

2008 No. 300

PLANT HEALTH

The Plant Health (Scotland) Amendment Order 2008

Made 5th September 2008

Laid before the Scottish Parliament 9th September 2008

Coming into force 1st October 2008

The Scottish Ministers make the following Regulations 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 paragraph 1A of Schedule 2 to the European Communities Act 1972(c) and all other powers enabling them to do so.

The Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(d) and it appears to the Scottish Ministers that it is expedient for the references to Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EEC may be introduced into or moved within the Community or certain protected zones thereof for trial or scientific purposes and for work on varietal selections(e) 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 2008 and comes into force on 1st October 2008.

Amendments to the Plant Health (Scotland) Order 2005

2. The Plant Health (Scotland) Order 2005(f) is amended in accordance with articles 3 to 16.

(a) 1967 c.8; sections 2(1) and 3(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) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(d) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(e) O.J. No L 158, 18.6.2008, p.41.

(f) S.S.I. 2005/613, as amended by S.S.I. 2006/474 and 2007/415 and 498.

Amendment of Article 2

3. In article 2(1)(general interpretation) at the appropriate place in accordance with alphabetical order insert–

““seed potato” means any potato intended for planting.”.

Amendment of part 3

4.—(1) In Part 3 (internal community controls on movement), in article 19(1) (prohibitions on landing plant pests and relevant material) after “paragraph (2)” insert “and article 19A”.

(2) In Part 3 after article 19 insert–

“Introduction of seed potatoes into Scotland

19A.—(1) No person shall introduce seed potatoes into Scotland unless that person has given written notification to an inspector at least forty eight hours prior to the intended date of introduction of their intention to introduce the potatoes and of–

- (a) the proposed time, date and means of introduction;
- (b) the proposed point of entry;
- (c) the proposed destination;
- (d) the variety;
- (e) the quantity; and
- (f) the producer’s identification number or the reference number of the lot.

(2) Where an inspector is satisfied that a lot comprises seed potatoes grown outwith Scotland and that no notification has been given as required by paragraph (1), then the inspector may serve a notice requiring the person introducing the potatoes to notify the Scottish Ministers within such period as is specified in the notice of the matters specified in paragraph (1)(a) to (f).”.

Amendment of part 8

5.—(1) In part 8 (licences), in article 41 (licences for trial or scientific purposes and for work on varietal selections), in paragraph (1) for “Directive 95/44/EC of 26th July 1995” substitute “Directive 2008/61/EC of 17th June 2008”(a);

(2) In paragraphs (2), (6) and (7)(a)(i) of article 41 for “Directive 95/44 EC” (wherever it occurs) substitute “Directive 2008/61 EC”.

(3) For paragraph (7)(b) of article 41 substitute–

“(b) “Directive 2008/61/EC” means Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections.”.

Amendment of part 10

6. In part 10 (offences), in article 45 (offences) after paragraph (1)(a)(v) insert “(vA) article 19A;”;

(a) O.J. No. L 158, 18.6.08, p.41.

Amendment of Schedule 1

7. In Schedule 1 (plant pests which shall not be landed in or spread within Scotland), Part B (plant pests known to occur in the European Community), under the first heading (Insects, mites and nematodes), omit item 4, “*Heliothis armigera* (Hübner)”.

Amendment of Schedule 2

8. In Schedule 2 (relevant material which may not be landed in or moved within Scotland if that material is carrying or infected with plant pests), part B (plant pests known to occur in the European Community) after item 10 in the table headed “Insects, mites and nematodes” insert–

“

11.	Plants other than seeds of <i>Dendranthema</i> (DC.) Des Moul, <i>Dianthus</i> L., <i>Pelargonium</i> L’Herit ex Ait. and of the family <i>Solanaceae</i> , intended for planting	<i>Helicoverpa armigera</i> (Hübner)
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9. In Schedule 2, part B (plant pests known to occur in the European Community) in the table headed “Fungi” omit the entries for item 2 (*Colletotrichum acutatum*).

