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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 613**

**The Plant Health (Scotland) Order 2005**

**PART 1**

**GENERAL**

**Title, commencement and extent**

1.—(1) This Order may be cited as the Plant Health (Scotland) Order 2005 and shall come into force on 31st December 2005.

(2) Subject to paragraph (3) this Order extends to Scotland only.

(3) In so far as this paragraph, articles 2(1), 5(1), 19(1), 20(1), 22(2), 23(2), 32(5), 33(2), 35(3), 43(2) and 44(2) of this Order extend beyond Scotland, they do so only as a matter of Scots law.

**General interpretation**

2.—(1) In this Order—

“area of plant health control” is defined in article 10(2);

“authorised officer” means—

- (a) an authorised representative of the responsible official body of the country in which a plant passport is issued, a public servant acting under the authority of such a representative or a qualified agent employed by the responsible official body, in any case who shall be appropriately qualified;
- (b) a person permitted by Swiss legislation to issue a Swiss plant passport; or
- (c) an authorised representative of the responsible official body or the national plant protection organisation of the country in which a phytosanitary certificate or phytosanitary certificate for re export or a translation of a phytosanitary certificate or phytosanitary certificate for re export is issued, or a public officer acting under the authority of such a representative;

“consignment” has the same meaning as in Article 2(1)(p) of Directive 2000/29/EC where that term is used in Part 2 or in relation to any relevant material referred to in that Part;

“Customs Act” means the Customs and Excise Management Act 1979(1);

“Directive 93/85/EC” means Council Directive 93/85/EC(2) on the control of Potato Ring Rot;

“Directive 98/57/EC” means Council Directive 98/57/EC(3) on the control of *Ralstonia solanacearum* (Smith) Yabuuchi et al.;

“Directive 2000/29/EC” means Council Directive 2000/29/EC(4) on protective measures against the introduction into the Community of organisms harmful to plants or plant

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(1) 1979 c. 2.

(2) O.J. No. L 259, 18.10.93, p.1.

(3) O.J. No. L 235, 21.8.98, p.1.

(4) O.J. No. L 169, 10.7.00, p.1.

products and against their spread within the Community as amended by Commission Directives [2001/33/EC\(5\)](#), [2002/28/EC\(6\)](#), [2002/36/EC\(7\)](#), [2003/22/EC\(8\)](#), [2003/47/EC\(9\)](#), [2003/116/EC\(10\)](#), [2004/31/EC\(11\)](#), [2004/70/EC\(12\)](#), [2004/102/EC\(13\)](#), [2005/16/EC\(14\)](#), Council Directive [2002/89/EC\(15\)](#), Council Regulation ([EC](#)) [806/2003\(16\)](#) and by Article 20 and Annex II of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded([17](#));

“early potatoes” means potatoes which are harvested before they are completely mature, marketed immediately after they have been harvested and whose skins can be easily removed without peeling;

“EC transit goods” means any relevant material introduced into Scotland from a third country via another part of the European Community;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000([18](#));

“Euro Mediterranean area” means the geographical area comprising Europe, Algeria, Ceuta, Egypt, Israel, Jordan, Lebanon, Libya, Melilla, Morocco, Syria, Tunisia and the area of Turkey east of the Bosphorus Strait known as Anatolia;

“Europe” includes European Russia, Belarus, Georgia, Ukraine, Turkey (except the area east of the Bosphorus Strait known as Anatolia), Kazakhstan (except the area east of the Ural river) and the Canary Islands;

“European Community” means the territories of the Member States including the Isle of Man and the Channel Islands but excluding the Canary Islands, Ceuta, Melilla and the French Overseas Departments;

“fruit” means fruit in the botanical sense but does not include dried, dehydrated, lacquered or deep frozen fruit;

“importer”, in relation to any plant pest or relevant material at any time between their landing from a third country and the time when they are discharged by an inspector under this Order, includes any owner or other person for the time being possessed of or beneficially interested in the plant pest or relevant material;

“inspector” means any person authorised by the Scottish Ministers to be an inspector for the purposes of this Order;

“IPPC” means the International Plant Protection Convention 1951([19](#));

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(5) O.J. No. L 127, 9.5.01, p.42; and see the associated Commission Directive [2001/32/EC](#), O.J. No. L 127, 9.5.01, p.38.

