

**2007 No. 415**

**PLANT HEALTH**

**The Plant Health (Scotland) (Amendment) Order 2007**

*Made* - - - - *5th September 2007*

*Laid before the Scottish Parliament* *6th September 2007*

*Coming into force* - *30th September 2007*

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), as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(b), and of all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Plant Health (Scotland) (Amendment) Order 2007 and comes into force on 30th September 2007.

**Amendment of the Plant Health (Scotland) Order 2005**

2. The Plant Health (Scotland) Order 2005(c) is amended in accordance with articles 3 to 9.

**Amendment of article 2**

3. In article 2(1) (general interpretation), for the definition of “Directive 93/85/EC” substitute—  
““Directive 93/85/EEC” means Council Directive 93/85/EEC(d) on the control of potato ring rot;”.

**Amendment of article 39**

4. In article 39(2)(c) (miscellaneous provisions for certain solanaceous species), for “Directive 93/85/EC” substitute “Directive 93/85/EEC”.

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(a) 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; section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c.48) and further amended by section 17(1) of the Criminal Justice Act 1991 (c.53) and the Statute Law (Repeals) Act 1993 (c.50), section 1(1) and Schedule 1, Part XIV. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of Section 53 of the Scotland Act 1998 (c.46).

(b) 1972 c.62.

(c) S.S.I. 2005/613 as amended by S.S.I. 2006/474.

(d) O.J. No. L 259, 18.10.1993, p.1, as last amended by OJ No. L 182, 4.7.2006, p.1.

#### **Amendment of article 42**

5. For Article 42(3) (notification of the presence or suspected presence of certain plant pests) substitute—

“(3) Where any plant pest referred to in paragraph (2)(b), (c) or (d) is specified in Schedule 18, it shall be notifiable under paragraph (1) where—

- (a) it is a subspecies or strain normally present in Great Britain and is found on the premises of a registered plant trader; or
- (b) it is a subspecies or strain not normally present in Great Britain and is found on any premises.”.

#### **Amendment of Schedule 4**

6. 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), in the third column of item 77, for “a country”, substitute “an area or areas”.

#### **Amendment of Schedule 16**

7.—(1) Schedule 16 (special measures for the control of potato ring rot) is amended in accordance with paragraphs (2) to (10).

(2) In paragraph 2, for “Directive 93/85/EC”, substitute “Directive 93/85/EEC”.

(3) For paragraph 3, substitute—

“3. Material can be required to be disposed of—

- (a) by destruction; or
- (b) by any other measure that complies with paragraph 1 of Annex IV to Directive 93/85/EEC.”.

(4) In paragraph 4—

- (a) for “Directive 93/85/EC”, substitute “Directive 93/85/EEC”; and
- (b) in sub-paragraph (b), for “paragraph 5”, substitute “paragraph 2 of Annex IV to Directive 93/85/EEC”.

(5) Omit paragraph 5.

(6) In paragraphs 6, 7 and 9, for “Directive 93/85/EC”, substitute “Directive 93/85/EEC”.

(7) For paragraph 10(b) and (c), substitute—

“(b) in the first potato cropping season following the period referred to in paragraph (a), that basic seed potatoes or pre-basic seed potatoes may be planted, for ware production only, provided that the field has been free from volunteer potato plants and other naturally found host plants of Potato Ring Rot for at least the two consecutive growing years prior to planting; and

(c) in the potato cropping season which follows that referred to in paragraph (b) and following an appropriate rotation cycle (which shall be at least two years where potatoes are planted for seed production), that basic seed potatoes or pre-basic seed potatoes may be planted, for seed or ware production.”.

(8) For paragraph 11(b), substitute—

“(b) in the first potato cropping season following the period referred to in paragraph (a), that basic seed potatoes or pre-basic seed potatoes may be planted, for seed or ware production, provided that the field has been free from volunteer potato plants and other naturally found host plants of Potato Ring Rot for at least the two consecutive growing years prior to planting.”.

(9) In paragraph 12–

(a) for “Directive 93/85/EC”, substitute “Directive 93/85/EEC”; and

(b) for paragraphs (b) and (c), substitute–

“(b) in the second growing year following the period referred to in paragraph (a) that basic seed potatoes or pre-basic seed potatoes officially tested for the absence of Potato Ring Rot and grown under official control at a place of production which is not designated by an inspector as contaminated for the purposes of Article 5(1)(a) of Directive 93/85/EEC, may be planted, for seed or ware production;

(c) for at least the third growing year following the period referred to in paragraph (a), that basic seed potatoes or pre-basic seed potatoes grown under official control may be planted, for seed or ware production; and

(d) from the date of receipt of the notice for the growing years referred to in paragraphs (a), (b) and (c), measures shall be taken to eliminate volunteer potato plants and naturally found host plants of Potato Ring Rot.”.

(10) In paragraphs 13 and 16, for “Directive 93/85/EC”, substitute “Directive 93/85/EEC”.