Amendment of Schedule 3

10. In Schedule 3 (relevant material which may not be landed in Scotland if that material originates in certain third countries), at item 8, in column 3, omit “Bulgaria”(a).

Amendment of Schedule 4

11. In Schedule 4 (restrictions on the landing in and movement within Scotland of relevant material), part A (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied), at item 41, in column 2 at paragraph (a) for “*Heliothis armigera* Hübner” substitute “*Helicoverpa armigera* (Hübner)”.

12. In Schedule 4, part A, at item 71, in column 2, after “seeds,” insert “bulbs,”.

13. In Schedule 4, part B (relevant material, from another part of the European Community, which may only be landed in or moved within Scotland if special requirements are satisfied), at item 23 in column 2 at paragraph (a) for “*Heliothis armigera* Hübner” substitute “*Helicoverpa armigera* (Hübner)”.

Amendment of Schedule 8

14. 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) at item 2, omit “other than *Sorbus intermedia* (Ehrh.) Pers”.

(a) The entry for Bulgaria was inserted by S.S.I. 2006/474.

15. In Schedule 8, in part A at item 5, in paragraph (d) after “*Allium schoenoprasum* L.”, insert “, *Helianthus annuus* L., *Lycopersicon lycopersicum* (L.) Karsten ex Farw, *Medicago sativa* L., *Phaseolus* L.”

St Andrew’s House,
Edinburgh
5th September 2008

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (Scotland) Order 2005 (“the principal Order”) so as to implement the instruments below–

- (a) Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections;
- (b) Commission Directive 2008/64/EC (O.J. No. L 168, 28.6.08, p.31) amending annexes I to 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;
- (c) Commission Decision No 1/2008(O.J. No. L 154, 12.6.08, p.1) of the Joint Committee on Agriculture set up by the agreement between the European Community and the Swiss Confederation on trade and agricultural products, concerning the amendments to the Appendices to Annex 4 (2008/86/EC);
- (d) Corrigendum 15528/07 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.

Articles 3 and 4 introduce a requirement that anyone who introduces seed potatoes into Scotland must give at least 48 hours prior written notice to an inspector authorised by the Scottish Ministers, providing specified information as to the identity of the potatoes, the proposed time and date of entry and their proposed destination. An inspector who is satisfied that a lot of seed potatoes has been introduced without the required notification may serve a notice on the person introducing the potatoes requiring them to supply the specified information.

Article 5 replaces references to Directive 95/44/EC with references to Directive 2008/61/EC, which is a codification of Directive 95/44/EC as amended.

Article 6 introduces an offence for failing to notify Scottish Ministers of the introduction of seed potatoes.

Articles 7, 8, 11 and 13 implement a change in the name of *Heliothis armigera* Hübner, which is now known as *Helicoverpa armigera* (Hübner) and alter the controls on this pest. It was previously listed in Schedule 1 of the principal Order, as a pest which may not be landed or moved within Scotland in any circumstances. It is now moved to Schedule 2, where landing or movement is only prohibited if the pest occurs on specified plants.

Article 9 removes *Colletotrichum acutatum* from the list of quarantine pests.

Article 11 removes Bulgaria from the list of third countries from which tubers of *Solanum* L. may be imported, since Bulgaria is now a member of the European Union.

Article 10 corrects the omission of bulbs from article 71 of Schedule 4A to the principal Order.

Articles 14 and 15 implement changes to the list in Schedule 8 of the principal Order of material originating in Switzerland which may be landed in or moved within Scotland if accompanied by a Swiss plant passport. *Sorbus intermedia* (Ehrh.) Pers. is no longer excluded, and seeds or bulbs of *Helianthus annuus* L., *Lycopersicon lycopersicum* (L.) Karsten ex Farw, *Medicago sativa* L. and *Phaseolus* L. are added.

This statutory notification requirement for all imported seed potatoes was subject to a public consultation from 6th March 2008 to 30th May 2008. The consultation paper and a summary of responses are available on the Scottish Government website, www.scotland.gov.uk/consultations. No regulatory impact assessment was carried out because the statutory requirement replaces a voluntary notification scheme, and no change in the impact on business is therefore expected.

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