as amended from time to time.

Citation and commencement

1. This Order may be cited as the Plant Health (Scotland) Amendment Order 2012 and comes into force on 15th November 2012.

Amendments to the Plant Health (Scotland) Order 2005

2. The Plant Health (Scotland) Order 2005(a) is amended in accordance with articles 3 to 13.

Amendment of Part 1

3. In article 2(1) (general interpretation)—

(a) after the definition of “Decision 2007/410/EC” insert—

““Decision 2012/138/EU” means Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster)(b), as amended from time to time;

“Directive 92/90/EEC” means Commission Directive 92/90/EEC establishing obligations to which producers and importers of plants, plant products or other objects are subject and establishing details for their registration(c);” and

(b) for the definition of “Directive 2000/29/EC” substitute—

““Directive 2000/29/EC” means Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community(d), as last amended by Commission Directive 2010/1/EU amending Annexes II, III and IV to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community(e);”.

Amendment of Part 7

4. In article 39 (miscellaneous provisions for certain solanaceous species), after paragraph (10), insert—

“(11) An inspector may perform an official survey on sampling units used for the production of potatoes, other than those intended for the production of seed potatoes, for the purposes of Article 6 of Directive 2007/33/EC.

(12) An inspector may perform an official survey for the purposes of Article 4 of Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similis* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner)(f).”.

(a) S.S.I. 2005/613, amended by S.S.I. 2006/474, 2007/415 and 498, 2008/300 and 350, 2009/153, 2010/206 and 342 and S.I. 2011/1043.

(b) OJ L 64, 3.3.2012, p.38.

(c) OJ L 344, 26.11.1992, p.38.

(d) OJ L 169, 10.7.2000, p.1.

(e) OJ L 7, 12.1.2010, p.17.

(f) OJ L 132, 23.5.2012, p.18.

Amendment of Part 8

5. For article 40 (licences to carry out activities prohibited by this Order) substitute—

“Licences to carry out activities prohibited by this Order

40. Notwithstanding any of the provisions of this Order, any plant pest or relevant material may be landed kept, stored, sold, planted, moved or otherwise disposed of in Scotland and any other thing prohibited by this Order may be done under the authority of a licence, whether general or specific, granted by the Scottish Ministers—

- (a) in exercise of any derogation permitted by Directive 2000/29/EC; or
- (b) in relation to a pest which although not specified in Schedule 1 or in column 3 of Schedule 2 is not normally present in Great Britain and which is likely to be injurious to plants in Great Britain, for the purposes of scientific research.”.

Amendment of Parts 9 and 10

6.—(1) After article 44 (information to be given) insert—

“Disclosure of information from Her Majesty’s Revenue and Customs

44A.—(1) The Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) may disclose any information in their possession to the Scottish Ministers for the purposes of this Order.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners to disclose information.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners under paragraph (1) if—

- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure;
- (b) the disclosure is not for the purposes of this Order; or
- (c) the Commissioners have not given their prior consent to the disclosure.”.

(2) In article 45 (offences), in paragraph (1)(a)—

- (a) at the end of head (xv) omit “and”; and
- (b) after head (xvi) insert—

“or

(xvii) article 44A(3);”.

(3) For article 46 substitute—

“Penalties

46.—(1) Subject to paragraph (2), a person who commits an offence under this Order is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (2) A person who commits an offence in breach of article 44A(3) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 3 months, to a fine not exceeding the statutory maximum or to both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both.”.

Amendment of Schedule 1

7. In Schedule 1 (plant pests which shall not be landed in or spread within Scotland), in Part B (plant pests known to occur in the European Union), after paragraph 1a insert—

“1b. *Epitrix cucumeris* (Harris)

1c. *Epitrix similaris* (Gentner)

1d. *Epitrix subcrinita* (Lec.)

1e. *Epitrix tuberis* (Gentner)”.

Amendment of Schedule 3

8. In Schedule 3 (relevant material which may not be landed in Scotland if that material originates in certain third countries)—

- (a) in item 8, in column 3 after “Morocco,” insert “Serbia,”; and
- (b) omit item 16.

