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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 350**

**PLANT HEALTH**

**The Plant Health (Scotland) Amendment (No. 2) Order 2008**

*Made* - - - - 29th October 2008  
*Laid before the Scottish*  
*Parliament* - - - - 30th October 2008  
*Coming into force* - - 21st November 2008

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(1), as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(2), and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(3), and all other powers enabling them to do so.

The 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 the references to Commission Directive 2008/61/EC(4) 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 (No. 2) Order 2008 and comes into force on 21st November 2008.

**Amendments to the Plant Health (Scotland) Order 2005**

2. The Plant Health (Scotland) Order 2005(5) is amended in accordance with articles 3 to 7.

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- (1) 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).
- (2) 1972 c. 62.
- (3) Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
- (4) O.J. No L 158, 18.6.2008, p41.
- (5) S.S.I. 2005/613 (“the principal Order”), as amended by S.S.I. 2006/474, 2007/415 and 498 and 2008/300.

**Amendment of article 2**

3. In article 2 (general interpretation), paragraph (6), for “Any”, substitute “Unless otherwise stated, any”.

**Amendment of article 41**

4. In article 41 (licences for trial or scientific purposes and for work on varietal selections), paragraph (7)(b)(6), immediately after “means Commission Directive 2008/61/EC”, insert “, as amended from time to time,”.

**Amendment of Schedule 1**

5. In Schedule 1 (plant pests which shall not be landed in or spread within Scotland), Part A (plant pests not known to occur in any part of the European Community), in the section “Insects, mites and nematodes”–

- (a) for item 4, substitute “*Anoplophora chinensis* (Forster)”; and
- (b) omit item 6.

**Amendment of Schedule 4**

6.—(1) 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)–

- (a) for item 41(7) substitute–

“41.	Plants, other than seeds, of <i>Dendranthema</i> (DC.) Des Moul., <i>Dianthus</i> L. or <i>Pelargonium</i> L'Hérit. ex Ait., intended for planting, originating in any third country.	Without prejudice to the requirements in items 42 to 44, 46 to 48, 50, 55, 60, 64 and 66, the plants shall be accompanied by an official statement that: <ul style="list-style-type: none"> <li>(a) no signs of <i>Helicoverpa armigera</i> (Hübner) or <i>Spodoptera littoralis</i> (Boisd.) have been observed at the place of production since the beginning of the last complete cycle of vegetation; or</li> <li>(b) the plants have undergone appropriate treatment to protect them from the plant pests in paragraph (a).”.</li> </ul>
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(6) Article 41(7)(b) was substituted by article 5(3) of the Plant Health (Scotland) Amendment Order 2008 (S.S.I. 2008/300) (“the 2008 Order”).

(7) This amendment corrects the effect of a typographical error in article 11 of the 2008 Order, which amended item 41 in Part A to Schedule 4 to the principal Order. Article 11 of the 2008 Order was intended to substitute “*Helicoverpa armigera* (Hübner)” for “*Heliothis armigera* Hubner” in column 3(a) of the principal Order. But, in article 11 of the 2008 Order, the reference was to “column 2” of item 41; the reference, and therefore the amendment, should have been to “column 3”.

(b) after item 80 insert–

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“81.	Plants, 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>Corylus</i> spp., <i>Cotoneaster</i> spp., <i>Fagus</i> spp., <i>Lagerstroemia</i> spp., <i>Malus</i> spp., <i>Platanus</i> spp., <i>Populus</i> spp., <i>Prunus</i> spp., <i>Pyrus</i> spp., <i>Salix</i> spp., and <i>Ulmus</i> spp., intended for planting, originating in any third country where <i>Anoplophora chinensis</i> (Forster) is known to occur.	Without prejudice to the requirements in Schedule 3, Part A, items 4, 12 and 14 and Schedule 4, Part A, items 11, 12, 19, 20, 22, 23, 27, 28, 29, 30, 48, 50, 51, 52, 55, 60, 61, 64, 65 and 70 the plants shall be accompanied by an official statement– (a) that the plants have been grown throughout their life in a place of production situated in a pest-free area established by the national plant protection organisation in the country of origin 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 (b) that– (i) the plants have been grown during a period of at least two 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 <i>Anoplophora chinensis</i> (Forster) in accordance with ISPM No. 10 and which has been subjected annually to two official inspections for any signs of <i>Anoplophora chinensis</i> (Forster)
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- carried out at appropriate times and 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 signs of *Anoplophora chinensis* (Forster) are found, eradication measures are immediately taken to restore the pest freedom

- of the buffer zone; and
- (iii) immediately prior to export, consignments of the plants have been officially subjected to a meticulous inspection for the presence of *Anoplophora chinensis* (Forster), in particular in roots and stems of the plants and where appropriate including destructive sampling.”.