(6) O.J. No. L 77, 20.3.02, p.23; and see the associated Commission Directive [2002/29/EC](#), O.J. No. L 77, 20.3.02, p.26.

(7) O.J. No. L 116, 3.5.02, p.16.

(8) O.J. No. L 78, 25.3.03, p.10; and see the associated Commission Directive [2003/21/EC](#), O.J. No. L 78, 25.3.03.

(9) O.J. No. L 138, 5.6.03, p.47; and see the associated Commission Directive [2003/46/EC](#), O.J. No. L 138, 5.6.03, p.45.

(10) O.J. No. L 321, 6.12.03, p. 36.

(11) O.J. No. L 85, 23.3.04, p.18; and see the associate Commission Directive [2004/32/EC](#), O.J. No. L 85, 23.3.04.

(12) O.J. No. L 127, 29.4.04, p.97.

(13) O.J. No. L 309, 6.10.04, p.9.

(14) O.J. No. L 57, 3.3.05, p.19; and see the associated Commission Directive [2005/18/EC](#), O.J. No. L 57, 3.3.05, p.25.

(15) O.J. No. L 355, 30.12.02, p.45.

(16) O.J. No. L 122, 16.5.03, p.1.

(17) O.J. No. L 236, 23.9.03, p.33.

(18) [2000 c. 7](#); the definition of electronic communication in section 15(1) was amended by the [Communications Act 2003 \(c..21\)](#), section 406(1) and Schedule 17, paragraph 158.

(19) Adopted in 1951 (Treaty Series No. 16 (1954), Cmd 9077) and revised in 1979 (Miscellaneous Series No. 1 (1981), Cmd 8108).

“ISPM No. 4” means International Standard for Phytosanitary Measures No. 4 of February 1996<sup>(20)</sup> on Requirements for the establishment of pest free areas, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations;

“ISPM No. 10” means International Standard for Phytosanitary Measures No. 10 of October 1999<sup>(21)</sup> on Requirements for the establishment of pest free places of production and pest free production sites, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations;

“landed” means introduced into Scotland by any means and includes imported by post, and “land” and “landing” shall be construed accordingly;

“lot” has the same meaning as in Article 2(1)(o) of Directive 2000/29/EC;

“national plant protection organisation” means the service established by the government of a third country to discharge the functions specified in Article IV(1)(a) of the IPPC, details of which have been notified—

(a) in the case of contracting parties to the IPPC, to the Director of the Food and Agriculture Organisation of the United Nations; and

(b) in all other cases, to the European Commission;

“North America” means the geographical area comprising Canada, Mexico and the USA;

“nursery” means premises wholly or partly used for the cultivation or keeping of plants for the purpose of transplantation or removal to other premises;

“official”, in relation to any testing or other procedure required by this Order to be carried out in respect of any relevant material, means carried out by or under the supervision of the responsible official body or the national plant protection organisation of the country in which the testing or other procedure is carried out and “officially” shall be construed accordingly;

“official body of destination” has the same meaning as in Article 2(1)(l) of Directive 2000/29/EC;

“official body of point of entry” has the same meaning as in Article 2(1)(k) of Directive 2000/29/EC;

“official label” means a label that meets the relevant requirements set out in Part A or B of Schedule 9, issued by or with the authority of the responsible official body for the Member State in which the official label is issued;

“official statement” means a statement issued by an authorised officer or a statement included in a plant passport;

“phytosanitary certificate” means a certificate which complies with the relevant requirements of articles 7 and 15;

“phytosanitary certificate for re export” means a certificate which complies with the relevant requirements of articles 7 and 15;

“place of production” means any premises, normally worked as a unit, together with any contiguous land in the same ownership or occupation as such premises;

“plant” means a living plant (including a fungus or shrub), or a living part of a plant (including a living part of a fungus or shrub), at any stage of growth but excluding forest trees or forest shrubs; and living parts of a plant shall include—

(a) fruit or seed,

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(20) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00100 Rome, Italy and <http://www.ippc.int/IPP/En/default.htm>.