#### **Amendment of Part A of Schedule 17**

**8.** In Schedule 17, Part A (special measures for the control of *Ralstonia solanacearum*)–

(a) in paragraph 2(b), for “used or disposed of in accordance with paragraph 3”, substitute “subjected to a provision in paragraph 1 of Annex VI to that Directive”;

(b) omit paragraph 3;

(c) in paragraph 4(b), for “paragraph 5”, substitute “paragraph 2 of Annex VI to that Directive”;

(d) omit paragraph 5;

(e) in paragraph 10–

(i) in paragraph (a)(ii)(aa), for “and plants”, substitute “, plants and true seeds”;

(ii) for paragraphs (b) and (c), substitute–

“(b) in the first potato cropping season following the period referred to in paragraph (a), that basic seed potatoes or pre-basic seed potatoes may be planted, for ware production only, provided that the field or unit of production has been free from volunteer potato and tomato plants and other host plants including solanaceous weeds for at least the two consecutive growing years prior to planting; and

(c) in the potato or tomato cropping season which follows that referred to in paragraph (b), that there shall be an appropriate rotation cycle which shall be at least two years where basic seed potatoes or pre-basic seed potatoes are planted.”;

(f) in paragraph 11(a)(i), after “other”, insert “naturally found”;

(g) in paragraph 12(a), for “or potato plants”, substitute “, potato plants or true seeds”;

(h) at the end of paragraph 14(a) omit “and” and after that paragraph insert–

“(aa) where the authorisation is granted for tomato production, production shall be from seed which meets the requirements of Directive 2000/29/EC(a) or, if vegetatively propagated, from tomato plants produced from such seed and grown under official control; and”;

(i) for paragraph 15, substitute–

“**15.** Where a place of production is designated by an inspector as contaminated for the purposes of Article 5(1)(a)(ii) of Directive 98/57/EC and with regard to any fields at that place other than those referred to in paragraph 9 the inspector is satisfied that the risk of volunteer potato and tomato plants and other naturally found host plants of

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(a) O.J. No. L 169, 10.7.2000, p.1 as last amended by O.J. No. L 88, 25.3.2006, p.9.

*R. solanacearum* has been eliminated, the notice referred to in paragraph 8 may require that with regard to such fields–

- (a) from the date of receipt of the notice and for one growing year following the start of the next growing year–
  - (i) potato tubers, potato plants and true seeds and other host plants of *R. solanacearum* shall not be planted save that, in the case of potato tubers, basic seed potatoes or pre-basic seed potatoes may be planted for ware production only;
  - (ii) tomato plants grown from seed which meets the requirements of Directive 2000/29/EC may be planted, for fruit production only;
- (b) in the first growing year following that specified in sub-paragraph (a)–
  - (i) if potatoes are to be planted, only basic seed potatoes or pre-basic seed potatoes officially tested for the absence of *R. solanacearum* and grown under official control at a place of production which is not designated by an inspector as contaminated for the purposes of Article 5(1)(a)(ii) of Directive 98/57/EC may be planted, for seed or ware production;
  - (ii) in the case of tomatoes, only tomato plants grown from seed which meets the requirements of Directive 2000/29/EC or, if vegetatively propagated, from tomato plants produced from such seed and grown under official control at a place of production which is not designated by an inspector as contaminated for the purposes of Article 5(1)(a)(ii) of Directive 98/57/EC may be planted, for plant or fruit production;
- (c) in the second growing year following that specified in sub-paragraph (a) and, where appropriate, in any subsequent growing year which may be specified in the notice–
  - (i) if potatoes are to be planted, only basic seed potatoes or pre-basic seed potatoes grown under official control from certified seed potatoes may be planted, for seed or ware production;
  - (ii) if tomatoes are to be planted, only tomato plants grown from seed which meets the requirements of Directive 2000/29/EC or tomato plants grown from such plants under official control may be planted, for plant or fruit production; and
- (d) from the date of the receipt of the notice and in each of the growing years referred to in this paragraph, measures shall be taken to eliminate volunteer potato plants and other naturally found host plants of *R. solanacearum* as appropriate.”; and
- (j) in paragraph 16, for “throughout the subsequent growing years up to and including the first potato or tomato cropping season permitted by paragraph 10(b) or 11(b)”, substitute “after the first subsequent growing year”.

#### **Amendment of Part B of Schedule 17**

9. In Schedule 17, Part B (demarcation of zones for the control of *Ralstonia solanacearum*) in paragraph 6(a)–

- (a) in paragraph (ii), for “may be planted”, substitute “grown under official control may be planted”;
- (b) at the end of paragraph (ii), omit “and”;
- (c) at the end of paragraph (iii), insert “, or a system of cleansing and, where appropriate, disinfection shall be carried out between the handling of seed and ware potatoes; and”;
- (d) after paragraph (iii), insert–
  - “(iv) with regard to tomato crops in the zone, only tomato plants grown from seed which meets the requirements of Directive 2000/29/EC or, if vegetatively

propagated, tomato plants produced from such seed and grown under official control may be planted;”.

St Andrew's House,  
Edinburgh  
5th September 2007

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

## EXPLANATORY NOTE

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

This Order amends Schedules 16 and 17 to the Plant Health (Scotland) Order 2005 (“the principal Order”). The Schedules, which implement Council Directive 93/85/EEC and Council Directive 98/57/EC contain special measures on the control of Potato Ring Rot and *Ralstonia solanacearum* respectively.

The amendments to Schedule 16, in article 7, give effect to Commission Directive 2006/56/EC (O.J. No. L 182, 4.7.2006, p.1) which amends the Annexes to Council Directive 93/85/EEC.

Similarly, the amendments to Schedule 17, in articles 8 and 9, give effect to Commission Directive 2006/63/EC (O.J. No. L 206, 27.7.2006, p.36) which amends Annexes II to VII to Council Directive 98/57/EC.

The amendments to both Schedules update requirements for the disposal of contaminated and possibly contaminated material, for the control measures required in contaminated places of production and, in the case of *Ralstonia solanacearum*, for such measures within demarcation zones.

The Order, in articles 3 to 6, also makes minor and drafting amendments to the principal Order.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.



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