Amendment of Schedule 4

9.—(1) In Schedule 4 (restrictions on the landing in and movement within Scotland of relevant material), in Part A (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied)—

- (a) after item 32, insert—

“32a.	Tubers of <i>Solanum tuberosum</i> L., originating in any third country where <i>Epitrix cucumeris</i> (Harris), <i>Epitrix similaris</i> (Gentner), <i>Epitrix subcrinita</i> (Lec.) or <i>Epitrix tuberis</i> (Gentner) is known to occur.	Without prejudice to the requirements in items 32, 33, 34, 35, 35a, 35b and 36, the tubers must be accompanied by an official statement that—
		(a) the tubers have been—
		(i) grown in an area established as free from <i>Epitrix cucumeris</i> (Harris), <i>Epitrix similaris</i> (Gentner), <i>Epitrix subcrinita</i> (Lec.) and <i>Epitrix tuberis</i> (Gentner) by the national plant protection organisation in the country of origin in accordance with ISPM No. 10 (the name of the pest-free area to be mentioned on the phytosanitary certificate or phytosanitary certificate for re-export under the rubric “Place of Origin”); or

		<p>(ii) washed or brushed so that there is no more than 0.1% soil remaining, or have undergone an equivalent method specifically applied in order to achieve the same outcome, namely, to remove the organisms concerned and to ensure that there is no risk of spreading the organisms;</p> <p>(b) the tubers have been found free from <i>Epitrix cucumeris</i> (Harris), <i>Epitrix similaris</i> (Gentner), <i>Epitrix subcrinita</i> (Lec.) and <i>Epitrix tuberis</i> (Gentner) and from any of their symptoms and do not contain more than 0.1% of soil in an official examination carried out immediately prior to export; and</p> <p>(c) the packaging material in which the tubers are imported is clean.”</p>
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(b) for item 81, substitute—

“81.	Plants intended for planting that have a stem or root collar diameter of 1 centimetre or more at their thickest point, other than seeds, of <i>Acer</i> spp., <i>Aesculus hippocastanum</i> , <i>Alnus</i> spp., <i>Betula</i> spp., <i>Carpinus</i> spp., <i>Citrus</i> spp., <i>Cornus</i> spp., <i>Corylus</i> spp., <i>Cotoneaster</i> spp., <i>Crataegus</i> spp., <i>Fagus</i> spp., <i>Lagerstroemia</i> spp., <i>Malus</i> spp., <i>Platanus</i> spp., <i>Populus</i> spp., <i>Prunus laurocerasus</i> , <i>Pyrus</i> spp., <i>Rosa</i> spp., <i>Salix</i> spp. and <i>Ulmus</i> spp. originating in any third country where <i>Anoplophora chinensis</i> (Forster) is known	<p>Without prejudice to the requirements in Schedule 3, items 4, 12 and 14 and Schedule 4, Part A, items 11, 12, 19, 20, 21, 22, 23, 27, 28, 29, 30, 48, 50, 51, 52, 55, 60, 61, 64, 65 and 70 the plants must be accompanied by an official statement—</p> <p>(a) that the plants have been grown throughout their life in a place of production which is registered and supervised by the national plant protection organisation in the country of origin and situated in a pest-free area established by that organisation in accordance with ISPM No. 4 (the name of the pest-free area to be mentioned on the phytosanitary certificate or phytosanitary certificate for re-export under the rubric “Place of origin”); or</p> <p>(b) that—</p>
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to occur.