(2) 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)–

(a) for item 23(8) substitute–

“23.	Plants, other than seeds, of <i>Dendranthema</i> (DC) Des Moul., <i>Dianthus</i> L. or <i>Pelargonium</i> l'Hérit ex Ait., intended for planting.	Without prejudice to the requirements in items 24, 25 and 27, the plants shall be accompanied by an official statement that: (a) no signs of <i>Helicoverpa armigera</i> (Hübner), or <i>Spodoptera littoralis</i> (Boisd.) have been observed at the place of production since the beginning of the last complete cycle of vegetation; or (b) they have undergone appropriate treatment to protect them from these pests.”.
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(c) after item 36 insert–

“37.	Plants, other than seeds, of <i>Acer</i> spp., <i>Aesculus hippocastanum</i> , <i>Alnus</i> spp.,	The plants shall be accompanied by an official statement–
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(8) This amendment corrects the effect of a typographical error in article 13 of the 2008 Order which amended item 23 in Part B to Schedule 4 to the principal Order. Article 13 of the 2008 Order was intended to substitute “*Helicoverpa armigera* (Hübner)” for “*Heliothis armigera* Hubner” in column 3(a) of the principal Order. But, in article 13 of the 2008 Order, the reference was to “column 2” of item 23; the reference, and therefore the amendment, should have been to “column 3”.

- Betula* spp., *Carpinus* spp., *Citrus* spp., *Corylus* spp., *Cotoneaster* spp., *Fagus* spp., *Lagerstroemia* spp., *Malus* spp., *Platanus* spp., *Populus* spp., *Prunus* spp., *Pyrus* spp., *Salix* spp., and *Ulmus* spp., intended for planting, originating in an area demarcated under a legislative or administrative procedure in a member State for the purpose of eradicating and monitoring an infestation of *Anoplophora chinensis* (Forster)
- (a) that the plants have been grown during a period of at least two years prior to movement in a place of production which is registered in accordance with 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)<sup>(9)</sup> and which has been subjected annually to two official meticulous inspections for any signs of *Anoplophora chinensis* (Forster), carried out at appropriate times and where appropriate including destructive sampling, and no signs of the organism have been found; and
- (b) that the plants were placed in a site—
- (i) with complete physical protection against the introduction of *Anoplophora chinensis* (Forster); or
- (ii) with the application of appropriate preventive treatments and surrounded by a buffer zone with a radius of at least two km beyond the boundary of the infested zone where official surveys for the presence or signs

<sup>(9)</sup> O.J. No. L 344, 26.11.1992, p.38.

of *Anoplophora chinensis* (Forster) are carried out annually at appropriate times and where signs of *Anoplophora chinensis* (Forster) are found, eradication measures are immediately taken to restore the pest freedom of the buffer zone.”.

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#### **Amendment of Schedules 6 and 7**

7. In both Schedule 6 (prohibitions on the landing in and movement within Scotland of relevant material without a plant passport), Part A (relevant material, from Scotland or elsewhere in the European Community, which may only be landed or moved within Scotland if accompanied by a plant passport) and Schedule 7 (prohibitions on the consignment of relevant material to another part of the European Community without a plant passport), Part A (relevant material which may only be consigned to another part of the European Community if accompanied by a plant passport), after item 7 insert—

“8. Without prejudice to paragraphs 1 and 7, plants, other than seeds, of *Acer* spp., *Aesculus hippocastanum*, *Alnus* spp., *Betula* spp., *Carpinus* spp., *Citrus* spp., *Corylus* spp., *Cotoneaster* spp., *Fagus* spp., *Lagerstroemia* spp., *Malus* spp., *Platanus* spp., *Populus* spp., *Prunus* spp., *Pyrus* spp., *Salix* spp., and *Ulmus* spp., intended for planting, originating in any third country where *Anoplophora chinensis* (Forster) is known to occur or in an area demarcated under a legislative or administrative procedure in a member State for the purpose of eradicating and monitoring an infestation of *Anoplophora chinensis* (Forster).”.

#### **Revocation**

8. Articles 11 and 13 of the Plant Health (Scotland) Amendment Order 2008(10) are revoked.

St Andrew’s House,  
Edinburgh  
29th October 2008

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

This Order amends the Plant Health (Scotland) Order 2005 ([S.S.I. 2005/613](#)) (“the principal Order”) to implement certain import restrictions on certain plant species, other than seeds, intended for planting, originating in any third country to prevent the introduction into Scotland of *Anoplophora chinensis* (Forster) (the citrus longhorn beetle).

In particular, this Order amends the principal Order so as—

- to clarify the scientific name for citrus longhorn beetle as *Anoplophora chinensis* (Forster) (article 5);
- to prohibit imports of certain plant species originating in any third country where *Anoplophora chinensis* (Forster) is known to occur unless certain conditions are met (article 6(1)(b)); and
- to require such plant species originating in such third countries or in the European Community to have a plant passport before being moved within the Community (articles 6(2)(b) and 7).

It is an offence under the principal Order to contravene these requirements.

This Order also corrects the effect of minor typographical errors in the Plant Health (Scotland) Amendment Order 2008 ([S.S.I. 2008/300](#)) (“the amending Order”):

- Article 4 of this Order amends article 41(7)(b) of the principal Order to make clear that references to Commission Directive [2008/61/EC](#) (O.J. No L 158, 18.6.2008) are to refer to that Directive as amended from time to time.
- Articles 6(1)(a) and 6(2)(a) of this Order correct the effect of a typographical error in articles 11 and 13 of the amending Order.

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