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- (b) vegetables, other than those preserved by deep freezing,
- (c) tubers, corms, bulbs or rhizomes,
- (d) cut flowers,
- (e) branches with or without foliage,
- (f) a plant or shrub that has been cut and which retains any foliage,
- (g) leaves or foliage,
- (h) a plant or shrub in tissue culture,
- (i) live pollen, and
- (j) bud wood, cuttings or scions;

“plant health check” means an examination carried out under article 12(3);

“plant health movement document” means a document which meets the requirements in Schedule 13;

“planting” has the same meaning as in Article 2(1)(c) of Directive 2000/29/EC;

“plant or shrub in tissue culture” means a plant or shrub growing in a clear liquid or clear solid aseptic culture medium in a closed transparent container;

“plant passport” means a label and, where appropriate, an accompanying document that meets the relevant requirements set out in Part A or B of Schedule 9, issued by or with the authority of the responsible official body for the Member State in which the plant passport is issued, and includes a replacement plant passport;

“plant pest” means any living organism, other than a vertebrate animal, in any stage of its existence, which is injurious or likely to be injurious to any plant or plant product;

“plant product” has the same meaning as in Article 2(1)(b) of Directive 2000/29/EC;

“plant trader” means—

- (a) an importer of relevant material,
- (b) a producer of relevant material,
- (c) a person in charge of premises used for the storage, aggregation or dispatch of consignments of relevant material, or
- (d) a person who in the course of a trade or business divides up or combines consignments of relevant material;

“potato” means any tuber or true seed or any other plant of *Solanum tuberosum* L. or other tuber-forming species of the genus *Solanum* L.;

“Potato Cyst Nematode” means any cyst-forming nematode of the species *Globodera pallida* Stone Behrens or *Globodera rostochiensis* (Wollenweber) Behrens that infests and multiplies on potatoes and any strains or pathotypes of such nematode;

“Potato Ring Rot” means either the disease of potatoes which is caused by the bacterium *Clavibacter michiganensis* subsp. *Sepedonicus* (Spieckermann and Kotthoff) Davis et al. or that bacterium, as the context may require;

“Potato Wart Disease” means either the disease of potatoes which is caused by the fungus *Synchytrium endobioticum* (Schilbersky) Percival or that fungus as the context may require;

“premises” includes any land, building, vehicle, vessel, aircraft, hovercraft, freight container or railway wagon;

“producer”, in relation to relevant material, means a person who grows or makes the material in the course of a trade or business;

“protected zone” means a zone listed in the third column of Annex IV, Part B of Directive 2000/29/EC opposite the reference to the relevant material to which that zone relates;

“register” means the register of plant traders maintained under article 25(1);

“registered”, in relation to a plant trader, means a trader whose particulars are listed in the register, and “registration” shall be construed accordingly;

“relevant material” means any plant, plant product, soil or growing medium;

“responsible official body” means either the body described in paragraph (i) or the body described in paragraph (ii) of Article 2(1)(g) of Directive 2000/29/EC;

“seed” means seed in the botanical sense other than seed not intended for planting;

“Seed Potatoes Regulations” means the Seed Potatoes (Scotland) Regulations 2000(22);

“South America” means the geographical area comprising Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela;

“Swiss plant passport” means a label and, where appropriate, an accompanying document, issued in Switzerland in accordance with Swiss legislation, which—

(a) contains information which gives evidence that the legislation in Switzerland relating to plant health standards and special requirements for relevant material moving into and within Switzerland have been complied with; and

(b) relates to relevant material listed in Part A of Schedule 8;

“third country” means a country or territory other than one within the European Community; and

“USA” means the United States of America except the state of Hawaii.

(2) “Transit”, for the purposes of this Order—

(a) where it occurs in article 12(5) or (6), has the same meaning as in Article 2(1)(r) of Directive 2000/29/EC; and

(b) where it occurs anywhere else in this Order shall bear its ordinary meaning.

(3) Any reference in this Order to a species shall be construed as a reference to that species or to any of its hybrids.

(4) Any reference in this Order to the European Community, to a Member State or a third country includes a reference to a state, country, principality, province or region within the European Community, Member State, or third country, as the case may be.

(5) Any reference in this Order to a numbered article or a numbered Schedule with no corresponding reference to a specific instrument shall be construed as a reference to the article or Schedule so numbered in this Order.

(6) Any reference in this Order to a Community instrument is a reference to that instrument as amended on the date this Order is made.

(7) Any reference in this Order to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is consequently capable of being reproduced.