- (i) the plants have been grown during a period of at least 2 years prior to export in a place of production, which is registered and supervised by the national plant protection organisation in the country of origin, established as free from *Anoplophora chinensis* (Forster) in accordance with ISPM No. 10 and which has been subjected annually to at least two official meticulous inspections for any signs of *Anoplophora chinensis* (Forster) carried out at appropriate times and where no signs of the organism have been found;
- (ii) the plants have been grown in a site—
 - (aa) with complete physical protection against the introduction of *Anoplophora chinensis* (Forster); or
 - (bb) with the application of appropriate preventive treatments and surrounded by a buffer zone with a radius of at least 2 kilometres where official surveys for the presence or signs of *Anoplophora chinensis* (Forster) are carried out annually at appropriate times and where any sign of *Anoplophora chinensis* (Forster) has been found, eradication measures have immediately been taken to restore the pest freedom of the buffer zone; and
- (iii) immediately prior to export, consignments of the plants have been subjected to an official meticulous inspection for the presence of *Anoplophora chinensis* (Forster), in particular in roots and stems of the plants—
 - (aa) which, in the case of plants originating in any third country other than China, includes targeted destructive sampling, with the size of the sample being such as to enable at least the detection of 1% level of infestation with a level of confidence of 99%; or

		<p>(bb) which, in the case of plants originating in China, includes targeted destructive sampling on each lot, with the size of the sample for inspection being such as to enable at least the detection of 1% level of infestation with a level of confidence of 99%. The level of destructive sampling required is as follows—</p> <table border="1"> <thead> <tr> <th>Number of plants in the lot</th> <th>Level of destructive sampling (number of plants to be cut)</th> </tr> </thead> <tbody> <tr> <td>1-4500</td> <td>10% of lot size</td> </tr> <tr> <td>> 4500</td> <td>450</td> </tr> </tbody> </table> <p>; or</p> <p>(c) that the plants have been grown from rootstocks which meet the requirements of point (b), grafted with scions which meet the following requirements—</p> <p>(i) at the time of export, the grafted scions are no more than 1 centimetre in diameter at their thickest point; and</p> <p>(ii) the grafted plants have been inspected in accordance with point (b)(iii); and</p> <p>(d) which, in the case of plants originating in China, states the registration number of the place of production and that place of production complies with the requirements specified in article 3(1)(c) of Decision 2012/138/EU.”</p>	Number of plants in the lot	Level of destructive sampling (number of plants to be cut)	1-4500	10% of lot size	> 4500	450
Number of plants in the lot	Level of destructive sampling (number of plants to be cut)							
1-4500	10% of lot size							
> 4500	450							

(2) In Schedule 4 (restrictions on the landing in and movement within Scotland of relevant material), in Part B (relevant material, from another part of the European Union, which may only be landed in or moved within Scotland if special requirements are satisfied)—

(a) after item 19, insert—

“19a	Tubers of <i>Solanum tuberosum</i> L originating in an area demarcated under a legislative or administrative procedure in an EU member State for the purpose of eradicating and monitoring an infestation of <i>Epitrix cucumeris</i> (Harris), <i>Epitrix similaris</i> (Gentner),	<p>Without prejudice to the requirements in items 15 to 19, the tubers must be accompanied by an official statement that—</p> <p>(a) the tubers have been—</p> <p>(i) grown in a place of production which is registered in accordance with Directive 92/90/EEC; or</p>
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	<p><i>Epitrix subcrinita</i> (Lec.) or <i>Epitrix tuberis</i> (Gentner).</p>	<p>(ii) grown by a producer registered in accordance with Commission Directive 93/50/EEC specifying certain plants not listed in Annex V, part A to Council Directive 77/93/EEC, the producers of which, or the warehouses, dispatching centres in the production zones of such plants, shall be listed in an official register^(a) (“Commission Directive 93/50/EEC”); or</p> <p>(iii) moved from a warehouse or dispatching centre registered in accordance with Commission Directive 93/50/EEC;</p> <p>(b) the tubers have been washed or brushed so that there is no more than 0.1% soil remaining or have undergone an equivalent method specifically applied in order to achieve the same outcome, namely to remove the organisms concerned and to ensure that there is no risk of spreading the organisms; and</p> <p>(c) that the packaging material in which the tubers are moved is clean.”</p>
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(b) for item 37, substitute—

<p>“37.</p>	<p>Plants intended for planting that have a stem or root collar diameter of 1 centimetre or more at their thickest point, other than seeds, of <i>Acer</i> spp., <i>Aesculus hippocastanum</i>, <i>Alnus</i> spp., <i>Betula</i> spp., <i>Carpinus</i> spp., <i>Citrus</i> spp., <i>Cornus</i> spp., <i>Corylus</i> spp., <i>Cotoneaster</i> spp., <i>Crataegus</i> spp., <i>Fagus</i> spp., <i>Lagerstroemia</i> spp., <i>Malus</i> spp., <i>Platanus</i> spp., <i>Populus</i> spp., <i>Prunus laurocerasus</i>, <i>Pyrus</i> spp., <i>Rosa</i> spp., <i>Salix</i> spp. and <i>Ulmus</i> spp. originating in an area demarcated under a legislative or administrative procedure in an EU Member State for the purpose of eradicating and</p>	<p>The plants must be accompanied by an official statement—</p> <p>(a) that the plants have been grown during a period of at least 2 years prior to movement in a place of production which is registered in accordance with Directive 92/90/EEC and which has been subjected annually to 2 official meticulous inspections for any signs of <i>Anoplophora chinensis</i> (Forster), carried out at appropriate times and where no signs of the organism have been found. Where appropriate, this inspection must include targeted destructive sampling of the roots and stems of plants; the size of the sample being such as to enable at least the detection of 1% level of infestation with a level of confidence of 99%; and</p> <p>(b) that the plants were grown in a site—</p>
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(a) OJ L 205, 17.8.1993, p.22.

	<p>monitoring an infestation of <i>Anoplophora chinensis</i> (Forster).</p>	<ul style="list-style-type: none"> (i) with complete physical protection against the introduction of <i>Anoplophora chinensis</i> (Forster); or (ii) with the application of appropriate preventive treatments or where targeted destructive sampling is carried out on each lot of specified plants prior to movement at the level set out in the Table in Point 2 of Annex 1, Section 1, Part B of Decision 2012/138/EU, and, in any case, where official surveys for the presence or signs of <i>Anoplophora chinensis</i> (Forster) are carried out annually within a radius of at least 1 kilometre around the site at appropriate times and where no signs of the organism have been found; or (c) that the plants were grown from rootstocks which meet the requirements of (a) and (b) but which were grafted with scions which have not been grown under these conditions, but which were no more than 1 centimetre in diameter at their thickest point at the time they were grafted.”
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(c) after item 37, insert—

<p>“37a.</p>	<p>Plants intended for planting that have a stem or root collar diameter of 1 centimetre or more at their thickest point, other than seeds, of <i>Acer</i> spp., <i>Aesculus hippocastanum</i>, <i>Alnus</i> spp., <i>Betula</i> spp., <i>Carpinus</i> spp., <i>Citrus</i> spp., <i>Cornus</i> spp., <i>Corylus</i> spp., <i>Cotoneaster</i> spp., <i>Crataegus</i> spp., <i>Fagus</i> spp., <i>Lagerstroemia</i> spp., <i>Malus</i> spp., <i>Platanus</i> spp., <i>Populus</i> spp., <i>Prunus laurocerasus</i>, <i>Pyrus</i> spp., <i>Rosa</i> spp., <i>Salix</i> spp. and <i>Ulmus</i> spp. originating in an area other than an area demarcated under a legislative or administrative procedure in an EU Member State for the purpose of eradicating and monitoring an infestation of <i>Anoplophora chinensis</i> (Forster) but which were introduced into a place of production in such a demarcated area.</p>	<p>The plants must be accompanied by an official statement that the plants have been grown in a site—</p> <ul style="list-style-type: none"> (a) with complete physical protection against the introduction of <i>Anoplophora chinensis</i> (Forster); or (b) with the application of appropriate preventive treatments or where targeted destructive sampling is carried out on each lot of specified plants prior to movement at the level set out in the Table in Point 2 of Annex 1, Section 1, Part B of Decision 2012/138/EU and, in any case, where official surveys for the presence or signs of <i>Anoplophora chinensis</i> (Forster) are carried out annually within a radius of at least 1 kilometre around the site at appropriate times and no sign of the organism has been found.”
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Amendment of Schedule 6

10. In Schedule 6 (prohibitions on the landing in and movement within Scotland of relevant material without a plant passport), in Part A (relevant material, from Scotland or elsewhere in the European Union, which may only be landed in or moved within Scotland if accompanied by a plant passport)—

(a) after paragraph 3a, insert—

“**3b.** Tubers of *Solanum tuberosum* L, other than those intended for planting, originating in an area demarcated under a legislative or administrative procedure in an EU member State for the purpose of eradicating and monitoring an infestation of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner).”; and

(b) for paragraph 8, substitute—

“**8.** Without prejudice to paragraphs 1 and 7, plants intended for planting, other than seeds, that have a stem or root collar diameter of 1 centimetre or more at their thickest point, of *Acer* spp., *Aesculus hippocastanum*, *Alnus* spp., *Betula* spp., *Carpinus* spp., *Citrus* spp., *Cornus* spp., *Corylus* spp., *Cotoneaster* spp., *Crataegus* spp., *Fagus* spp., *Lagerstroemia* spp., *Malus* spp., *Platanus* spp., *Populus* spp., *Prunus laurocerasus*., *Pyrus* spp., *Rosa* spp., *Salix* spp. and *Ulmus* spp., originating—

- (a) in any third country where *Anoplophora chinensis* (Forster) is known to occur;
- (b) in an area demarcated under a legislative or administrative procedure in an EU member State for the purpose of eradicating and monitoring an infestation of *Anoplophora chinensis* (Forster); or
- (c) in an area other than a demarcated area mentioned in sub-paragraph (b) but introduced into a place of production in such a demarcated area.”.

Amendment of Schedule 7

11. In Schedule 7 (prohibitions on the consignment of relevant material to another part of the European Union without a plant passport), in Part A (relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport)—

(a) after paragraph 3a, insert—

“**3b.** Tubers of *Solanum tuberosum* L, other than those intended for planting, originating in an area demarcated under a legislative or administrative procedure in an EU member State for the purpose of eradicating and monitoring an infestation of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner).”; and

(b) for paragraph 8, substitute—

“**8.** Without prejudice to paragraphs 1 and 7, plants intended for planting, other than seeds, that have a stem or root collar diameter of 1 centimetre or more at their thickest point, of *Acer* spp., *Aesculus hippocastanum*, *Alnus* spp., *Betula* spp., *Carpinus* spp., *Citrus* spp., *Cornus* spp., *Corylus* spp., *Cotoneaster* spp., *Crataegus* spp., *Fagus* spp., *Lagerstroemia* spp., *Malus* spp., *Platanus* spp., *Populus* spp., *Prunus laurocerasus*., *Pyrus* spp., *Rosa* spp., *Salix* spp. and *Ulmus* spp., originating—

- (a) in any third country where *Anoplophora chinensis* (Forster) is known to occur;
- (b) in an area demarcated under a legislative or administrative procedure in an EU member State for the purpose of eradicating and monitoring an infestation of *Anoplophora chinensis* (Forster); or

- (c) in an area other than a demarcated area mentioned in sub-paragraph (b) but introduced into a place of production in such a demarcated area.”.

Amendment of Schedule 8

12.—(1) In Schedule 8 (Swiss plant passports), in Part A (relevant material originating in Switzerland which may be landed in or moved within Scotland if accompanied by a Swiss plant passport)—

- (a) for paragraph 1 substitute—

“1. Plants, other than seeds, of *Beta vulgaris* L., *Camellia* sp., *Humulus lupulus* L., *Prunus* L., other than *Prunus laurocerasus* L. or *Prunus lusitanica* L., *Rhododendron* spp., other than *Rhododendron simsii* Planch., or *Viburnum* spp., intended for planting.”; and

- (b) in paragraph 5—

(i) in sub-paragraph (a), after “*Dianthus* L.”, insert “and hybrids thereof”;

(ii) at the end of sub-paragraph (e) omit “or”;

- (iii) after sub-paragraph (e) insert—

“(ea) plants of *Palmae*, intended for planting and having a diameter of the stem at the base of over 5 centimetres and belonging to the following genera or species: *Areca catechu* L., *Arenga pinnata* (Wurmb) Merr., *Borassus flabellifer* L., *Brahea* Mart., *Butia* Becc., *Calamus merrillii* Becc., *Caryota maxima* Blume ex Mart., *Caryota cumingii* Lodd. ex Mart., *Chamaerops* L., *Cocos nucifera* L., *Corypha elata* Roxb., *Corypha gebang* Mart., *Elaeis guineensis* Jacq., *Jubaea* Kunth., *Livistona* R. Br., *Metroxylon sagu* Rottb., *Oreodoxa regia* Kunth., *Phoenix* L., *Sabal* Adans., *Syagrus* Mart., *Trachycarpus* H. Wendl., *Trithrinax* Mart., *Washingtonia* Raf; or”.

(2) In Schedule 8, in Part B (relevant material imported into Switzerland from another third country which, if it would normally be permitted to be landed in Scotland if accompanied by a phytosanitary certificate, may be accompanied by a Swiss plant passport)—

- (a) for paragraph 1, substitute—

“1. Plants, other than seeds, intended for planting, other than *Clausena* Burm. f. and *Murraya* Koenig ex. L.”; and

- (b) in paragraph 5(c), for “*Quercus* L or *Solidago* L.” substitute “*Quercus* L., *Rhododendron* spp., other than *Rhododendron simsii* Planch., *Solidago* L., or *Viburnum* spp.”.

Amendment of Schedule 15

13. In Schedule 15 (special measures for the control of Potato Cyst Nematode), in paragraph 7, after “article 39(8),” insert “or an official survey referred to in article 39(11),”.

Revocations

14. The following articles are revoked—

- (a) article 2(22) of the Plant Health (Scotland) Amendment Order 2006(a);

(a) S.S.I. 2006/474.

- (b) articles 6(2)(c) and 7 of the Plant Health (Scotland) Amendment (No. 2) Order 2008(a);
- (c) articles 4 and 5 of the Plant Health (Scotland) Amendment (No. 2) Order 2010(b).

St Andrew's House,
Edinburgh
27th September 2012

RICHARD LOCHHEAD
A member of the Scottish Government

(a) S.S.I. 2008/350.
(b) S.S.I. 2010/342.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (Scotland) Order 2005 (“the principal Order”) to implement certain EU obligations relating to plant health. It also makes some other changes to the principal Order.

Commission Implementing Decision 2012/138/EU

Articles 8(b), 9(1)(b), 9(2)(b) and (c), 10(b) and 11(b) implement Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster) (OJ L 64, 3.3.2012, p.38). The Order amends Part A of Schedule 4 to the principal Order (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied) to place requirements on the landing in and movement within Scotland of certain host plants which originate in countries where the pest (known commonly as the citrus longhorn beetle) is known to occur. Additional controls are placed on plants imported from China, including plants of *Acer* spp. (article 9(1)(b)). The ban on import into the Union of plants of *Acer* spp. originating in China expired on 30th April 2012 and article 8(b) of the Order, which amends Schedule 3 to the principal Order (relevant material which may not be landed in Scotland if that material originates in certain third countries) reflects this.

Article 9(2)(b) amends Part B of Schedule 4 to the principal Order (relevant material from another part of the European Union, which may only be landed in or moved within Scotland if special requirements are satisfied) to place requirements on the import into and movement within Scotland of the relevant host plants from demarcated areas within other member States. Article 9(2)(c) does the same in relation to host plants which do not originate in demarcated areas but which were introduced into a place of production in such an area (article 9(2)(c)).

Articles 10(b) and 11(b) of the Order amend Part A of Schedule 6 (relevant material, from Scotland or elsewhere in the European Community, which may only be landed in or moved within Scotland if accompanied by a plant passport) and Part A of Schedule 7 (relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport) respectively to require that the relevant host plants of *Anoplophora chinensis* (Forster) are accompanied by a plant passport when landed in or moved within Scotland or when on consignment to another part of the Union.

Commission Implementing Decision 2012/219/EU

Article 8(a) amends Schedule 3 to the principal Order (relevant material which may not be landed in Scotland if that material originates in certain third countries) to except Serbia from the general prohibition on the introduction into the Union of tubers of species *Solanum* L and their hybrids. This exception implements Commission Implementing Decision 2012/219/EU recognising Serbia as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckerman and Kotthoff) Davis et al. (OJ L 114, 26.4.2012, p.28).

Commission Implementing Decision 2012/270/EU

Articles 4, 7, 9(1)(a), 9(2)(a), 10(a) and 11(a) implement Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) (OJ L 132, 23.5.2012, p.18). Article 4 (in so far as it inserts paragraph (12)) amends article 39 of the principal Order (miscellaneous provisions for certain solanaceous species) to allow inspectors to perform an official survey for the presence of these pests (known commonly as potato flea beetles). Article 7 of the Order adds these pests to Schedule 1 to the principal Order. Amongst other things, this addition permits inspectors to use their general powers under article 32 of the principal Order to require certain actions to be taken by the occupier or person in charge of land on which the pest may be present.

Articles 9(1)(a) and 9(2)(a) amend Parts A and B respectively of Schedule 4, to place requirements on the import into and movement within Scotland of tubers of *Solanum tuberosum* L, which originate in any third country in which the pests are known to occur (article 9(1)(a)) or in a demarcated area within a Member State (article 9(2)(a)). Articles 10(a) and 11(a) amend Part A of Schedule 6 and Part A of Schedule 7 to the Principal Order respectively. They require tubers of *Solanum tuberosum* L. which originate in a demarcated area of another member State may only be landed in or moved within Scotland, or consigned to another part of the Union from Scotland, if they are accompanied by a plant passport.

Council Directive 2007/33/EC

Articles 4 (in so far as it inserts paragraph (11) into article 39 of the principal Order) and 13 (which amends Schedule 15 to the principal Order (special measures for the control of Potato Cyst Nematode)) together permit inspectors to perform surveys on fields used for the production of ware potatoes and to take the steps required by Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC (OJ L 156, 16.6.2007, p.12) if that pest is discovered.

Other changes

Article 3 substitutes the definition of “Directive 2000/29/EC” (OJ L 169, 10.7.2000, p.1) in order to capture amendments which have been made to the Directive since the making of the principal Order. It also adds two other definitions of instruments referred to in these amendments.

Article 5 substitutes article 40 of the principal Order (licences to carry out activities prohibited by this Order). The previous article 40 allowed for the grant of licences in exercise of a derogation under Council Directive 2000/29/EC. The substituted article also allows for licences to be granted for the purposes of scientific research on pests which, although not listed in Schedule 1 to the principal Order (Plant pests which shall not be landed in or spread within Scotland) or column 3 of Schedule 2 to the principal Order (relevant material which may not be landed in or moved within Scotland if that material is carrying or infected with plant pests), are pests which are not normally present in Great Britain but which would be injurious to plants in Great Britain.

Article 6 inserts a new article 44A into the principal Order to permit the Commissioners for Her Majesty’s Revenue and Customs to disclose any information in their possession to the Scottish Ministers for the purposes of the principal Order (article 6(1)). It also creates a new offence and corresponding penalty in relation to this power of disclosure by amending articles 45 (offences) and 46 (penalties) of the principal Order.

Article 12 amends Schedule 8 to the principal Order (Swiss plant passports) to reflect Decision No 1/2010 of the Joint Committee on Agriculture set up by the agreement between the European Community and the Swiss Confederation on trade in agricultural products concerning the amendments to the Appendices to Annex 4 (2011/83/EU) (OJ L 32, 8.2.2011, p.9). The article updates the list of plants which may enter Scotland accompanied by a Swiss plant passport.

Article 14 revokes certain articles of other orders in consequence of this Order.

No business and regulatory impact assessment has been prepared for this Order as no impact on business, charities or voluntary bodies is foreseen.

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